

File Reference: SM56942-5

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22 November 2023

Via Electronic Mail (pjrafuse@irac.pe.ca)

Philip Rafuse
Island Regulatory and Appeals Commission
National Bank Tower
134 Kent Street, 5th Floor
Charlottetown, PE C1A 8R8

Dear Mr. Rafuse:

Re: LEV23-001 - Matt MacDonald v. Minister of Environment, Energy and Climate Action

As you know, we represent the Minister of Environment, Energy and Climate Action in the above-captioned matter. We write in response to the Commission's correspondence to the Minister dated 6 October 2023, which indicated that the Commission had received a notice of appeal against a decision of the Minister dated 28 September 2023. The correspondence enclosed a copy of the notice of appeal, which in turn enclosed a copy of the relevant decision.

We respectfully raise two preliminary points in response to this correspondence.

The first is that we respectfully submit that the notice of appeal is defective. It indicates that the appellant is seeking to appeal from a decision by the Minister relating to the refusal of approval of a management plan. The term "management plan" is defined in the *Watercourse and Wetland Protection Regulations*. It pertains primarily to soil and crop management.¹

The second is that the notice of appeal is incomplete. It does not set out any grounds of appeal. Section 29.1 of the *Environmental Protection Act* specifically provides that a notice of appeal shall state the grounds of appeal. This statutory provision should be read harmoniously with section 13 of the *Watercourse and Wetland Protection Regulations*. In addition to this specific statutory direction, there is a more fundamental reason for requiring an appellant to set out at least one ground of appeal in the notice of appeal: as a general rule, an appellate tribunal has no jurisdiction to determine an appeal otherwise than on the grounds raised by the appellant.² We note, moreover, that an appellant's general dissatisfaction with the underlying decision is not, on its own, a ground of appeal.³

We have enclosed, with this correspondence, documents with respect to the decision by the Minister that was enclosed with the notice of appeal. We have also enclosed a number of

¹ PEI Reg EC720/08, s.9(1)(a).

² Sara Blake, *Administrative Law in Canada*, 7th ed., §6.05.

³ See, for example, *Kasheke v Canada (Attorney General)*, 2018 NSCA 2 at para 26.

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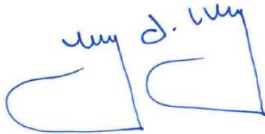
documents with respect to prior correspondence between the appellant and Departmental staff. We respectfully note, however, that we provide these documents under reservation. More specifically, we reserve the right to argue that the Commission lacks jurisdiction, in whole or in part, to decide the matter or matters in appeal. We anticipate that we will be able to formulate our position on the Commission's jurisdiction to determine this matter, or to determine these matters, if the notice of appeal is rectified and completed.

In our respectful view, it would be appropriate and beneficial for the Commission to seek the correction of these apparent deficiencies in the notice of appeal before requiring submissions from the Minister. This will ensure that the Minister is better-positioned to provide submissions that assist the Commission by meaningfully addressing the relevant issues, including jurisdiction.

Thank you for your attention to this correspondence.

Yours truly,

Stewart McKelvey

A handwritten signature in blue ink, appearing to read "Murray L. Murphy". The signature is written in a cursive style and is positioned above the printed name.

Murray L. Murphy