



PRINCE EDWARD ISLAND  
Regulatory & Appeals Commission  
Commission de réglementation et d'appels  
ÎLE-DU-PRINCE-ÉDOUARD

**Date Issued:** November 7, 2023  
**Dockets:** LA23002, LA18014,  
LA17008  
**Type:** Planning Appeal

**INDEXED AS:** Bryanton v. Minister of Housing, Land and Communities,  
2023 PEIRAC 09 (CanLII)

**Order No:** LA23-09

**BETWEEN:**

Betty Ann Bryanton

**Appellant**

**AND:**

Minister of Housing, Land and Communities

**Respondent**

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## PRELIMINARY ORDER

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Panel Members:

J. Scott MacKenzie, K.C. Chair

M. Douglas Clow, Vice-Chair

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Philip J. Rafuse  
Appeals Administrator  
Prince Edward Island Regulatory  
and Appeals Commission

## 1. BACKGROUND

1. This specific appeal is relatively new, having been filed just this year; however, the permits and accessory buildings at issue have a long history and have been the subject of dispute between Ms. Bryanton and the Minister, between Ms. Bryanton and her neighbours, and before the Commission.
2. Beginning in 2015, Ms. Bryanton's neighbour, Donna Stringer, appealed the Minister's decision to grant two permits to Ms. Bryanton with respect to her cottage and various accessory buildings on her property. The Commission's Order LA17-06 quashed both permits.
3. Ms. Bryanton then applied for the permits again, twice. As a result of those applications and the decisions of the Minister with respect to both, Ms. Bryanton and Ms. Stringer each filed appeals with the Commission in 2017 (LA17008) and 2018 (LA18014), respectively. Those two matters have been held in abeyance for quite some time while the parties try to come to some resolution about Ms. Bryanton's cottage and accessory buildings.
4. That leads to this appeal. In June 2022, Ms. Bryanton applied, again, for various permits on her property. This appeal relates to a decision of the Minister of Housing, Land and Communities, dated December 13, 2022, to deny three of those applications for accessory buildings on her property in Little Pond.
5. Ms. Bryanton filed a Notice of Appeal with respect to the Minister's denial on January 3, 2023, at 4:09pm (Docket LA23002).
6. On January 13, 2023, Ms. Stringer applied to be an Added Party Intervener in the present appeal.
7. This Order relates to three preliminary issues which have arisen with respect to this appeal.

## 2. PRELIMINARY ISSUES

8. There are three preliminary issues:
  - i. Was the Notice of Appeal filed within the limitation period?
  - ii. Should Ms. Stringer's Intervention Application be granted?
  - iii. How should the outstanding appeals be addressed?
9. Each of these issues will be addressed below.

## Limitation Period

10. The Minister's decision letter denying the permits is dated December 13, 2022. The *Planning Act* requires appeals to be filed "within 21 days after the date of the decision being appealed".<sup>1</sup>
11. Therefore, the final day to file an appeal with the Commission was January 3, 2023.
12. Rule 12(5) of the Commission's Rules of Practice & Procedure provides that a Notice of Appeal received after 4:00pm shall be deemed to have been filed on the next day. Therefore, on a strict reading of the Rules, the appeal was deemed received January 4, 2023.
13. The Commission requested submissions from both the Minister and Ms. Bryanton with respect to this issue and whether the Notice of Appeal was filed on time.
14. The Minister's position is that the Notice of Appeal was outside the prescribed timeline because it was received at 4:09pm on January 3, 2023, and therefore deemed to be received on January 4, 2023. The Minister has requested the appeal be dismissed on this basis because the Commission is without the jurisdiction to extend or abridge the statutory timeline.
15. Ms. Bryanton submitted the following primary arguments:
  - The PEI Planning Decision website indicates the appeal date as January 4<sup>th</sup>;
  - The *Planning Act* does not prescribe a time of day for filing a notice of appeal;
  - The Commission's Rules are procedures set by the Commission itself and are not law; and
  - She points out several Rules that support accepting her Notice of Appeal, including Rule 7.1 which provides that the Commission may extend or abridge time requirements fixed by the Rules.
16. In this case, in the interests of fairness, the Commission agrees with Ms. Bryanton and finds it necessary to dispense with the 4:00pm timeline in the Rules and accept the Notice of Appeal.
17. While the twenty-one day appeal period is legislated in the *Planning Act*, the 4:00pm cut-off is a rule imposed by the Commission under its authority to make its own rules under the *Island Regulatory and Appeals Commission Act*.<sup>2</sup> The *Planning Act* similarly leaves matters of procedure to the Commission.<sup>3</sup>
18. Rule 6 permits the Commission to, in its sole discretion, dispense with, amend or vary the Rules. Further, Rule 7.1 allows the Commission to extend the time requirements fixed by the Rules.

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<sup>1</sup> *Planning Act*, RSPEI 1988, P-8, s. s. 28(1.3).

<sup>2</sup> *Island Regulatory and Appeals Commission Act*, RSPEI 1988, I-11, s. 3(7).

<sup>3</sup> *Planning Act*, RSPEI 1988, P-8, s. 28(7).

19. In this case, the Commission dispenses with Rule 12(5) and finds that Ms. Bryanton's Notice of Appeal was filed within the legislated limitation period, being twenty-one days after the date of the decision being appealed.

### **Intervention Application**

20. Donna Stringer filed an Application for an Added Party Intervener on January 13, 2023, to this appeal (Docket LA23002). Ms. Stringer is the owner of the property located next door to Ms. Bryanton's property. She is represented in her application by John Stringer, KC, (her husband). Ms. Stringer seeks to fully participate in the Appeal as a party.
21. Pursuant to Rule 18 of the Commission's Rules of Practice & Procedure, both Ms. Bryanton and the Minister filed a written submission in response to the Application.
22. The Minister takes no position on the Intervener Application.
23. Ms. Bryanton objects to the Application for the following primary reasons:
  - Ms. Stringer's grounds are not relevant to the current appeal, and are instead based on the earlier appeal;
  - The focus on the earlier appeal, and Ms. Stringer's full participation, will greatly add to the complexity and cost of the proceeding;
  - The previous Order LA17-06 has been acted upon and is not outstanding;
  - The intervention would amount to a rehearing of the earlier appeal;
  - The intervention is not necessary to ensure compliance with the *Planning Act*; and
  - The intervention is vexatious and Ms. Stringer's interest is based on personal bias.
24. Rule 19 provides that, upon reviewing an application for intervener status, the Commission may, in its sole discretion, decline the application or grant the application, with or without conditions. Rule 20.1 outlines the factors to be considered by the Panel in making this determination.
25. In the Commission's view, the primary consideration from Rule 20.1 in this case is with respect to the nature of Ms. Stringer's interest in the appeal and whether it is "distinct and substantial". Based on the long history of this matter between these two parties dating back to 2015, and the fact that this appeal concerns the same accessory buildings that have been the subject of prior appeals between the parties, the Commission finds that Ms. Stringer has an interest in the appeal that is distinct and substantial.
26. Further, given the already complex nature of this appeal, with two appeals on the same subject matter outstanding involving the same parties, the Commission does not expect that Ms. Stringer's participation in the proceeding will add to its cost or complexity in any material way.
27. Finally, and as will be touched on in the section below, the Commission expects having Ms. Stringer participate in this appeal will assist the Commission in resolving the issues raised in this proceeding.

28. For these reasons, the Commission grants Ms. Stringer's Application for Added Party Intervener, and to fully participate in the Appeal (Docket LA23002) as a party.

### **Outstanding Appeals**

29. As discussed above, the history of the permits and accessory buildings at issue in this appeal is long and protracted. There are currently two outstanding appeals before the Commission with respect to the same accessory buildings. Ms. Bryanton filed an appeal on November 11, 2017 (Docket LA17008). Ms. Stringer filed an appeal on August 10, 2018 (Docket LA18014).

30. In June 2022, Ms. Bryanton applied, again, for various permits on her property. The Minister of Housing, Land and Communities, granted two permits to Ms. Bryanton and denied three applications for accessory buildings on her property in Little Pond. The two permits that were granted include a condition that "all previously issued permits for the structure(s) are null and void".

31. As a result of Ms. Bryanton's 2022 applications, and the condition attached to the newly issued permits, one or both of the previous appeals may be moot. However, given the history of these matters, and their overlap in terms of facts and evidence, the Commission has decided that all three appeals should be heard together.

32. Therefore, the parties are directed to consider the previous appeals, being Dockets LA17008 and LA18014, and to be prepared to address any outstanding issues at the hearing of this matter, Docket LA23002. If either Ms. Bryanton or Ms. Stringer wish to withdraw their previous appeal, they can do so at any time by contacting Commission Staff and advising of same.

33. Finally, prior to the hearing of these matters, the Commission may conduct a preliminary hearing to clarify or simplify the issues in respect of all three appeals.

### **IT IS ORDERED THAT**

The Commission hereby orders:

1. Rule 12(5) of the Commission's Rules of Practice & Procedure is dispensed with and Ms. Bryanton's Notice of Appeal is accepted as being filed within the legislated limitation period;
2. Ms. Stringer's Application for Added Party Intervener is granted and she will be permitted to fully participate in Appeal Docket LA23002 as a party; and
3. The previous appeals between these parties, being Dockets LA17008 and LA18014, and any outstanding issues therein, will be heard at the same time as this appeal.

**DATED** at Charlottetown, Prince Edward Island, November 7, 2023.

**BY THE COMMISSION:**

*(sgd. J. Scott MacKenzie, K.C.)*

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J. Scott MacKenzie, K.C., Chair

*(sgd. M. Douglas Clow)*

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M. Douglas Clow, Vice-Chair

**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.*

**NOTE:** In accordance with IRAC'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.