



Date Issued: March 27, 2026
Docket: LA25022
Type: Planning Act Appeal

INDEXED AS: Barlow v. Minister of Housing, Land and Communities
2026 PEIRAC 14 (CanLII)

Order No: LA26-05

BETWEEN:

Johnnie Barlow

Appellant

AND:

Minister of Housing, Land and Communities

Respondent

REASONS FOR DECISION

Panel Members:

Kerri Carpenter, Vice-Chair
Gordon MacFarlane, Commissioner

Compared and Certified a True Copy

(Sgd.) Michelle Walsh-Doucette

Commission Clerk

Island Regulatory and Appeals Commission

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Written Submissions Filed by:

1. For the Appellant:

Johnnie Barlow, Self Represented

2. For the Respondent:

Counsel:

Stephen Flanagan, Minister of Housing, Land and Communities

1. INTRODUCTION

1. This is an appeal of a decision of the Minister of Housing, Land and Communities (the “Minister”) to deny a development permit requesting permission to locate a 20’ x 24’ residence accessory structure on PID 694356, located at 115 Rainbow Drive, Tarantum, PE.
2. The decision under appeal was made September 24, 2025, and posted on the PEI Planning Decisions website on September 25, 2025. The Notice of Appeal was filed by the Appellant on November 5, 2025.
3. This Order considers the preliminary issue of whether the Notice of Appeal was filed within the statutory appeal period prescribed in subsection 28(1.3) of the *Planning Act* (the “Act”) “*within 21 days after the date of the decision being appealed*” and whether the Minister complied with subsection 23.1 of the *Act*.
4. The subject property falls within the jurisdiction of the Minister. Land use and development are regulated by the *Act’s* Subdivision and Development Regulations and Provincial Laws and Regulations.

2. BACKGROUND

5. On November 5, 2025, the Appellant filed a Notice of Appeal with the Commission. The Notice of Appeal appeals the decision of the Minister which denied a development permit on PID 694356 for an accessory structure. The denial letter indicates that the development permit was denied because the location of the structure would not be in accordance with the required setbacks in the *Planning Act Subdivision Regulations*.
6. The Minister’s decision letter is dated September 24, 2025. Notice of the Minister’s decision was posted on the PEI Planning Decisions website on September 25, 2025.
7. As set out above, the *Act* provides that an appeal to the Commission is to be made within 21 days after the date of the decision being appealed. Therefore, on its face, the statutory limitation period expired on October 15, 2025, being 21 days from the date of the decision.
8. Because the Notice of Appeal was filed on November 5, 2025, more than 21 days after the date of the decision, the Commission requested preliminary submissions from the parties on the matter of whether the Notice of Appeal was filed within the statutory timeline provided for in subsection 28(1.3) of the *Act*.
9. The Appellant made submissions on November 6, 2025. The Minister provided written submission on November 28, 2025. The Appellant made reply submissions on December 1 and 8, 2025.

3. ISSUES

10. The question for the Commission to consider in respect of this preliminary issue is whether the Appellant's appeal was filed in accordance with the statutory appeal period prescribed in subsection 28(1.3) of the *Act*.
11. The right to appeal to the Commission is a right created by statute and the Commission only has the jurisdiction that has been granted to it via its enabling and operating legislation. Therefore, the question of whether the Notice of Appeal was filed within the statutory appeal period goes to the Commission's jurisdiction and will determine whether this appeal can proceed before the Commission

4. DISPOSITION

12. The appeal is dismissed. The Commission finds that the Notice of Appeal was not filed in accordance with the statutory appeal timeline prescribed by the *Act*. The Commission accepts that the Minister provided public notice of the decision in accordance with section 23.1 of the *Planning Act*.
13. The Commission does not have jurisdiction to waive or extend the appeal period prescribed in the *Act*.

5. ANALYSIS

14. Subsection 28(1.3) of the *Planning Act* states:

Notice of appeal and time for filing

- (1.3) A notice of appeal must be filed with the Commission within 21 days after the date of the decision being appealed.

15. Section 23.1 of the *Act* requires a decision-maker (the Minister or council of a municipality, as the case may be) to post public notice of decisions:

23.1 Notice of decision of Minister or council

- (1) Where

- (a) the Minister makes a decision of a type described in subsection 28(1); or
- (b) the council of a municipality makes a decision of a type described in subsection 28(1.1)

the Minister or council, as the case may be, shall, within seven days of the date the decision is made, cause a written notice of the decision to be posted

- (c) on an Internet website accessible to the public; and
- (d) at a location accessible to the public during business hours,
 - (i) if the decision is made by the Minister, in
 - (A) a provincial government office in Charlottetown,and

- (B) a provincial government office in the county where the land that is the subject of the decision is located, or
- (ii) if the decision is made by the council of a municipality, in that municipality.

16. The Commission's authority is derived solely from the *Act*. The legislative timelines in subsection 28(1.3) provides that a notice of appeal must be filed within 21 days.
17. Previous orders of the Commission have held that the Commission is without jurisdiction to hear appeals filed beyond the statutory appeal period¹ and does not have authority to extend the time limit for appeals prescribed in the *Act*.² The Commission has also recently held that posting public notice of a decision in accordance with subsection 23.1 of the *Act* is sufficient notice to an applicant.³
18. In the present case, the decision under appeal was made September 24, 2025, and posted on the PEI Planning Decision website – an Internet website accessible to the public – on September 25, 2025. Therefore, on its face, the appeal was to be filed by October 15, 2025 (being 21 days after September 24, 2025⁴).
19. The Appellant submits that he received the decision letter from the Minister via registered mail. He submits that the letter from the Minister is dated September 24, 2025 and was postmarked September 25, 2025. He says he received notice of the letter from Canada Post on October 23, 2025, and picked it up that same day. The notice from Canada Post had "10/15" written on it. It is unclear whether this date refers to the day Canada Post received the mail or when they sent out the registered mail card.
20. The Appellant submits that Canada Post was on strike around the time of the decision and that these labour disruptions likely delayed the delivery of the registered letter.
21. The Appellant submits he did not know there would be a letter issued to him or that he had to check online for a published decision. The Appellant also submits that before the Minister sent the letter to him, they sent it to the previous owners.
22. The Appellant argues that he issued his Notice of Appeal within 12 calendar days of receiving the Minister's decision letter. He submits that the time limit in this matter should start on the day he physically picked up his registered letter containing the decision, that being October 23, 2025, and argues that any time before that was out of his control due to labour issues and other factors as described above.
23. The Minister's position is that the Commission does not have the statutory jurisdiction to hear the appeal as the Appellant failed to file his Notice of Appeal within the 21-day timeline set out in subsection 28(1.3) of the *Act*.

¹ Order LA17-05, *J. Anne Nicholson v. Community of Lower Montague*.

² Order LA22-01, *Goops Woolridge, et al. v. City of Charlottetown*, at paras 14 and 20.

³ Order LA25-08, *Montgomery Cavendish Cottages Inc. v. Resort Municipality*; see also, Order LA26-04, *Emma Donovan v. Minister of Housing, Land and Communities*

⁴ *Interpretation Act*, RSPEI 1988, I-8.1, s. 33(3).

24. The Minister submitted that they posted notice of the denial on the PEI Planning Decisions website on September 25, 2025. They also submitted that information about the decision was made available to the public on request during regular business hours in the provincial planning office located in Charlottetown, PEI.
25. Accordingly, the Minister submits that the appeal period began to run on September 25, 2025, when it posted public notice of the decision in accordance with subsection 23.1 of the *Act*. The Minister supports its position by citing the recent decision of the Commission, Order LA25-08 *Montgomery Cavendish Cottages Inc. v. Resort Municipality*, where, the Commission found that the appeal period began to run when the Municipality posted public notice of the decisions in accordance with subsection 23.1 of the *Act*.
26. The Commission notes that section 23.1 is the only notice requirement included in the *Planning Act*. It was added to the *Act* in 2009 to legislate a standardized public notice process some years following a decision of the Prince Edward Island Court of Appeal in *Booth and Peake v. Island Regulatory and Appeals Commission*.⁵
27. In *Booth and Peake*, the PEI Court of Appeal held that pursuant to section 28 of the *Act*, the appeal period begins to run when an appellant has received notice of the decision, whether through actual notice or general notice via a public posting process. Notably, at the time of the Court of Appeal's decision, the *Act* did not specify the manner in which notice to the public (or anyone) must be given, but the Court found that the law required there "*must be some public notice of a decision—or specific notice to persons affected by the development—before an appeal period [could] be said to run.*"
28. As noted above, some years following this decision, the *Act* was amended to include the notice provision at section 23.1.
29. The Commission finds that the Minister complied with the statutory notice requirement, and consequently, the trigger for the appeal period was not the Appellant's physical receipt of the decision letter. As noted above, section 23.1 provides the only notice requirements prescribed by the *Planning Act*.
30. Given the above consideration and review of the written submissions of the parties, the applicable legislation, and previous Orders and case law, the Commission finds that the requirements of subsection 23.1 of the *Act* were satisfied on September 25, 2025. Given that the Appellant filed his Notice of Appeal on November 5, 2025, he was outside the statutory limitation period. As the Notice of Appeal was filed well beyond the 21 days prescribed by section 28(1.3) of the *Act*, the Commission does not need to consider in this case whether the Minister's one day delay in posting notice of the decision impacted the appeal period.
31. Notwithstanding the Commission's decision, we recognize that there was an unfairness to the Appellant in this case when he was not made aware that the decision letter would be posted publicly online and, instead, waited for personal notice of the decision. However, the Commission can only work within the jurisdiction granted to it in the *Planning Act*, and is not authorized to waive or extend the application of statutory provisions, even in

⁵ 2004 PESCAD 18 [*Booth and Peake*].

extenuating circumstances. The Minister is encouraged to consider such unfairness moving forward.

6. CONCLUSION

32. The appeal is dismissed. The Commission finds that the Notice of Appeal was not filed within the statutory appeal period prescribed by the *Act*. Therefore, the Commission does not have the jurisdiction to hear the appeal.

33. The Commission thanks the parties for their submissions in this matter.

7. ORDER

34. The appeal is dismissed.

DATED at Charlottetown, Prince Edward Island, **March 27, 2026**

BY THE COMMISSION:

[sgd. Kerri Carpenter]

Kerri Carpenter, Vice-Chair

[sgd. Gordon MacFarlane]

Gordon MacFarlane, Commissioner

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.