



PRINCE EDWARD ISLAND

Regulatory & Appeals Commission

Commission de réglementation et d'appels

ÎLE-DU-PRINCE-ÉDOUARD

Date Issued: July 5, 2023
Docket: LT22030
Type: Real Property
Assessment Act Appeal

INDEXED AS: *Killam Investments (PEI) Inc. v. Minister of Finance*
2023 PEIRAC 08 (CanLII)

Order No: LT23-01

BETWEEN:

Killam Investments (PEI) Inc.

Appellant

AND:

Minister of Finance

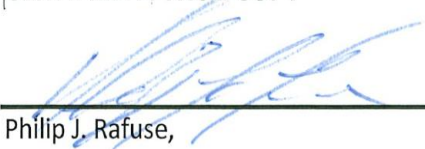
Respondent

ORDER

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 & Appeals
Commission

This proceeding requires the Commission to consider whether it has the jurisdiction to hear an appeal pursuant to section 22 of the *Real Property Assessment Act*, RSPEI 1988, c. R-4 (“Act”).

BACKGROUND

1. On November 17, 2022, the Minister of Finance disposed of an assessment referred for reconsideration (“Decision”) and mailed notice of the decision to the affected property owner, Killam Investments (PEI) Inc.
2. The Decision includes notice that, in the event the Owner was not satisfied with the Decision, a notice of appeal had to be completed, forwarded by registered mail, and received by the Minister and the Commission within twenty-one (21) days of the mailing date noted on the decision letter.
3. Clause 22(2)(a) of *Real Property Assessment Act* provides that an appeal of an assessment may be made “within twenty-one days of the mailing of the notice”.
4. Subsection 23(1) of the Act provides that an appeal to the Commission is “instituted by” serving a notice of appeal upon the Minister and the Chairman of the Commission.
5. The Owner mailed a notice of appeal to the Commission by registered mail on December 8, 2022.
6. The Minister received the notice of appeal via registered mail on December 12, 2022.
7. The Commission received the notice of appeal on December 14, 2022.

ISSUE

8. There is one main question for the Commission to decide:
 - Under sections 22 and 23 of the *Real Property Assessment Act*, did the Owner make the appeal within 21 days of the mailing of the Decision?
9. In other words, the Commission must decide whether it has jurisdiction to hear this appeal.
10. The question raised is a legal one. Having received written submissions from the parties on the subject of jurisdiction, the Commission will determine this matter in writing.

DISPOSITION

11. The notice of appeal was filed out of time. Therefore, the Commission, as a statutory tribunal without inherent authority, does not have the jurisdiction to hear this appeal. The Commission is also without the statutory authority to extend the time for filing an appeal under the Act.

SUBMISSIONS FROM THE PARTIES

Owner

12. The Owner does not dispute that they mailed the notice of appeal on December 8, 2022. However, the Owner submits that the Minister erred in the delivery of the Decision because it was not sent via registered mail as required under clause 25(1)(b) of the Act; therefore, they did not receive the Decision until November 29, 2022. The Owner argues that the failure to provide the Decision in a reasonable period was procedurally unfair because they had less time to appeal to the Commission.
13. For example, the Owner says that other referral decisions of the same date were received within four or five days, while this Decision was not received until twelve days after it was mailed. Given this discrepancy, the Owner called into question whether this Decision was actually sent November 17, 2022.
14. The Owner calculates the limitation period as being “within twenty-one days” of November 29, 2022 (the date they received the Decision), and ending on December 20, 2022.
15. The Owner provided some excerpts of case law to support their position, including that the interpretation of taxation legislation by the Supreme Court of Canada has directed that if the ordinary rules of interpretation leave doubt or ambiguity, there is a residual presumption in favour of the taxpayer (*Québec (Communauté urbaine) v Notre-Dame de BonSecours*, 1994 CanLII 58 (SCC)).
16. The Owner submits that the unfairness and inequity in this case should not be tolerated by the Commission in deciding this matter.

Minister

17. The Minister submits that the notice of appeal was served outside the 21-day appeal period prescribed at clause 22(2)(a) of the Act and is therefore out of time.
18. The Minister calculates the deadline for making an appeal as December 8, 2022. Their interpretation is that clause 22(2)(a) of the Act specifies the limitation period as beginning on (or from) the day of “*the mailing of the notice*”. According to the Minister, the mailing of the Decision was November 17, 2022. Therefore, December 8, 2022, is the deadline to appeal.
19. The Minister submits that the Owner did not serve the Minister with the notice of appeal until December 12, 2022, and the Commission was not served until December 14, 2022. Therefore, the appeal must, be dismissed because the Commission has no jurisdiction to extend the time for filing an appeal.
20. Contrary to the arguments of the Owner, the Minister pointed out that subsection 25(3) of the Act permits the Minister to make an Order with respect to other methods of service of documents, and provided a copy of a Ministerial Order dated January 31, 2013, which

orders standard mail as the method of delivery of referral dispositions. As a result, the Minister submits they acted appropriately in sending out the Decision by standard mail.

21. Finally, the Minister submits that if mail is received by the Provincial Administrative Building's Mail Room by 2:00pm, it will go out that day. The normal business practice is that if a letter is not going out the day it is dated, it would be reprinted and sent out on the same date it is dated. Pursuant to this practice, the Minister confirmed that the date as shown on the Decision, is the date it was mailed, which is the same process for any other taxpayer.

ANALYSIS

22. In a series of orders issued by the Commission in January 2022, this same question was considered. Orders LT22-01 through LT22-08 concluded that:
 - i) read as a whole, the appeal provisions of the Act state that an appeal to the Commission is instituted when a notice of appeal has been served on the Minister and the Commission, by registered mail, within twenty-one days of the mailing of the reconsideration decision by the Minister; and
 - ii) the act of mailing a notice of appeal is not service and a notice of appeal must actually be received by the Commission¹ in order to be served.
23. The Commission finds that these Orders and remain good authority on this question and the principles contained therein continue to apply.
24. In this case, the Decision is dated November 17, 2022. The Commission accepts the submission of the Minister that their standard practice is such that the date on the Decision letter is the same date it was mailed. While the Owner has speculated that perhaps this Decision may not have been put in the mail the day it was dated, they have provided no evidence to support this speculation.
25. Therefore, the appeal was to be made by end of day on December 8, 2022 (twenty-one (21) days from November 17, 2022).
26. While the Owner mailed a notice of appeal to the Commission and Minister, via registered mail, on December 8, 2022, this was not service. The Minister did not receive the notice of appeal until December 12, 2022, and the Commission did not receive it until December 14, 2022.²
27. Therefore, the Commission finds that the notice of appeal was not served within twenty-one days of the mailing of the decision. The Commission does not have jurisdiction to hear this appeal.
28. As a final note, the Commission understands the argument of the Owner with respect to receipt of the Decision twelve days after it was mailed and how this shortened the appeal period. It is noted that on the specific facts of this case, the Owner did receive the Decision

¹ Or deemed to be received by the Commission; see subsection 25(2) of the Act.

² Which is deemed to have been received on December 12, 2022, per subsection 25(2) of the Act.

within the twenty-one-day appeal period, and, therefore, the right of appeal was not completely circumscribed.

29. The Commission as a statutory tribunal without inherent authority, cannot extend the time for filing an appeal under the Act.
30. Nevertheless, the Commission agrees that this could lead to unfairness, particularly where the Minister relies on ordinary mail. The Commission encourages the Minister to consider the possibility that a person's right of appeal could be prejudiced by the language of the Act and method of service, and to consider legislative amendments to remedy this.

CONCLUSION

31. The Commission does not have the jurisdiction to hear this appeal because it was filed out of time.
32. The Commission thanks the parties for their submissions in writing.

DATED at Charlottetown, Prince Edward Island, Wednesday, July 5, 2023.

BY THE COMMISSION:

(sgd.) J. Scott MacKenzie

J. Scott MacKenzie, K.C., Chair

(sgd.) M. Douglas Clow

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.