



PRINCE EDWARD ISLAND

Regulatory & Appeals Commission

Commission de réglementation et d'appels

ÎLE-DU-PRINCE-ÉDOUARD

Date Issued: December 20, 2024
Docket: LT24001
Type: Real Property
Assessment Act Appeal

INDEXED AS: *Killam Investments (PEI) Inc. v. Minister of Finance*
2024 PEIRAC 9 (CanLII)

Order No: LT24-01

BETWEEN:

Killam Investments (PEI) Inc.

Appellant

AND:

Minister of Finance

Respondent

ORDER

Panel Members:

M. Douglas Clow, Acting Chair
Kerri Carpenter, Commissioner

Compared and Certified a True Copy

(Sgd.) Michelle Walsh-Doucette

Commission Clerk

Island Regulatory and Appeals Commission

INTRODUCTION

1. This is an appeal of a reconsideration decision made by the Minister of Finance of an assessment in respect of PID #1101443, made pursuant to the *Real Property Assessment Act*, RSPEI 1988, c. R-4 (the “RPAA”).
2. This proceeding requires the Commission to consider whether it has the jurisdiction to hear this appeal pursuant to sections 22 and 23 of the RPAA.

BACKGROUND

3. On January 11, 2024, the Minister of Finance disposed of an assessment referred for reconsideration (the “Decision”) in respect of PID #1101443 and mailed notice of the Decision to the affected property owner, Killam Investments (PEI) Inc. (the “Owner”).
4. The Owner, represented by Altus Group, e-mailed a Notice of Appeal to the Commission on January 31, 2024 (the Owner is also referred to herein as the “Appellant”).
5. Commission Staff e-mailed a copy of the Notice of Appeal to a representative of the Minister on February 21, 2024.
6. On March 6, 2024, the representative of the Minister e-mailed Commission Staff indicating they had no record of having received a Notice of Appeal from the Owner regarding this property. Further, they took issue with the form of service on the Commission being via e-mail versus registered mail, as prescribed by the RPAA. The Minister requested confirmation from the Owner as to if and when the Minister was notified.
7. On March 27, 2024, the Owner’s representative, Altus Group, confirmed to Commission Staff that they had not notified the Minister of the appeal.
8. On April 11, 2024, Commission Staff requested the parties provide written submissions on the issues of: (1) the apparent lack of service on the Minister; and (2) the form of service on the Commission.
9. Both parties provided written submissions.

ISSUE

10. There is one main question for the Commission to decide:

Under sections 22 and 23 of the *Real Property Assessment Act*, did the Owner institute the appeal within 21 days of the mailing of the Decision?

11. In other words, the Commission must decide whether it has jurisdiction to hear this appeal.
12. The questions raised are legal ones. Having received written submissions from the parties on the subject of jurisdiction, the Commission will determine this matter in writing.

DISPOSITION

13. The appeal was not properly instituted in accordance with sections 22 and 23 of the *RPAA*, because the Owner did not serve the Minister with the Notice of Appeal within the prescribed timeline.
14. 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 amend the requirements for filing an appeal under the *RPAA*.
15. The Commission declines to comment on the question of the method of service at this time as it is not required to dispose of this appeal.

ANALYSIS

16. In this case, the Minister has submitted that the Appellant's Notice of Appeal did not properly "institute" the appeal for two reasons, namely:
 - a. The Minister never received the Notice of Appeal, via personal service, registered mail, email or otherwise; and
 - b. The Commission received the Notice of Appeal via email.
17. The Appellant's representative, Altus Group, has conceded that they did not provide the Notice of Appeal to the Minister. However, they submit that they were not advised by Commission Staff that they were required to file the appeal with the Minister, saying:

It would have been nice to also been notified that I needed to appeal to the Minister of Finance in the same matter as I did with IRAC, but I acknowledge that I did not do so and cannot offer any valid rebuttal to the ministers detailed response.
18. A series of previous decisions of the Commission issued in January 2022, being Orders LT22-02 through LT22-08, concluded that the *Real Property Assessment Act* is clear that an appeal is instituted "by serving a notice of appeal" according to section 23(1) of the Act on both the Minister and the chairperson of the Commission. Orders LT22-01 through LT22-08 concluded, in part, that, the appeal provisions of the *RPAA* provide that an appeal to the Commission is instituted when a notice of appeal has been served on the Minister and the Commission within twenty-one days of the mailing of the reconsideration decision by the Minister.
19. The Commission finds that these Orders remain good authority on this question and the principles contained therein continue to apply.
20. In this case, the Commission received a copy of the Notice of Appeal before the appeal timeline expired. However, the Minister did not receive a copy of the Notice of Appeal until it was provided by Commission Staff on February 21, 2024, well after the appeal period expired.

21. Sections 22 and 23 of the RPAA state:

22. Appeals to Appeals Board

- (1) Where an assessment has been referred to the Minister under section 20, and after the Minister has notified the person making the reference of the decision, the person making the reference may appeal to the Commission to have the assessment vacated or varied.

Limitation of action

- (2) An appeal under subsection (1) may be made by the person assessed
- (a) within twenty-one days of the mailing of the notice referred to in subsection 20(3); or
 - (b) where the Minister has not notified the person of the decision within the time specified by subsection 20(3), within twenty-one days after the time for mailing the notice has expired.

23. Appeal to be begun by

- (1) An appeal to the Commission shall be instituted by serving a notice of appeal in the form approved by the Minister
- (a) upon the Minister by mailing a copy of it by registered mail;
 - (b) upon the chairman by mailing a copy of it by registered mail; and
 - (c) upon any other person that the Minister directs by notice in writing to the appellant.

22. As concluded by the Commission previously, the *RPAA* is clear that an appeal is “instituted” by serving a notice of appeal in accordance with section 23(1) of the Act, and this service must be effected on both the Minister and the chairperson of the Commission.

23. In this case, the Appellant has acknowledged that they did not serve the Notice of Appeal on the Minister. Applying the Commission’s previous findings in Orders LT22-02 through LT22-08, the Appellant, therefore, did not serve the notice of appeal in accordance with subsection 23(1) of the Act, and the appeal was not properly “instituted”.

24. In response to the Appellant’s submission that they were not notified by Commission Staff of the requirement to serve the Notice of Appeal on the Minister, it is worth noting that both the Minister’s Decision and approved Form 3 Notice of Appeal make it very clear that the Notice of Appeal must be served on both the Commission *and* the Minister.

25. First, the Decision includes notice that, in the event the Owner was not satisfied with the Decision, they have the right to make a formal appeal under section 22 of the RPAA. The Decision goes on to state:

Attached please find a copy of Form 3, prescribed by the *Real Property Assessment Act* Regulations, for serving a **Notice of Appeal** to the Island

Regulatory and Appeals Commission (IRAC) and The (sic) Minister for the Department of Finance. You must complete this form and forward it by registered mail, to be received by the above noted parties, within 21 days of the mailing date noted on this decision letter. [emphasis in original]

26. Second, the Form 3 Notice of Appeal includes also the following information at the bottom:

This form shall be forwarded by Registered Mail to:		
The Island Regulatory and Appeals Commission 5 th Floor, Suite 501 National Bank Tower, 134 Kent Street, PO Box 577 Charlottetown, PE C1A 7L1	AND	Department of Finance Taxation and Property Records P.O Box 1150 Charlottetown, PE C1A 7M8

27. In conclusion, as previously held by the Commission in Orders LT22-02 through LT22-08, an appeal is “instituted” by serving a notice of appeal in accordance with section 23(1) of the Act, and this service must be effected on both the Minister and the chairperson of the Commission, within the timeline prescribed by the *RPAA*. The Commission does not have the ability to waive compliance with legislatively mandated service requirements. Therefore, because the Appellant did not serve the notice of appeal on the Minister in accordance with the requirements of the *RPAA*, the Commission does not have jurisdiction to hear this appeal.

28. As a final comment, as noted above, Commission Staff provided a copy of the Notice of Appeal to the Minister on February 21, 2024. However, even if Commission Staff had provided a courtesy copy of the Notice of Appeal to the Minister within the prescribed timeline, the provisions of the *RPAA* still would not have been complied with, as it is the Appellant (“the person assessed”) who is required to make the appeal within the prescribed timeline and institute the appeal by serving the Commission and the Minister.

29. In respect of the Minister’s submission with respect to the method of service of the Notice of Appeal, the Commission declines to comment on that question at this time as it is not required to dispose of this appeal.

CONCLUSION

30. The Commission does not have the jurisdiction to hear this appeal.

31. The Commission declines to comment on the method of service at this time as it is not required to dispose of this appeal.

32. The Commission thanks the parties for their submissions in writing.

ORDER

33. The Commission does not have jurisdiction to hear this appeal.

DATED at Charlottetown, Prince Edward Island, Friday, December 20, 2024.

BY THE COMMISSION:

(sgd. M. Douglas Clow)

M. Douglas Clow, Acting Chair

(sgd. Kerri Carpenter)

Kerri Carpenter, 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.

Section 33 of the ***Real Property Assessment Act*** reads as follows:

33. Notwithstanding anything in any public or private Act, an appeal lies to the Supreme Court of the province from any order, decision, or award of the Commission, if notice of the appeal is given the other parties within forty-five days after the making of the order, or decisions sought to be appealed from.

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.