



PRINCE EDWARD ISLAND
ÎLE-DU-PRINCE-ÉDOUARD

JUDICIAL REVIEW ACT

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For more information concerning the history of this Act, please see the *Table of Public Acts* on the Prince Edward Island Government web site (www.princeedwardisland.ca).

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JUDICIAL REVIEW ACT

CHAPTER J-3

1. Definitions

In this Act

- (a) “**act**” includes an omission or failure to act;
- (b) “**application for judicial review**” means an application to determine whether or not authority conferred on a tribunal by an enactment has been exercised in accordance with the enactment in respect to a decision of the tribunal in relation to the legal rights, powers, privileges, immunities, duties or liabilities of a person or the eligibility of a person to receive, or to continue to receive, a benefit or license;
- (c) “**enactment**” includes an Act or a regulation;
- (d) “**exercise of authority**” includes a failure to exercise authority;
- (e) “**existing proceedings**” means the proceedings referred to in clauses 2(a) and (b);
- (f) “**judge**” means a judge of the Supreme Court;
- (g) “**record**” includes
 - (i) a document by which the proceeding is commenced,
 - (ii) a notice of a hearing in the proceeding,
 - (iii) an intermediate order made by the tribunal,
 - (iv) a document produced in evidence at a hearing before the tribunal, subject to any limitation expressly imposed by any other enactment on the extent to or the purpose for which a document may be used in evidence in a proceeding,
 - (v) a transcript, if any, of the oral evidence given at a hearing, and
 - (vi) the decision of the tribunal and any reasons given by it;
- (h) “**tribunal**” means a person or group of persons upon whom an enactment confers authority to make a decision, whether styled a board or a commission or by any other title, but does not include
 - (i) the Provincial Court of Prince Edward Island or a judge thereof,
 - (ii) the Supreme Court of Prince Edward Island or a judge thereof,
 - (iii) the Court of appeal of Prince Edward Island or a judge thereof, or
 - (iv) the Lieutenant Governor in Council when not making a decision pursuant to authority conferred by an enactment. *1988, c.35, s.1; 2008, c.20, s.72(51).*

2. Purpose

- (1) The purpose of this Act is to substitute an application for judicial review for the following existing proceedings:
 - (a) proceedings by way of application for an order in the nature of mandamus, prohibition or certiorari;

- (b) proceedings by way of an action for a declaration or for an injunction, or both, in relation to the exercise, refusal to exercise or proposed or purported exercise of a statutory power.

Treatment of application for prerogative remedies

- (2) An application in the nature of mandamus, prohibition or certiorari shall be deemed to be an application for judicial review and shall be made, treated and disposed of as if it were an application for judicial review. *1988, c.35, s.2; 1990, c.26, s.1.*

3. Application

- (1) An application for judicial review may be made to a judge or, with the consent of all parties and of the Court of Appeal or a judge thereof, to the Court of Appeal.

Time for bringing application

- (1.1) An application for judicial review shall be brought within thirty days of the date of the exercise of authority complained of but a judge may extend the time for making the application, either before or after the expiration of the time so limited, on such terms as he considers proper, where he is satisfied that there are grounds for relief and that no substantial prejudice or hardship will result to any person by reason of the delay.

Sufficiency of application

- (2) In an application for judicial review the applicant shall set out
- (a) the grounds upon which he is seeking relief; and
 - (b) the nature of the relief he seeks,
- but need not specify which of the existing proceedings governs his claim.

Powers of judge

- (3) Subject to this Act, a judge, on an application for judicial review, may by order
- (a) nullify an act of a tribunal not done pursuant to authority conferred by an enactment;
 - (b) prohibit an act of a tribunal that would not be an act done pursuant to authority conferred by an enactment;
 - (c) direct an act by a tribunal in accordance with authority conferred by an enactment if a duty to act is not performed;
 - (d) declare a right of a person in respect to the exercise of authority conferred by an enactment on a tribunal;
 - (e) refer a matter back to a tribunal for further consideration either generally or in accordance with specific findings of the judge.

Interim order

- (4) On an application for judicial review, a judge may make such interim order as he considers proper pending the final determination of the application including a stay of proceedings before a tribunal.

Act of a tribunal

- (5) For the purpose of subsection (3) “an act of a tribunal” includes a decision or order of the tribunal.

References to judge

- (6) Where an application is made to the Court of Appeal pursuant to subsection (1), any reference in this Act to a judge shall be construed as a reference to the Court of Appeal or a judge thereof. *1988, c.35, s.3 1990, c.26, s.2; 2008, c.20, s.72(51).*

4. Grounds

- (1) Without limiting the generality of section 3, a judge, on an application for judicial review, may make an order pursuant to section 3 where
- (a) there is a breach of the rules of natural justice;
 - (b) there is a failure to adhere to procedures prescribed by an enactment;
 - (c) there is an act that is not an act pursuant to authority conferred by an enactment;
 - (d) there is error in law, whether or not a record of the tribunal discloses the error;
 - (e) there is a failure to perform a duty in respect to the exercise of authority conferred by an enactment;
 - (f) there is no evidence to support an exercise of authority conferred by an enactment;
 - (g) there is unreasonable delay in respect to the exercise of authority conferred by an enactment;
 - (h) the exercise of authority conferred by an enactment is induced or affected by fraud.

Order notwithstanding right of appeal

- (2) A judge may make an order pursuant to section 3 notwithstanding that the authority of a tribunal could have been the subject of an appeal by the applicant if the order is conditional on the applicant filing with the Prothonotary a written waiver of any right of appeal from the tribunal in respect to the matter that forms the basis of his application for judicial review.

Condition precedent to exercise of authority by tribunal

- (3) A judge may make an order pursuant to section 3 in respect to a report or recommendation where an enactment requires that the report or recommendation precede a decision of a tribunal pursuant to an enactment. *1988, c.35, s.4; 2008, c.20, s.72(51).*

5. Dismissal of application, limitation and interest of applicant

Without limiting the generality of section 3, a judge may dismiss an application for judicial review at any time on the ground that

- (a) the applicant has not brought his application within such time as is specified in subsection 3(1.1) or the order of a judge, whichever is the greater time; or
- (b) the applicant is not a person who is, or would be, adversely affected by the exercise of, or failure to exercise, the authority conferred on a tribunal. *1988, c.35, s.5; 1990, c.26, s.3.*

6. Defect in form, technical irregularity

- (1) An application for judicial review may be dismissed where
- (a) the sole ground for an order established is a defect in form or a technical irregularity; and
 - (b) the judge is of the opinion that no substantial wrong or miscarriage of justice has occurred.

Validation of decision of tribunal

- (2) Where an application is dismissed pursuant to subsection (1), the judge may by order validate the decision of the tribunal notwithstanding the defect on such terms and with effect at such time as the judge considers appropriate. *1988, c.35, s.6.*

7. Description of tribunal as a party

- (1) No application for judicial review shall be dismissed or stayed by reason only that the application describes as a party a tribunal.

Idem

- (2) A tribunal is properly described for the purpose of an application for judicial review if it is described in the same manner as it is described in an enactment that confers authority on the tribunal.

Amendment

- (3) No application for judicial review shall be dismissed by reason only that the application does not properly describe a tribunal but the judge may order that the application shall be amended on such terms as to costs or extension of time as the judge considers is reasonable.

Service

- (4) Where two or more persons collectively comprise a tribunal, an application for judicial review that relates to that tribunal is sufficiently served on the tribunal if it is served on any of those persons. *1988, c.35, s.7.*

8. Record of tribunal

- (1) Unless a judge otherwise orders, a tribunal to which an application for judicial review relates shall file with the Prothonotary within ten days of the service of the application on the tribunal a true copy of a record of any hearing in respect to the decision that is the subject of the application.

Idem

- (2) The applicant or the tribunal may apply to a judge for an order to settle the content of the record.

Application does not stay proceeding

- (3) Unless a judge otherwise orders, an application for judicial review does not stay a proceeding before a tribunal or any act that may be done if an exercise of authority by the tribunal were upheld. *1988, c.35, s.8; 2008, c.20, s.72(51).*

9. Intervention by Minister

Notice of an application for judicial review shall be served on the Minister of Justice and Public Safety and Attorney General and the Minister of Justice and Public Safety and Attorney General is entitled to intervene and to be heard on the application. *1988, c.35, s.9; 1993, c.29, s.4; 1997, c.20, s.3; 2000, c.5, s.3; 2010, c.14, s.3; 2012, c.17, s.2; 2015, c.28, s.3.*

10. Amendment of other enactments

A reference in any other enactment to a writ or order in the nature of certiorari, prohibition or mandamus is deemed also to refer to an application for judicial review. *1988, c.35, s.10.*

11. Abolition of *quo warranto*

- (1) Writs of *quo warranto* and informations in the nature of *quo warranto* are abolished.

Judicial review of entitlement to office

- (2) Where a person assumes a public office to which he is not entitled, a judge on an application for judicial review of the entitlement to the office may enjoin and restrain the person from assuming or acting as if he were entitled to the office and may declare the office vacant.

Saving

- (3) The *Controverted Elections (Provincial) Act* R.S.P.E.I. 1988, Cap. C-22 applies notwithstanding subsection (2). 1988, c.35, s.11.

12. Notice, Crown proceedings

Subsection 10(2) of the *Crown Proceedings Act* R.S.P.E.I. 1988, Cap. C-32 does not apply to an application for judicial review. 1988, c.35, s.12; 2014.c.37,s.1.