



PRINCE EDWARD ISLAND
ÎLE-DU-PRINCE-ÉDOUARD

ISLAND REGULATORY AND APPEALS COMMISSION ACT

PLEASE NOTE

This document, prepared by the *Legislative Counsel Office*, is an office consolidation of this Act, current to June 28, 2019. It is intended for information and reference purposes only.

This document is *not* the official version of the Act. The Act and the amendments as printed under the authority of the Queen's Printer for the province should be consulted to determine the authoritative statement of the law.

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).

If you find any errors or omissions in this consolidation, please contact:

Legislative Counsel Office
Tel: (902) 368-4292
Email: legislation@gov.pe.ca



ISLAND REGULATORY AND APPEALS COMMISSION ACT

Table of Contents

Section	Page
1. Definitions.....	5
2. Corporation	5
3. Composition of the Commission.....	5
4. Conflict of interest	7
5. Functions.....	7
6. Powers.....	8
6.1 Levies respecting IWMC	8
7. Staff.....	8
8. Procedure	9
9. Determining questions of fact	9
10. Defects in procedure, effect of	9
11. Reference of matters to Supreme Court	9
11.1 Alternative dispute resolution	9
12. Review, etc. of decisions.....	10
13. Appeal	10
14. Stated case to the Supreme Court by Commission.....	10
15. Annual expenses	10
16. Annual report	11
17. Audit	11
18. Service of documents	11
19. Indemnity	11
20. Regulations	12
21. Repeal	12
22. Consequential amendments.....	12
23. Transitional provisions.....	12



ISLAND REGULATORY AND APPEALS COMMISSION ACT

CHAPTER I-11

1. Definitions

In this Act

- (a) “**Commission**” means the Island Regulatory and Appeals Commission;
- (b) “**commissioner**” means a full-time or part-time member of the Commission;
- (c) “**Executive Committee**” means the persons appointed under subsection 3(5);
- (c.1) “**Island Waste Management Corporation**” means the Island Waste Management Corporation established by an order made under section 18 of the *Environmental Protection Act* R.S.P.E.I. 1988, Cap. E-9;
- (d) “**Minister**” means the Minister of Education and Lifelong Learning;
- (d.1) “**renewable energy generator**” means a renewable energy generator as defined under the *Renewable Energy Act* R.S.P.E.I. 1988, Cap. R-12.1;
- (e) “**utility**” means any person and the lessees, trustees, liquidators or receivers of any person that owns, operates, manages or controls, or is incorporated for the purpose of owning, operating, managing or controlling any plant or equipment,
 - (i) repealed by 1996, c.21, s.1,
 - (ii) for the production, transmission, distribution or furnishing of electrical energy, or
 - (iii) for the provision of water or sewerage or water and sewerage service, either directly or indirectly, to or for the public. 1991,c.18,s.1; 1993,c.29,s.4; 1995,c.32,s.3; 1996,c.21,s.1; 2001,c.9,s.1; 2004,c.16,s.20; 2005,c.34,s.2; 2009,c.73,s.2; 2015,c.28,s.3; 2019,c.1,s.3.

2. Corporation

- (1) There is established a Corporation to be called the Prince Edward Island Regulatory and Appeals Commission, which may also be known as the Island Regulatory and Appeals Commission.

Appointment

- (2) The Lieutenant Governor in Council shall appoint the members of the Commission and shall designate the chairman and a vice-chairman. 1991,c.18,s.2.

3. Composition of the Commission

- (1) The Commission shall be composed of
 - (a) a full-time chairman who shall be the chief executive officer of the Commission;
 - (b) a full-time vice-chairman, who shall assume primary responsibilities for matters related to land;

- (c) one other commissioner;
- (d) not more than five part-time commissioners who shall be knowledgeable in one or more of the following areas:
 - (i) accounting, agriculture, municipal planning, engineering,
 - (ii) business, environmental matters, finance, economics,
 - (iii) law, utilities, taxation, consumer protection.

Chairman, term of office

- (2) The chairman, subject to removal from office for just cause, shall hold office for a period of up to ten years as determined by the Lieutenant Governor in Council from the effective date of appointment, and is eligible for reappointment for a term of up to ten years.

Term of office

- (3) Subject to removal from office for just cause, the term of office of the commissioners other than the chairman shall be not less than three nor more than ten years as determined by the Lieutenant Governor in Council at the time of appointment.

Reappointment

- (4) A commissioner is eligible for reappointment.

Executive Committee

- (5) The chairman shall appoint an Executive Committee of the Commission consisting of two or more members of the Commission, one of whom may be the chairman.

Orders, quorum

- (6) A decision or order made by any panel comprising two or more commissioners, at least one of whom is a full-time commissioner is a decision or order of the Commission.

Rules of procedure, administration

- (7) The Executive Committee may prescribe forms to be used by the Commission and make rules and regulations governing administration and general procedure, including
 - (a) authorizing the Commission to establish panels to exercise the powers of the Commission; and
 - (b) the imposition of time constraints on parties appearing before the Commission where time constraints are in the interest of speedy resolution of matters before the Commission.

Idem

- (8) The Executive Committee may make rules governing practice and procedure at hearings and may impose time constraints on the parties appearing before the Commission where time constraints are in the interest of a speedy resolution of matters before the Commission.

Directions

- (9) Where any matter is before the Commission, the Commission may give directions to the parties with respect to the conduct of the hearing.

Authority of chairman

- (10) The chairman has control and direction over the duties to be performed by the Executive Committee, the other members of the Commission and by the staff of the Commission.



Powers of commissioner

- (11) For the purpose of discharging his functions, each commissioner may
- (a) administer oaths;
 - (b) certify to official acts;
 - (c) by subpoena, compel the attendance of witnesses and the production of books, accounts, papers, records, documents and other evidence.

Contempt

- (12) A refusal of any witness to testify or a failure to respond to any subpoena or other process of the Commission is a contempt and a judge of the Supreme Court may, on application of the Commission or any commissioner, compel obedience for contempt in the same manner as for contempt of the court.

Oath of office

- (13) Before entering on the discharge of their duties, each of the commissioners shall be sworn to the faithful discharge thereof before a judge of the Supreme Court.

Tied vote

- (14) In the case of equal division of opinion on the part of the commissioners, the decision of the chairman or the commissioner appointed by the chairman to preside in any matter before the Commission shall prevail. *1991, c.18, s.3; 2001, c.41, s.1; 2008, c.20, s.72(49).*

4. Conflict of interest

- (1) Each commissioner shall arrange his private affairs in a manner that will enhance public confidence in the independence of the Commission and prevent conflicts of interest from arising.

Idem

- (2) Any commissioner who
- (a) holds an interest, directly or indirectly, in any share, stock or other security of a utility;
 - (b) makes use of any privileged information for personal gain or the gain of others; or
 - (c) accepts any remuneration, fee, gift, gratuity or other benefit which could reasonably be considered to influence his decision in respect of the performance of his functions,
- is in conflict of interest.

Vacating office

- (3) If any commissioner voluntarily holds an interest described in clause (2)(a), his office thereupon becomes vacant, and if any commissioner holds such an interest otherwise than voluntarily, he shall, within a reasonable time, divest himself of the interest, and if he fails so to do, his office shall thereupon become vacant.

Effect of vacancy

- (4) A vacancy in the office of commissioner does not impair the ability of the remaining commissioners to act. *1991, c.18, s.4.*

5. Functions

The functions of the Commission are

- (a) subject to the provisions of the *Electric Power Act* R.S.P.E.I. 1988, Cap. E-4 to regulate utilities except sewerage and water utilities owned, operated, managed or controlled by the City of Charlottetown, City of Summerside or the Towns of Stratford or Cornwall; {eff.} March 31/95
- (b) to hear and decide matters relating to land use, to decide upon the disposition of applications respecting the acquisition of land by non-residents and corporations where so required by any Act;
- (c) to hear and decide appeals from decisions of
 - (i) the Director under the *Rental of Residential Property Act* R.S.P.E.I. 1988, Cap. R-13.1,
 - (ii) the Minister of Finance under the *Real Property Assessment Act* R.S.P.E.I. 1988, Cap. R-4 or the *Real Property Tax Act* R.S.P.E.I. 1988, Cap. R-5,
 - (iii) the Provincial Tax Commissioner under the *Revenue Administration Act* R.S.P.E.I. 1988, Cap. R-13.2, and
 - (iv) the Minister of Finance under the *Emergency 911 Act* R.S.P.E.I. 1988, Cap.E-5.1; and
- (d) to perform such other functions as may be conferred on the Commission under any enactment. *1991,c.18,s.5; 1993,c.29,s.4; 1994,c.25,s.30 {eff.} July 4/94; 1994,c.29,s.1; 2006,c.30,s.7; 2010,c.31,s.3; 2010,c.9,s.8; 2012,c.17,s.2; 2015,c.28,s.3; 2015,c.36,s.35; 2016,c.45,s.28(2).*

6. Powers

- (1) The Commission has
 - (a) all the jurisdiction and powers conferred or vested in it by this Act or any other enactment, and all other implied or incidental powers necessary to perform its functions;
 - (b) the powers of a company incorporated under the *Companies Act* R.S.P.E.I. 1988, Cap. C-14;
 - (c) power to levy assessments, levies, license fees and other charges to cover the cost of its operations and such assessments and charges may be imposed upon the government.

Levies respecting renewable energy generators

- (2) The Commission may not under subsection (1), or under section 15, levy or issue an assessment on a renewable energy generator. *1991,c.18,s.6; 2004,c.16,s.20.*

6.1 Levies respecting IWMC

The Commission may not, under sections 6 or 15, levy or issue an assessment on the Island Waste Management Corporation. *2005,c.34,s.2.*

7. Staff

- (1) The Commission may
 - (a) appoint such staff and define their duties;
 - (b) engage such consultants or other assistants,as it considers necessary to perform its functions.



Application of Civil Service Act

- (2) The *Civil Service Act* R.S.P.E.I. 1988, Cap. C-8 does not apply to any person employed by the Commission. *1991, c.18, s.7.*

8. Procedure

In the exercise of its jurisdiction the Commission

- (a) may require a party to provide such records, books or information as the Commission considers necessary to decide the matter in issue;
- (b) may decide all matters of procedure not otherwise provided for in the rules made under subsection 3(7) or (8). *1991, c.18, s.8.*

9. Determining questions of fact

In determining any question of fact the Commission is not bound by the finding or judgment of any court in any suit, prosecution or proceeding involving the determination of that fact, but the finding or judgment, in proceedings before the Commission, is *prima facie* evidence only. *1991, c.18, s.9.*

10. Defects in procedure, effect of

A substantial compliance with the requirements of this Act or any other Act conferring jurisdiction, power or authority on the Commission is sufficient to give effect to all the rules, orders, acts and regulations of the Commission, and no rule, regulation, order, decision, or act of the Commission shall be declared inoperative, illegal or void for any omission of a technical nature in respect thereof. *1991, c.18, s.10.*

11. Reference of matters to Supreme Court

- (1) If in any matter before it, the Commission is of the opinion that any issue involved is properly triable in a court of law, it may of its own motion or upon application of any party transmit a statement of the issue to the Supreme Court.

Procedures

- (2) The Supreme Court or a judge thereof shall determine the procedure to be followed on the transmission referred to in subsection (1) and may enlarge or amend any issue involved.

Jurisdiction of court

- (3) The Supreme Court or the judge thereof shall try the issue transmitted to it under subsection (1) or the enlarged or amended issue and remit the matter to the Commission with its decision thereon. *1991, c.18, s.11.*

11.1 Alternative dispute resolution

- (1) The Commission may use alternative dispute resolution where it considers it appropriate to do so for the purpose of resolving any issue or matter in dispute before the Commission.

Jurisdiction of court

- (2) The terms of any agreement signed as a result of the use of alternative dispute resolution procedures may be incorporated in and form part of an order made by the Commission. *1995, c.32, s.3.*

12. Review, etc. of decisions

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. *1991,c.18,s.12.*

13. Appeal

- (1) An appeal lies from a decision or order of the Commission to the Court of Appeal upon a question of law or jurisdiction.

Notice of appeal

- (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.

Commission deemed a party

- (3) The Commission shall be deemed to be a party to the appeal.

Costs

- (4) No costs shall be payable by any party to an appeal under this section unless the Court of Appeal, in its discretion, for special reasons, so orders. *1991,c.18,s.13; 2008,c.20,s.72(49).*

14. Stated case to the Supreme Court by Commission

- (1) The Commission may, of its own motion or upon the application of any party and upon such security being given as the Commission may direct, state a case in writing for the opinion of the Court of Appeal upon any question which in the opinion of the Commission is a question of law.

By Minister

- (2) A similar reference may also be made at the request of the Minister.

Jurisdiction of court

- (3) The Court of Appeal shall hear and determine the question stated under subsection (1) or (2) and all questions of law arising therefrom and remit the matter to the Commission with the opinion of the court thereon. *1991,c.18,s.14; 2008,c.20,s.72(49).*

15. Annual expenses

- (1) The annual expenses of the Commission shall be borne by the several utilities and other persons who are subject to the supervision or control of the Commission under this or any other enactment or are parties to appeals to the Commission and the Commission may levy assessments upon them for that purpose.

Assessments, classification

- (2) The Executive Committee shall determine the amount to be assessed, having regard to the amount required for the previous year, and for the purpose of providing for an equitable apportionment of the expenses of the Commission among utilities and other persons, the Executive Committee may classify the utilities and other persons and determine the total amount to be paid by each utility or class of person and the basis upon which the share of each utility or class of person shall be arrived at.



Assessment within each class

- (3) After the Executive Committee has determined the total amount required from each of the utilities or class of persons so determined, it shall forthwith assess the amount required from each utility or person and shall determine the manner and time within which each payment is to be made.

Notification of persons assessed

- (4) Except in the case of a license fee payable on the granting of a license, the Commission shall forthwith notify each public utility or other person of the amount so assessed upon it or him and the time within which payment shall be made.

Payment of assessment, enforcement of

- (5) If any utility or person fails to pay the amount so assessed against it or him or any instalment or portion thereof within the time fixed by the Commission for the payment of the amount, the Commission may make application, without notice to any person, to a judge of the Supreme Court for an order that judgment for the amount of the assessment so in default may be entered in the court against the utility or person.

Jurisdiction of court

- (6) The judge shall grant the order referred to in subsection (5) on proof by affidavit of the amount of the assessment so in arrears and of the giving of the notice of the assessment as required by this section.

Execution

- (7) On any judgment entered under this section, execution may be issued as on any other final judgment of the Supreme Court. *1991,c.18,s.15.*

16. Annual report

The Commission shall, at the end of its financial year, prepare and forward to the Minister a report of its activities together with a statement of its receipts and expenditures for the preceding year. *1991,c.18,s.16.*

17. Audit

The Executive Committee shall appoint an auditor to audit the accounts and financial transactions of the Commission. *1991,c.18,s.17.*

18. Service of documents

Unless otherwise required by any Act conferring jurisdiction on the Commission, any notice, order, judgment, or decision by the Commission may be served on any person affected thereby by mailing it to the person by registered post. *1991,c.18,s.18.*

19. Indemnity

A commissioner and any person acting on the instructions of the Commission or under the authority of this Act are not personally liable for any loss or damage suffered by any person by reason of any act done by them in good faith in the exercise or purported exercise of their functions. *1991,c.18,s.19.*

20. Regulations

The Commission may make regulations. *1991,c.18,s.20.*

21. Repeal

Act repealed. *1991,c.18,s.21.*

22. Consequential amendments

Various Amendments. *1991,c.18,s.22.*

23. Transitional provisions

- (1) Where, on the date this Act comes into force, any matter is the subject of a proceeding commenced before an authority then having jurisdiction that would after that date be a matter for the Commission, that authority shall continue to exercise jurisdiction and shall decide the appeal or make the decision as if this Act had not come into force.

Idem

- (2) All orders, decisions, rules, regulations, directives or policy statements made by an authority referred to in subsection (1) shall continue in force until they are repealed or revoked or others are made in their stead by the Commission. *1991,c.18,s.23.*

