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IMLA Canadian Legal News
April 11, 2025

Summaries provided by:
MCM Consulting and Legal Services

Leaky Pipes are Subject to Statutory Limitation Protecting City from Nuisance Claim

Stadnyk v. Thunder Bay (City) 2025 ONCA 137

Patricia Stadnyk ("Stadnyk') sued the City of Thunder Bay ("City") for negligence and nuisance alleging that the City's decision to add high concentrations of sodium hydroxide to the City's water supply led to pinhole leaks in copper plumbing pipes which in turn led to water damage to homes throughout the City. The Statement of Claim also included a claim for breach of contract, but that claim was not argued before the motion judge. In 2023, the motion judge certified a class action against the City in negligence but declined to certify the nuisance claim. The motion judge found that it was "plain and obvious" that the nuisance claim could not proceed as it was barred by section 449 of the *Municipal Act 2001*, S.O. 2001, c. 24. which protected the City from nuisance claims "in connection with the escape of water or sewage from sewage works or water works." The motion judge found it was a straightforward matter of statutory interpretation. Stadnyk appealed.

HELD: Appeal dismissed.

DISCUSSION: Stadnyk appealed on the basis that the motion judge erred in declining to certify the claim in nuisance, arguing that the case was not about "leaks" or "escape of water" but rather about the corrosion and integrity of the pipes due to the addition of sodium hydroxide by the City. She argued that government immunity clauses are to be interpreted literally and narrowly and that it was not plain and obvious her claim would fail. The Ontario Court of Appeal agreed with the motion judge's determination of the matter, stating that it was a straightforward matter of statutory interpretation which is to determine the ordinary meaning of the text. The Court noted that ordinary meaning "refers to the reader's first impression meaning, the understanding that spontaneously comes to mind when words are read in their immediate context." Ruth Sullivan, *Sullivan on the Construction of Statutes*, 6th ed. (Markham, Ont.: LexisNexis Canada 2014), as cited in *R. v.*

Wookey, 2016 ONCA 611, 351 O.A.C. 14, at paras. 24, 25. Stadnyk's argument would effectively "read in" limitations to the statutory provision to narrow its applicability, which, on its face and "literally," precludes a claim such as this.

Injunction Against City's Street Widening Project Fails

Westcan Recyclers Ltd. v. Calgary (City) 2025 ABCA 67

The City of Calgary ("City") owned and began to develop Point Trotter Industrial Park in southeast Calgary. The development was being led by the City's Real Estate and Development Services business unit (REDS). A subdivision approval for the development required a widening of 68th Street SE. One of the respondents owned land adjacent to 68th Street SE and the other respondent operated a recycling plant on that land. Vehicles would access that land and facility via 68th Street SE. The respondents brought a claim requesting an interim injunction seeking to prevent the widening of 68th Street SE and the City agreed to the interim injunction order while the parties were trying to resolve alternative access.

After REDS obtained approval for an alternative access design it informed the respondents that it was planning to obtain a bylaw to close their access to 68th Street SE, pursuant to the Alberta *Highways Development and Protection Act*, 2004. Following the standard process for approval of municipal bylaws, the bylaw was presented to the City's Infrastructure and Planning Committee ("Committee") where it received a vote of 5-1 in favour of passage. The bylaw then went to City Council where it was passed with a vote of 14-1, allowing the closure of the respondents' 68th Street SE access. The City applied to vacate the injunction and the respondents cross-applied to quash the bylaw. The trial judge refused to vacate the injunction and granted the respondents' cross-application to quash the bylaw. The City appealed.

HELD: Appeal allowed; interlocutory injunction vacated and order quashing the bylaw set aside.

DISCUSSION: The City argued that the chambers judge erroneously found the bylaw's enactment to be procedurally unfair and substantially invalid. The City also argued that the injunction should have been vacated based on proper application of the tri-partite test from *RJR MacDonald Inc. v. Canada (Attorney General)* [1994] 1 SCR 311. The Court of Appeal noted that the chambers judge correctly identified the criteria for assessing procedural fairness and properly held that the procedure for enacting the closure bylaw was a "fair and open procedure, appropriate to the statutory context." The respondents had the opportunity for oral and written submissions to the Committee and written submissions to City Council. However, the Court of Appeal found that the chambers judge erred in finding that the respondents were denied procedural fairness. The respondents had significant opportunity to participate in the decision affecting their property and operations and neither the Committee nor City Council were misled by City administration regarding REDS role in the development.

Concerning the application to vacate the injunction, the Court of Appeal found that the chambers judge erroneously applied the tri-partite test from *RJR-MacDonald*; part of the issue was the chambers judge mistakenly treating REDS as a distinct entity separate from the City. As a result of this mistaken distinction the rationale for finding a serious issue to be tried was rooted in reviewable error. But even assuming that there was a serious issue to be tried, the Court of Appeal found that the respondents had failed to show that they would suffer irreparable harm that would outweigh the public interest in ending the injunction. And lastly, the Court of Appeal concluded that the balance of convenience favoured vacating the injunction.

Weed Control Bylaw as an Infringement on Free Expression

Ruck v. Mississauga (City) 2025 ONCA 147

Wolfgang Ruck ("Ruck"), a property owner and resident in the City of Mississauga ("City") was growing tall grasses and other plants on his property for reasons, he argued, of biodiversity and climate change and as a way to express himself. The City took bylaw enforcement action against Ruck, as the grasses and plants on the property didn't comply with the City's Nuisance Weed and Tall Grass Control By-law (the "Weed Control bylaw"). Pursuant to the Weed Contol bylaw, the City cut the grasses on Ruck's property and added the costs of that work to his property tax bill. TRuck brought an application seeking to have the Weed Control bylaw declared *ultra vires* and unconstitutional as an infringement of his right to free expression under the *Canadian Charter of Rights and Freedoms* (*"Charter"*). The Superior Court judge accepted that a garden is a form of expression intended to be protected by the *Charter* and therefore had to consider whether the restriction on that particular freedom through the Weed Control bylaw was saved by section 1 of the *Charter*.

Applying the test from *R. v. Oakes* (1996) SCC, the Superior Court judge found that the Weed Control bylaw was rationally connected to the objectives of protecting residents from noxious weeds and risks of fire and other accidents associated with tall gras. The Court also found that the bylaw was minimally impairing as it only targeted specific noxious weeds and placed a height restriction on all grasses but did not prohibit any grasses and the benefits of the bylaw outweighed its deleterious effects. On that basis the Charter challenge failed. Rusk raised a number of other concerns with the bylaw that he argued rendered the bylaw void and unenforceable. These issues, according to Ruck, related to the training and qualifications of the bylaw officers and the improper enforcement of the bylaw. The Court did not accept Ruck's arguments on these issues and found that his arguments had no merit. Ruck's application was dismissed. Ruck appealed and the Canadian Constitution Foundation intervened to support Ruck's right to free expression.

HELD: Appeal allowed.

DISCUSSION: The lower court decision was set aside because s. 109 of the *Courts of Justice Act* required that the Attorneys General of Canada and Ontario should have been provided notice of the constitutional issue so that they could file evidence and make submissions if they chose. Ruck has stated he intends to bring a fresh judicial review application after serving notice on the Attorneys General.

No Additional Standard of Care on Appeal

Saloojee v. Gibsons (Town), 2025 BCCA 49

In June 2012, Mujtaba Saloojee, ("Saloojee") who was 17 years old, went to a park with some friends where they were pushing dead trees to knock them over. While Saloojee was pushing a tree, part of it broke off and struck him in the back and neck, severing his cervical spine. As a result Saloojee is a tetraplegic, has complex medical conditions, and a reduced life expectancy. His action against the municipality was based in negligence under the *Occupiers Liability Act*, RSBC 1996, c. 337 ("OLA"). The trial judge dismissed the action, finding that the municipality had not breached the requisite standard of care. She found that the *OLA* required the municipality to take the care that is reasonable in the circumstances to ensure that a visitor using the park would be reasonably safe doing so. The trial judge specifically found that the municipality's standard of care twas to identify and manage potentially dangerous trees contained in the Wildlife Danger Tree Assessor's Course

("WDTAC Standard"). Saloojee appealed, arguing that the trial judge's analysis of the standard of care was incomplete because she only considered whether the municipality had complied with the WDTAC Standard in concluding there was no breach of the OLA. Saloojee argued that the trial judge was required to determine whether, independent of the WDTAC Standard, section 3(1) of the OLA required the municipality to do more than it had done to protect against the risk posed by the conditions in the park.

HELD: Appeal dismissed.

DISCUSSION: Saloojee had not argued at trial that the OLA required a different standard of care than the WDTAC Standard and therefore was not allowed to raise this new issue on appeal. The Court of Appeal noted that the evidence and submissions at trial were based on Saloojee's position that the WDTAC Standard was exhaustive of the standard of care required by the OLA. The trial judge made her conclusions based on the evidence before her. As a new trial with new evidence would be required to address this new argument of a different standard of care, the Court of Appeal ruled that it was not in the interests of justice to permit Saloojee to advance this new argument.

Inadequate Evidence of Disruption to Livestock Operations

Cornwallis Farms Limited v. Nova Scotia (Attorney General), 2025 NSCA 9

Bradford and Constance Hopgood ("Hopgoods") sought approval from the Municipality of Kings ("Municipality") for a development agreement to build a multi-unit residential project in Port Williams. The location was near Cornwallis Farms Limited ("Cornwallis") livestock operations. The Municipality's planning staff concluded that the development complied with the Municipal Planning Strategy ("MPS") and City Council ultimately approved the development agreement. Cornwallis opposed the development arguing that it violated the buffer zone between agricultural and residential land uses as set out in the MPS. Cornwallis appealed to the Nova Scotia Utility and Review Board ("Board") arguing that the development did not reasonably carry out the MPS's intent. The Board was not persuaded and dismissed the appeal. Cornwallis appealed to the Court of Appeal.

HELD: Appeal dismissed.

DISCUSSION: The issue for the Court of Appeal was whether the Board erred in law by concluding that the development fulfilled the intent of the MPS. Cornwallis tried to argue that the development did not fit with the intent of the MPS for two reasons. The first was that there was not 600 feet between Cornwallis' pasture and the proposed development. The MPS Policy 4.5.24(c) required that there be a buffer of 600 feet between any residential building and land used for intensive livestock operations. This argument failed because the evidence did not support that the pasture in question was an "intensive livestock operation". The second argument that Cornwallis raised related to traffic issues. Cornwallis suggested that the proposed development would worsen the already chaotic traffic issue at the site, but offered no expert evidence or traffic study to support its argument. The Hopgoods had obtained a traffic study which was accepted by the Municipality's administration. The Court of Appeal found there was no basis to conclude that the Board had erred in law on either issue or that the City Council's approval had failed to carry out the intent of the MPS.