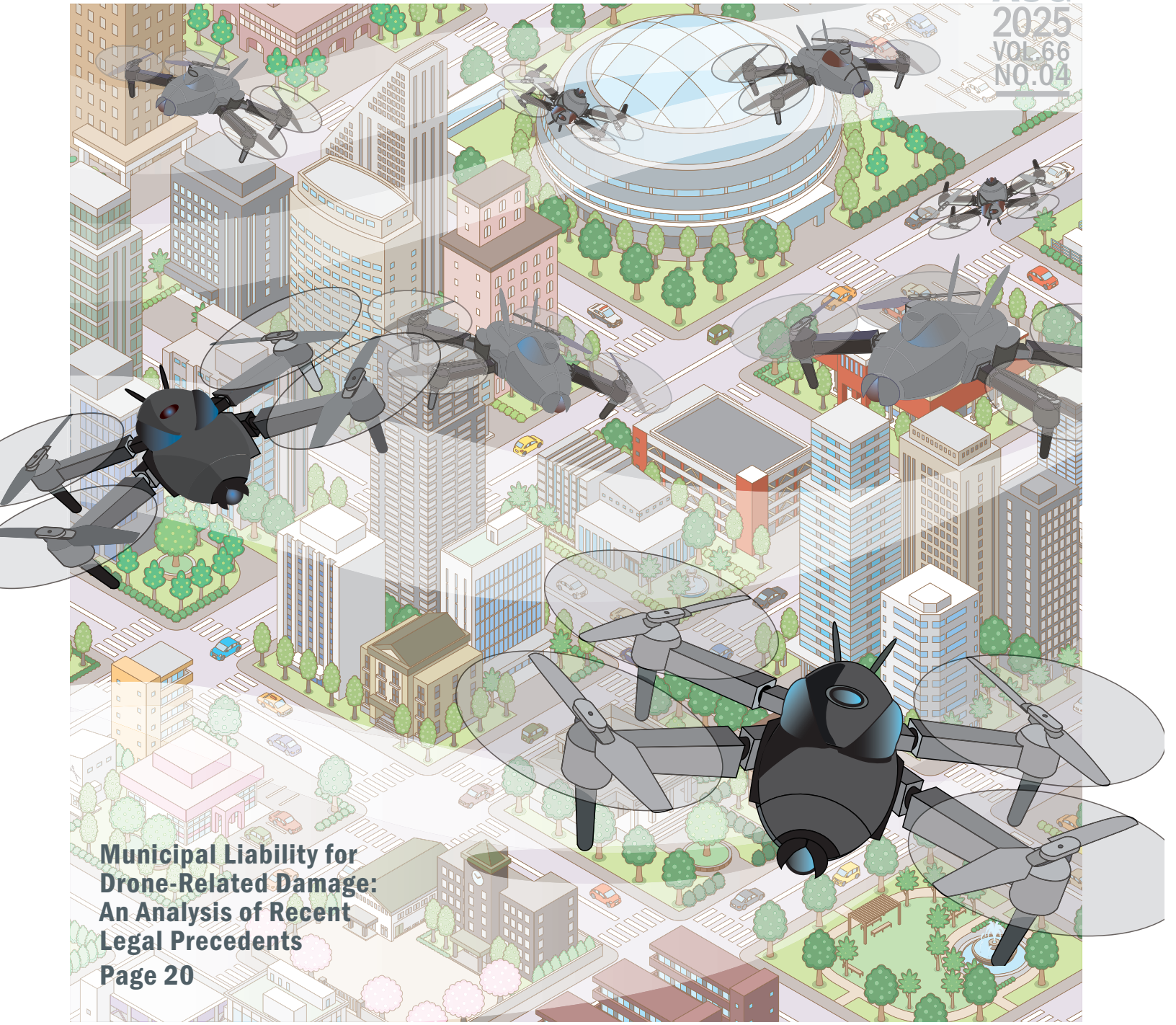
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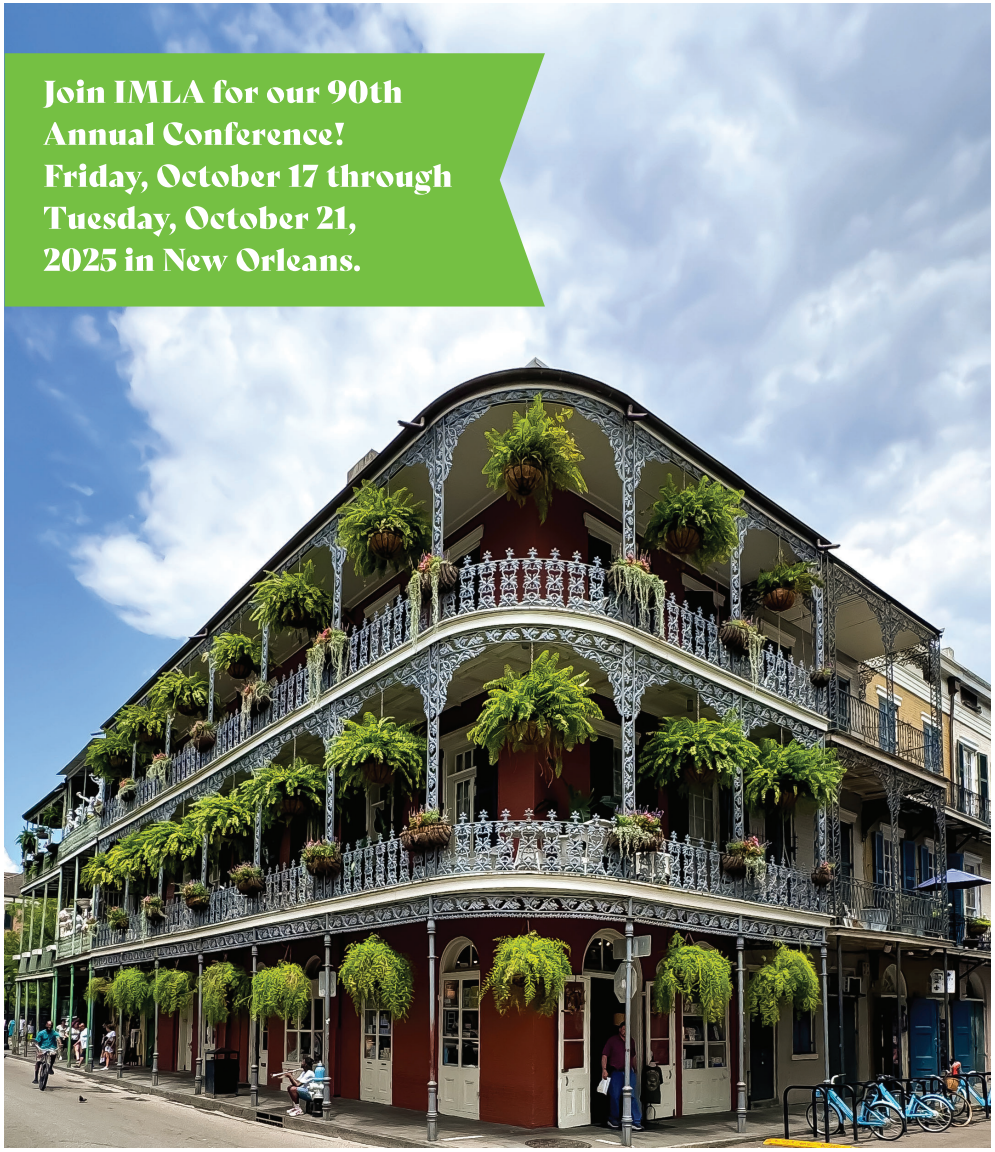
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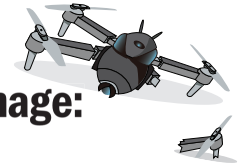


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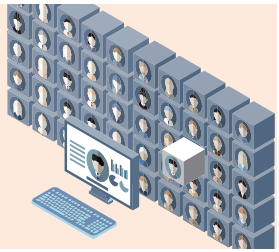
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Request to Halt Neighbour's Construction Denied

Blanke v. West Vancouver District
https://canlii.ca/t/kb4qp

In 2012, the District Council approved applications for development permits for the construction of two similar homes on two adjacent waterfront lots - lots 8540 and 8520. The 2012 development permit authorized zoning variances that allowed for increases in the maximum height, number of storeys and highest building face envelope for each lot. A home was constructed on lot 8540 within the 24-month period allowed by the development permit. No home was constructed lot 8520 within the 24-month period so the 2012 development permit for that property lapsed. In 2017 the Wolfins purchased lot 8520 and in 2018 applied for another development permit to build a home similar to the one that Council had authorized in 2012 with the same variances that had been approved in 2012. The District's Director of Planning and Development issued a development permit to the Wolfins with the variances they had requested. At the time, the Director also notified the owners and occupiers of all property situated within 50 metres of lot 8520, including the then-owner of lot 8540. Blanke purchased the home on lot 8540 in 2019 and took possession in December 2019. He was aware and had reviewed the 2018 development permit at that time.

In November 2019, the Wolfin's architect submitted a building permit application to construct the home authorized by the 2018 development permit. Due to delays caused by the Covid-19 pandemic, construction was not commenced within the 24-month period authorized by the 2018 development permit. Blanke noticed construction beginning in early spring 2021 and inquired with the District about the status of the 2018 development permit. His inquiries were not promptly answered. In between May and August 2021 Blanke met with the Wolfins and their architect to express concern about the building height and its placement close to the shared property line. The Wolfins were not prepared to make any changes to their design. The architect continued to work with the District to address changes in the Building Code and the bylaws. In January 2023, the architect requested a 32-month extension to the 2018 development permit to account for delays caused by the pandemic. The Director granted a 24-month extension and issued a 12-month renewal of the 2018 development permit. In August 2023 the Director determined that the building plans complied with the 2018 development permit and granted the building permit. Construction on the Wolfins home began in January 2024. Blanke brought a petition for judicial review, seeking to quash the decision made by the Director to renew the development permit and seeking an interim injunction to prohibit the Director from issuing a building permit to the Wolfins. The petition was dismissed. Blanke appealed.

HELD:

Appeal dismissed

DISCUSSION:

Blanke argued that the chambers judge erred on four grounds: i) in finding that Blanked lacked standing to challenge the 2018 development permit; ii) in exercising his discretion to deny relief regarding the 2018 development permit on the basis of delay and prejudice; iii) in concluding that the Director's decisions were reasonable; and iv) in not finding a breach of procedural fairness. The Court of Appeal focused primarily on whether the decisions of the Director in 2023 were reasonable and concluded that they were. The Court of Appeal noted that it is important to assess reasonableness in the context of the applicable legislative framework and the specific circumstances surrounding the Director's decision rather than focusing on narrow or technical legal issues related to the zoning bylaw. The Court of Appeal also noted that the reasonableness analysis should recognize the prejudice to the Wolfins who were just trying to comply with all of the required regulations and approvals.



The "Butterfly Effect" Affects Municipality

Marmora and Lake (Municipality) v. Ontario
https://canlii.ca/t/k8mt4

The mottled Duskywing butterfly was listed as an endangered species under the Endangered Species Act of Ontario in 2014. The second largest population of this butterfly lives its entire life cycle on or near the host plants which are clustered along eight kilometers of highway in the Riverside Pines area of the municipality of Marmora and Lake. In 2021, the Municipality was conducting a major resurfacing project on its main roads which included roads in the Riverside Pines community. During this project, a construction crew cleared a high shoulder of built-up sand, cleared vegetation to bare soil, and parked maintenance vehicles on top of the host plants. As a result of these actions, the Municipality was charged with two contraventions under the *ESA*. It was alleged that the actions of the construction crew killed, harmed, or harassed the butterflies and the host plants. The Municipality had not applied for an exemption permit under the *ESA* before beginning the project.

The Municipality argued that at the time of the alleged contravention, it was performing work to comply with its obligations under the *Municipal Act*, to maintain highways in its jurisdiction in a reasonable state of repair. Failing to do so would make the Municipality subject to liability under the *Negligence Act*. The Municipality argued that it was not possible to comply with the road safety provisions of the *Municipal Act* and the *ESA* at the same time. At trial, the Municipality sought, among other things, a declaration that i) it had jurisdictional independence to determine what was "reasonable" in performing its statutory duties under the *Municipal Act*; and ii) where a municipality makes such a determination it is not required to obtain a permit, comply with an order or be subject to the offence provisions or other enforcement provisions of the *ESA* or its regulations. The trial judge dismissed the application on the basis that the issues raised by the Municipality were not ripe for declaratory relief. The Municipality appealed.

HELD:

The appeal was dismissed with costs.

DISCUSSION:

The Municipality argued on appeal that the applications judge had erred on four grounds. The first ground the Municipality argued was that the applications judge had erred in determining that the issues were not ripe for adjudication. This argument failed as the Ontario Court of Appeal found that based on the record before her the application judge was open to find that the Municipality had not established that its *ESA* obligations were irreconcilable with its *Municipal Act* obligations. The Municipality had not attempted to obtain a permit under the *ESA* to allow it to conduct its work under the *Municipal Act*.

discrimination can be subtle and covert and in those cases only a hearing where complainants can provide evidence to establish the link between the alleged discrimination and the protected ground will suffice

The second ground argued by the Municipality was that the application judge had erred by finding that the Municipality had impermissibly attempted to circumvent the Ontario Court of Justice's authority under the *ESA*. The Court of Appeal again dismissed this argument finding that the issue of what the Municipality could and should have done as well as its culpability under the ESA were properly within the jurisdiction of the Ontario Court of Justice.
The third ground of appeal was that the application judge erred in not addressing the Municipality's argument that it had jurisdictional independence to determine reasonable standards for road maintenance. The Court of Appeal disagreed, confirming that the application judge was not obligated to address every argument raised, particularly after finding that the issues were not ripe for adjudication. Further, the Municipality had provided no authority to support its argument in this regard.The final ground of appeal also failed. The Municipality argued that the application judge had failed to grant a temporary order dispensing the Municipality from compliance with the *ESA* until it had time to seek a permit. At the time of the appeal the Municipality had not applied for a permit so there was no evidentiary basis to support the argument that the Municipality could not obtain accommodation allowing it to comply with its concurrent statutory obligations within a reasonable time. The Court of Appeal noted that it would have been inappropriate to grant an order premised on an application for a permit that did not yet exist.

Same-Sex Couple alleges discrimination by officers of municipality

Gray v. City of Medicine Hat
https://canlii.ca/t/kc0wt

The complainants, Gray and Hemsing, operated a hair salon in Medicine Hat. Due to the Covid-19 pandemic they moved their business from commercial premises to their primary residence. To operate from their residence, the complainants applied for and received a Home Occupation Development Permit which had conditions related to operating hours, street parking and number of customers. The complainants were in a same-sex marriage and alleged that the City discriminated against them based on their sexual orientation by imposing restrictions on their business which were not imposed on other businesses. They further alleged that the City's officers harassed them by continually attending their home in response to neighbours' complaints and that the neighbours complaints were based on disapproval of their sexual orientation and that the City should have known that. The City denied the allegations of discrimination and argued that they attended the complainants' home frequently due to the neighbours complaints about excessive parking due to their business. The Director of the Alberta Human Rights Commission dismissed the complaints finding that the City had received a considerable number of complaints and that it was reasonable for the City to follow up on those complaints to enforce compliance with development permits. The complainants requested a review of the Director's decision pursuant to section 6 of the Alberta Human Rights Act.

HELD:
The Director's decision was overturned and the matter was referred to a Tribunal for hearing.

DISCUSSION:
The Acting Chief of the Commission and Tribunals found that the issue of whether the complainants' sexual orientation or marital status was a factor in the attendance at their home by the City's officers was a genuine issue that could only be addressed in a full hearing of the complaint. If the complainants allegations could be proved by evidence it could establish a link between the alleged adverse treatment and the protected ground of sexual orientation. Referring to previous decisions of the Tribunal, Court of King's Bench and Court of Appeal, the Acting Chief found that if the information gathered by the Director does not clearly point to the veracity of one version of the facts then it is not appropriate for the Director to dismiss the complaint. Rather the matter should be referred to the Tribunal for hearing where additional evidence can be provided. The Acting Chief concluded by noting that discrimination can be subtle and covert and in those cases only a hearing where complainants can provide evidence to establish the link between the alleged discrimination and the protected ground will suffice.

Exemptions available to municipality in records request related to work of external entity

Tarasoff v. Saskatoon (City), Re
https://canlii.ca/t/kbft5

The Community Safety and Well-Being partnership (CSWB) was initiated by the City and comprised of a group of stakeholders brought together to consult or share information on a variety of city issues including community safety, homelessness, encampments, shelters, addictions, crime and discrimination. The Mayor, his chief of staff and various City departments were involved along with external stakeholders. In 2023, Tarasoff made a freedom of information request to be provided with emails from January 1, 2020 to the date of his request relating to the executive committee of CSWB on which the City's then-Mayor was included. When responding to the request the City withheld portions of the records relying on exemptions under the *Local Authority Freedom of Information and Protection of Privacy Act*, SS 1990-91, c. L 27.1 (the "Act"). Tarasoff applied for a review of the City's refusal to provide all records and the Privacy Commissioner recommended the release of a substantial portion of the remaining records withheld by the City. The City did not comply with the Privacy Commissioner's recommendation, relying on section 45 of the Act. Tarasoff brought an appeal pursuant to s. 46 of the Act.

HELD:
The appeal was largely dismissed with the court finding that the majority of the City's exemption claims were lawful. However, certain records were ordered to be released by the City.

DISCUSSION:
The Court began by noting the purpose of the Act was to promote openness, transparency and accountability such that, subject to the exceptions stipulated in the Act, every local person should have access to the records of the local authority. The Court also addressed the inconsistency and initial overprotectiveness of the City when dealing with the request. During the period of time between the initial request and the appeal hearing, the City changed its position on some records by removing previous redactions. The Court noted that this inconsistency and overprotectiveness suggested the City was not conducting itself according to the Act's objectives of openness, transparency and accountability. While it was preferable that the City voluntarily released more records throughout the process, it did leave the impression that the City was seeking to raise barriers and avoid accountability and transparency. The Court did suggest that perhaps the City's processes could be improved.

Considering the specific exemptions, the Court disagreed with the finding of the Privacy Commissioner that s. 16(1)(a) of the Act could not apply to the work of the CSWB because it was external to the City. Section 16(1)(a) provided an exemption for records that could reasonably be expected to disclose advice, proposals, recommendations, analyses or policy options developed by or for the local authority. The Court found that even though the CSWB was external to the City, it was organized by the City to aid the City in carrying out its mandates under *The Cities Act*. Thus, advice developed for the CSWB as a committee was advice developed "by or for" the City and therefore eligible for exemption under the *Act*.

Section 16(1)(b) of the Act provided an exemption for records that could reasonably be expected to disclose consultations or deliberations involving officers or employees of the local authority. The Court disagreed with the Commissioner's finding that in order for a s. 16(1)(b) exemption to exist a decision-maker needed to be involved. Rather, what was required for a s. 16(1)(b) exemption was that officers or employees of the City be involved in consultations or deliberations. The consultations or deliberations did not need to be exclusive to City officers or employees, nor did a decision-maker have to be involved.

Finally, in awarding costs, the Court noted that while it would not normally do so, the City's approach to this matter (its inconsistency in redacting records and overprotectiveness) warranted costs against the City. Tarasoff was awarded $750.00. **ML**

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