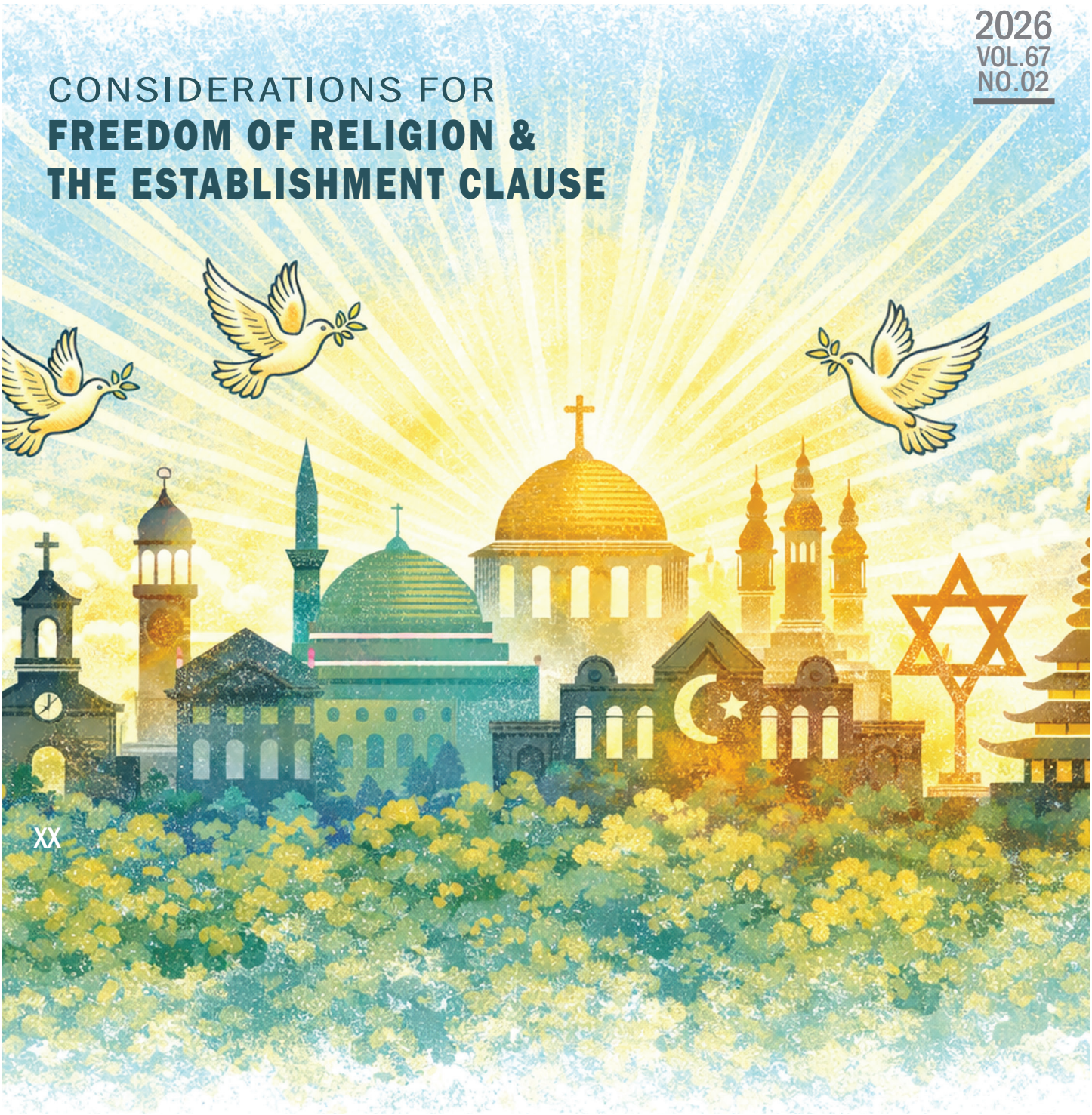
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CONSIDERATIONS FOR FREEDOM OF RELIGION & THE ESTABLISHMENT CLAUSE



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Public Duty, Jurisdiction, Common Law Immunity, Public Interest, and More.



DUTY TO CONTINUE PURSUING BUSINESS LICENSE AND TO NOT OPERATE BUSINESS UNTIL LICENSE CONFIRMED.

Tan v Saskatoon (City), 2025 SKKB 169

https://canlii.ca/t/kfzfj

Tan operated two businesses in the City of Saskatoon ("City") in separate locations with different business licenses. In 2022, Tan submitted two applications to modify those business licenses because the businesses were moving to a single location. A City employee determined that since Tan owned both businesses, they were going to be operating out of the same premises, and this was really one business with two public-facing brands as opposed to two separate businesses sharing space, only one business license was required. The application proceeded as an application for a single business license. Tan was advised, however, that a building permit needed to be obtained before her business license application could be processed. Tan emailed the City that her landlord did not believe a building permit was required. Tan did not receive a response to this email, did not obtain the building permit, and operated her business at the new location for several months until she was charged with operating two businesses without a license. Tan was convicted on both charges and appealed.

HELD: Appeal allowed in part.

DISCUSSION: Tan argued that the justice of the peace erred in convicting her in relation to both businesses and by failing to find her duly diligent. The Court referred to the Supreme Court of Canada's decision in *R v Kienapple*, 1974 CanLII 14 (SCC) ("*Kienapple*"), where it was held that an accused cannot be convicted of more than one offence arising out of the same cause, matter, or delict, so the accused is not punished twice for the same offence. For the *Kienapple* principle to apply, there must be a sufficient factual and legal nexus between the charges. A factual nexus is established if the same act of the accused grounds each of the charges. A legal nexus will be established if there is no additional or distinguishing element that goes to guilt contained in the offence for which a conviction is sought to be precluded by the *Kienapple* principle. The City advised Tan that she only required one business license. The justice of the peace erred in law when she held that Tan could be convicted with respect to both businesses, and Tan's appeal on one conviction was allowed and a stay entered. With respect to the remaining charge, the fact that Tan did not receive a response to her last email to the City was irrelevant. The Court held that there was a positive duty on Tan to pursue her business license and to not operate her business until she had obtained it. Having done nothing for more than eight months to confirm that her business license had been granted, Tan was not duly diligent.



NEGLIGENCE OR BAD JUDGMENT IN PERFORMING A PUBLIC DUTY IS NOT MISFEASANCE IN PUBLIC OFFICE.

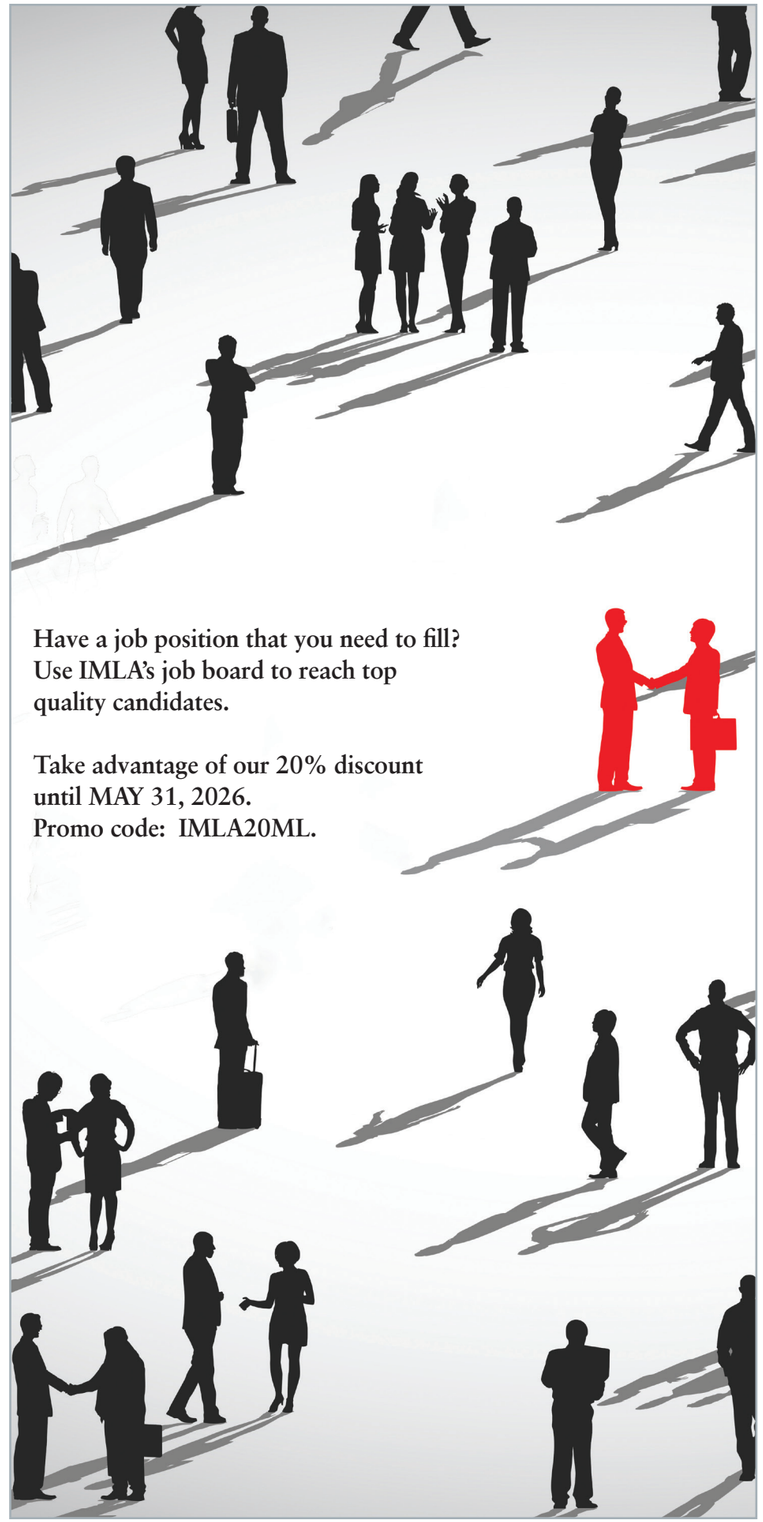
6165347 Manitoba Inc v Robinson, 2025 MBCA 33

https://canlii.ca/t/kbr3s

Gem was a developer in the City of Winnipeg ("City"). Smith was the City's chief planner, and Robinson was a senior planner. After a lengthy trial, the judge found that Smith was responsible for deliberate attempts to slow down or thwart Gem's development applications, and that both Robinson and Smith attempted to persuade another employee to deny Gem's application for a permit. The trial judge found them both liable for misfeasance in public office because they exercised their power as public officials for an improper purpose or in breach of their statutory and professional obligations, and with conscious or reckless disregard for the interests of Gem. The City was found vicariously liable for their actions. The City, Smith, and Robinson were found jointly and severally liable to pay compensatory and exemplary damages of $5 million and appealed.

HELD: Appeals allowed and claims dismissed.

DISCUSSION: The Court found that for Gem to succeed, it had to prove deliberate and unlawful conduct in the exercise of Smith's and Robinson's duties, along with their subjective awareness that their conduct is unlawful. It is not enough to show negligence or bad judgment in performing a public



duty. The Court held that there must be an assessment of the public officer's authority before assessing whether it was exceeded or the actions were in breach of the relevant duty. The Court found that the trial judge erred in failing to examine the parameters or framework within which Smith and Robinson as public officials were compelled to act, and by failing to address that Smith and Robinson must be subjectively aware of the unlawfulness of their conduct and the likelihood of harm to Gem. Palpable and overriding errors in certain findings of fact were made by the judge and in the inferences that she drew from the evidence to conclude Smith and Robinson engaged in deliberate and unlawful conduct in their capacity as public officers. The Court held that the evidence fell short of proving Smith and Robinson had the minimum required "subjective recklessness" or "conscious disregard" for the lawfulness of their conduct and the likely harm to Gem.



MUNICIPALITY'S AUDIT COMMITTEE IMMUNE FROM CIVIL LIABILITY UNDER COMMON LAW.

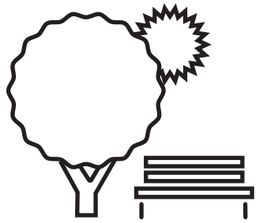
Leduc v Rioux, 2026 ONSC 92

https://canlii.ca/t/khfxv

The plaintiff was an incumbent municipal councillor in Greater Sudbury re-elected to represent Ward 11. The defendant Rioux resided in Ward 11. The defendant Greater Sudbury established the election compliance audit committee ("Committee") pursuant to the Municipal Elections Act, 1996, SO 1996, c 32, Sch ("MEA"). Rioux had concerns about an event advertised as sponsored by "Ward 11 CAN", which Rioux believed meant the event was sponsored by a publicly funded "Community Action Network" contrary to the campaign financing provisions of the MEA. Rioux brought an application pursuant to s. 88.33(1) of the MEA permitting an elector to apply for a compliance audit of a candidate's election campaign finances. The application was heard by the Committee, and a compliance audit of Leduc's election campaign finances was ordered. An independent auditor appointed by the Committee prepared a report that identified possible contraventions of the MEA by Leduc. Leduc applied for judicial review of the Committee's decision and then commenced this action for defamation against Rioux, and the tort of misfeasance in public office against Greater Sudbury. Rioux applied to have Leduc's case dismissed through what is commonly referred to as an anti-SLAPP ("strategic lawsuit against public participation") motion under the Courts of Justice Act, RSO 1990, c C.43. Greater Sudbury applied for dismissal on the basis that the Committee is immune from civil liability.

HELD: Applications allowed and case dismissed.

DISCUSSION: The purpose of the anti-SLAPP provision is to reduce the risk that participation by the public in debates on matters of public interest will be hampered by fear of legal action. To have a SLAPP dismissed, the defendant must first satisfy the court that the expression complained of was made in the public interest. The onus then shifts to the plaintiff to satisfy the Court that there are grounds to believe that the proceeding has substantial merit, that the defendant has no valid defence in the proceeding, and that the harm likely to be or that has been suffered by the plaintiff as a result of the defendant's expression is sufficiently serious that the public interest in permitting the proceeding to continue outweighs the public interest in protecting the defendant's expression. Although Leduc did not oppose motion, the Court was persuaded on the record available that the test would not have been met by Leduc. Regarding the action against Greater Sudbury, the Court explained that judicial immunity may be extended by statute or the common law to administrative decision-makers exercising quasi-judicial functions. While no statutory immunity clause protected the Committee, the Court found that the common law did. Relying on the decision in *Westlake v. The Queen* in right of the Province of Ontario, 1971 CanLII 680 (Ont. H.C.); aff'd 1972 CanLII 515 (Ont. C.A.), the Court determined that the Committee was a non-corporate body who is a legal entity in that their actions may be reviewed in proceedings brought against them by way of the extraordinary remedies of certiorari, mandamus, and prohibition. As such, the legislature could not have intended in these circumstances that this quasi-judicial body could be sued.



ACTION OF MUNICIPALITY DECLARED TO BE WITHOUT JURISDICTION EVEN THOUGH ACTION CANNOT BE RECTIFIED.

Stanley Park Preservation Society v Vancouver Board of Parks and Recreation, 2025 BCSC 2500

https://canlii.ca/t/kh4nl

In 2023, the City of Vancouver ("City") authorized large scale tree removal in response to a moth infestation that significantly impacted the forest in Stanley Park. This moth devours the leaves of conifers and typically leads to their death. The contract for removal was $1,900,000, removed 7000 trees, was substantially complete by April 2024, and considered phase 1 of the tree removal project ("Project"). In June 2024, the City entered a second contract to do further tree removal that began after October 8, 2024, and was considered phase 2 of the Project. The Vancouver Board of Parks and Recreation ("Board") authorized phase 2 of the Project on October 8, 2024. The City and the Board (collectively, the "Respondents") authorized the tree removal based on concerns that dead or dying trees in Stanely Park threatened public safety due to falling trees or branches, and increased the risk of wildfire. Stanley Park Preservation Society and several individuals (collectively, the "Petitioners") sought declarations that the Board did not properly authorize the supply contracts for the first two phases of the tree removal project and sought to quash the Board's third phase decisions. The Respondents argued that the declarations sought were moot because



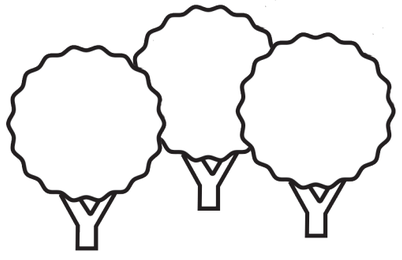
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the trees had already been removed, and that the Court should not exercise its discretion to review the decisions to enter into those agreements.

HELD: One of two declarations granted, application to quash dismissed.

DISCUSSION: Although courts do not generally grant declaratory relief unless it will have a practical effect, courts may elect to address a moot issue if the circumstances warrant it. With respect to phase 1 of the Project, the Court exercised its discretion to address the issue even though the work was complete and there was no longer a live controversy. The City is incorporated pursuant to the Vancouver Charter, SBC 1953, c 55, as amended, and the Board established pursuant to s. 485 of that charter. A publicly elected Board of Commissioners governs the Board and its staff, which is paid by the City but solely accountable to the Board. The City is also responsible for funding the Board. As a designated public park, the Board has exclusive jurisdiction over the custody, care, and management of Stanely Park. The Board's procurement policy required that the Board approve all contracts worth over $750,000. As there was no Board resolution authorizing phase 1 of the Project, the City entered the contract to cut down thousands of trees in Stanely Park without the required approval of the Board. The Court held at paragraph 65 that "[t]he spectre of these kinds of decisions being improperly made by the City ... followed by work being concluded within short timeframes, and then an argument advanced that the decision is not reviewable because it is moot, will not be countenanced." The Petitioners were entitled to a declaration that the City entered the phase 1 contract without jurisdiction. The Court declined to make a similar declaration with respect to the contract for phase 2 of the Project. Although this second contract was entered into in June 2024, the work did not begin until after the Board authorized this work on October 8, 2024, and could have been cancelled. The Court went on to determine that the Board did not breach the duty of procedural fairness owed to the Petitioners with respect authorizing phases 2 and 3 of the Project, and that the resolution authorizing phase 3 of the Project was reasonable.



HARM RELATED TO REMOVAL OF PUBLIC PARK TREES IS TO PUBLIC AT LARGE AND NOT SPECIFIC TO ANY INDIVIDUAL.

Stanley Park Preservation Society v Vancouver Board of Parks and Recreation, 2026 BCCA 21

https://canlii.ca/t/khmfs

Following the determination by the Court in *Stanley Park Preservation Society v Vancouver Board of Parks and Recreation*, 2025 BCSC 2500 that the resolution authorizing phase 3 of the Project was made fairly and was reasonable, the Petitioners filed an appeal with the British Columbia Court of Appeal and applied for an order prohibiting the Respondents from continuing phase 3 of the Project until their appeal is determined.

HELD: Application dismissed.

DISCUSSION: Both sides agreed that the application must be resolved in accordance with the test set out by the Supreme Court of Canada in *RJR-MacDonald Inc. v. Canada* (Attorney General) 1994 CanLII 117 ("RJR"). The resolution authorizing the phase 3 work was passed by the Board at a public committee meeting. The record included multiple reports and presentations on the appropriate response and mitigation plan, as well as representations by members of the public, including the Petitioners. The accelerated phase 3 work was completed between January and April 2025. The remaining phase 3 work was temporarily halted by agreement pending the outcome of the judicial review of the resolution that authorized the work. The Court of Appeal justice sitting in chambers, Horsman J.A., determined that in accordance with RJR, the Petitioners had the onus to establish that there is merit to their appeal, that they will suffer irreparable harm if the stay is refused, and that the balance of convenience favours granting the stay. The Respondents conceded that the appeal met the low standard required to find it meritorious. Given that the harm related to the removal of trees in a public park is to the public at large and not specific to the Petitioners, Horsman J.A. considered this form of harm best assessed at the balance of convenience stage of the RJR test. The Court found that granting the stay could significantly impact public access to Stanley Park during the high tourist season and community organizations that planned events in the park. The Board, contractors, subcontractors, owners, and employees associated with businesses in the park would be disrupted and suffer financial losses, because portions of Stanley Park would have to be closed if the phase 3 work were halted after the Board accepted that there is a public safety and wildfire risk if the work were not done. The harm that trees may have been removed unnecessarily if the Petitioners were successful on this appeal was outweighed by the harm to the Respondents and the public interest if the phase 3 work was not completed. The Court found a presumption of harm to the public interest if the Board was prevented from carrying out its statutorily mandated public duty to manage Stanley Park. In Horsman J.A.'s view, the balance of convenience weighed against the issuance of a stay. ML

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