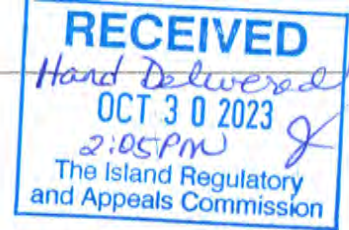


Notice of Appeal

(Pursuant to Section 28 of the *Planning Act*)



TO: The Island Regulatory and Appeals Commission
National Bank Tower, Suite 501, 134 Kent Street
P.O. Box 577, Charlottetown PE C1A 7L1
Telephone: 902-892-3501 Toll free: 1-800-501-6268
Fax: 902-566-4076 Website: www.irc.pe.ca

NOTE:
Appeal process is a public process.

TAKE NOTICE that I/we hereby appeal the decision made by the Minister responsible for the administration of various development regulations of the **Planning Act** or the Municipal Council of Summerside (name of City, Town or Community) on the _____ day of ref # "45218", _____, wherein the Minister/Community Council made a decision to "Partial Permit" new 59 unit Apartment Building from an Application made for a "New" 59 Unit Apartment Building for Property # PID 72421 678 Water Street having Reference # 2023-9-0332. Application made by Nathan kember/Associated interests com (attach a copy of the decision).

AND FURTHER TAKE NOTICE that, in accordance with the provisions of Section 28.(5) of the **Planning Act**, the grounds for this appeal are as follows: (use separate page(s) if necessary)

SEE ATTACHED SCHEDULE " A "

AND FURTHER TAKE NOTICE that, in accordance with the provisions of Section 28.(5) of the **Planning Act**, I/we seek the following relief: (use separate page(s) if necessary)

SEE ATTACHED SCHEDULE " B "

EACH APPELLANT MUST COMPLETE THE FOLLOWING: (print separate sheets as necessary)

Name(s) of Appellant(s): Randy Pitre Signature(s) of Appellant(s): Randy Pitre
Please Print
Mailing Address: 280 keppoch Road City/Town: Stratford
Province: P.E.I. Postal Code: C1B2J6
Email Address: randypitre67@outlook.com Telephone: (782) 377-6060

Dated this 29 day of October, 2023.
day month year

IMPORTANT

Under Section 28.(6) of the **Planning Act**, the Appellant must, within seven days of filing an appeal with the Commission serve a copy of the notice of appeal on the municipal council or the Minister as the case may be.

Service of the Notice of Appeal is the responsibility of the Appellant

Information on this Form is collected pursuant to the **Planning Act** and will be used by the Commission in processing this appeal. For additional information, contact the Commission at 902-892-3501 or by email at info@irc.pe.ca.

Development Activity

Building Permits Issued

Reference Number	Issued Date	PID	Address		Appeal Deadline *	Description
2023-9-0332	45218	72421	678	Water St East	29-Oct-23	New 59-unit Apartment Building - Partial Permit
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2023-10-0368	45218	1120393	141	Putters Street	29-Oct-23	New Semi-Detached Unit - Partial Permit

* Per Section 24 of the Provincial Building Codes Act:

Request for review of decision or order

(1) A person who is aggrieved by a decision of a building official under section 10 or an order issued by a building official under section 14 or subsection 16(2) may request a review of the decision or order by the Chief Building Official by submitting a request for review in the form approved by the Minister to the Chief Building Official within 10 days after receipt of the decision or order.

Development Permits (Official Plan/Zoning Amendments, Subdivisions, Site Plan, Variances, and Other)

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Development Permits are appealable to the Island Regulatory & Appeals Commission (IRAC)

Do not move. Do not cover

SCHEDULE "A"

1. In a Letter Dated **May 18th, 2023**, from the City of Summerside signed by **Linda Stevenson "Development Officer"** and a CC copy to **Gordon MacFarlane, CAE** and **Aaron Macdonald DTS**, the application was "**DENIED**" for **PID # 73536 & PID # 72421**.
2. Under the City of Summerside Zoning bylaws EXCERPT **SS-15 SECTIONS 5.8**, *it states;*

TIME LIMITATIONS FOR APPLICATION

*"Should a development Application be denied,
a "similar application "shall not be considered
within 12 months of the initial application being
denied, except when the development officer
considers it justified because of valid new evidence
or a change in conditions or as the result of an appeal
or review procedure allowed under this bylaw.*

City of Summerside By-law is Attached with this notice of Appeal.

3. Under the "**Building Codes Act**" under the heading of **PERMITS** and the sub Heading of "**Revocation of Permit**" the sections are non- applicable being (a),(b),(c),(d),(e), that **would have allowed or permitted** for the City of Summerside to have "**Re-Considered the same Application**" of the Applicants for the **5th time** in the last **7 months** for the **same re-lated matter**.

4. Evidence had been brought forward by the Appellant to the Development Officer and City Councilors and the City Lawyer Gordon MacFarland as well as acting outside City Lawyer for the City of Summerside Derek Key, that the Applicant Nathan Kember had been operating under 19 False entities and a false entity by the Name of "Strategic Enterprises Inc" which was a name submitted on the Application to the City of Summerside for the Permit. The province "Corporations Division" has "Confirmed in writing" that no such entity existed. It's the Appellants position that the Applicant Nathan Kember was therefore knowingly perpetuating a fraud. The Second name on the Application was Strategic Holdings Inc. This Company is required to have a Corporate address at all material times under the Corporations Registration requirements. The Address listed on the corporate filings at the time for the Applicant Strategic Holdings Inc was 364 Blue Shank Road in Wilmot Valley. Upon the Appellant arriving to serve Nathan Kember Court Certified Papers at the Corporate Registered office of Strategic Holdings Inc 364 Blue Shank Road, the appellant came Across a residential home Address. The Appellants spoke with the Property Owner who was totally unaware that Nathan Kember was and had been using her residential home address as the corporate address for his Company when she was in fact the deed holder of the property for a number of years. The Property Owner called her legal Counsel (whom interestingly enough was Derek Key the City of Summerside Outside lawyer) to seek further advice. Her legal counsel Derek Key instructed the property owner to "keep her mouth shut" and not to talk with the Appellant with relation to the Applicant Nathan Kember and his use of the 364 Blue Shank Road Property Address. Andrew Campbell, who is the Solicitor for Nathan Kember and Strategic Holdings Inc, were somehow notified and the Corporate Address changed from 364 Blue Shank Road to 674 Water Street. Cox & Palmer (Andrew Campbell) Lawyer for Nathan Kember was reported by the Corporations division as the Person changing the fake Address.

5. Considering the foregoing, **it is not possible under any circumstances** that the Development officer "**Linda Stevenson**" nor the **City Councilors** could have come to any kind of **justification** to **allow** or **permit** the Applicant Nathan Kember to **re-apply** under the same **PID # 73536** & **PID # 72421** and under the same fake Company names "**Strategic Enterprises Inc**" a **false entity** that **does not exist** to be permitted to do business in P.E.I.

In addition, the Applications are **similar in nature** with respect to **re-zoning** and **building development** and same **PID #** which is **not permitted** for reconsideration **12 months from the denial** of the Application.

It is further Important to note that the Application was "**Denied**" (pursuant to the letter of the development officer **Linda Stevenson**) dated **May 18, 2023**.

6. That **Andrew Campbell** (Solicitor for the Applicant **Nathan Kember**),

- knowing full well of the Fake unregistered Companies.
- Knowing full well that Strategic Holdings was using a false Residential Address.
- Knowing full well he (Cox & Palmer) had changed the corporate address from 364 Blue Shank Road to 674 Water Street.....
- Knowingly was aware that City Council and the development officer had Prior evidence before them of the false entity to deny the Application on May 18th, 2023.
- Knowingly filed an **Appeal** dated **June 5th, 2023/LA23013** citing and having claimed that the City of Summerside failed to exercise their decision-making discretion in a **fair, reasonable** and **transparent manner** yet his Client Nathan Kember was not and had not been transparent with **anything** with regards to his application put forth to the City. Hence now why the Ethics and Conduct of

Lawyer Andrew Campbell is **now in very serious question** in supporting and having assisted his client in **unethical** and **unlawful behavior** unbecoming a member of the Bar of the province of P.E.I.

- That Appeal of **June 5, 2023**, by Andrew Campbell was subsequently withdrawn. Andrew Campbell/Client Nathan Kember then **re-submitted** a similar application using the very same fake entity **Strategic Enterprises Inc** both same **PID #** of **Pid # 73536 & Pid # 72421** and a rezoning and Building Request on a new Application that was approved only months later **September 18th, 2023**. The Development officer "**Linda Stevenson**" had **no justification** nor did City councilors to accept a **re-application** from Nathan Kember let alone to Approve the Application (Nathan kember) on **September 18th, 2023**, with a fake Entity of **Strategic Enterprises Inc**. The Appellants filed an Appeal to that decision on **October 6th, 2023**.
- The City Councilors & Mayor **Dan Kutcher** (Former Lawyer **Cox & Palmer**) , the Development Officer "**Linda Stevenson**" and **Gordon MacFarland** (City In house lawyer), **Derek Key** City outside lawyer and **Andrew Campbell** (Applicants Lawyer) **all aware that there were Appeals filed** with **IRAC** on this matter. The City of Summerside attempted to **Circumvent** and overthrow the judicial Appeal process and laws in place and allowed the Applicant to Re-Apply to the City of Summerside for Approval on **October 19th, 2023**, on the same related matter and property PID #. The City **then Approved the Application of Applicant on October 19th, 2023**, which was still pending appeal before IRAC therefore having completely overthrown the Rule of law and due process and a total lack of regard and respect for the Island Regulatory and Appeals Commission.

- Councilor Carrie Adams had cited on October 19 that she was voting against the application citing and “Confirming” that the Planning Board and her fellow Councilor’s did not conduct a proper review required on the Application and that there were significant safety Concerns that could seriously affect the public and she was not at all comfortable as a result in approving the Application and therefore voted against it.
- The City Councilors and Mayor involved that have voted for the Applicants Application Abused the Process and are in breach of lawful procedures in place that as Public Representatives, were Required to abide by and follow.
- The City Councilor’s and the Mayor that have voted in favor of the Applicants application have abused the process. The same individuals have committed the act in public office of “Malfeasance” and “Misfeasance”. Each Councilor including the mayor that was in support and voted for this Applicant Nathan Kember & Strategic Enterprises Inc having known it was a fake entity must each on their own be held Accountable as to why they would approve and issue a Permit to a Fake & False entity knowingly and willingly. In addition, why the very same individual Councilor’s and Mayor have shown no respect for the Island Regulatory and Appeals Commission (has Jurisdiction over municipalities) having unlawfully and illegal committed serious breaches. All must now be held individually accountable before IRAC for each Councilors and Mayors (Vote) & actions in this matter.

- The appellants will be seeking an immediate “**Interlocutory Order**” pending the hearing of the Appeal for IRAC to impose a “**Freeze**” with respect to this applicant, the Councilors and Mayor in question as it relates to these PID #.

SCHEDULE “B”

The Appellants seek the Following Relief.

- The **Applications** of the Applicant **Nathan Kember, Strategic Holdings Inc,** and **Strategic Enterprises Inc** is Struck in its entirety.
- Immediate “**Interlocutory Order**” to prohibit the City of Summerside from accepting **any further or future Applications** from Nathan Kember his purported Companies affiliate’s or assigns or legal representatives as it relates to the Property in Question and others until such time IRAC has adjudicated on this matter and the Misfeasance of City Council as it relates to this Applicant.
- Each City Councilors and the Mayor that with the Knowledge voted to approve a fake & False entity that **is not properly registered to do business** in the province be questioned and investigated as to why and or how they could have possibly come to that determination when evidence was Brought before them months before the Contrary.
- That “**Only**” City councilors whom had voted and Mayor, to be **investigated** under “**Misfeasance**” & “**Malfeasance**” and or any other means by law that deems just for abusing legal and due process that’s in place and “**having abused**” their Public Positions of office as it relates to this applicant and its applications before the City.

- That the Appeals of

April 24, 2023

June 5th, 2023

October 16, 2023

October 29th, 2023 (2)

be consolidated and all heard at the same time. This will include the Appeal of June 5th, 2023 that was withdrawn by Andrew Campbell and Nathan Kember.

- That IRAC (Entity overseeing Municipalities) consider calling in the authorities on this matter of the Misfeasance.



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(Pursuant to Section 28 of the *Planning Act*)

TO: The Island Regulatory and Appeals Commission
National Bank Tower, Suite 501, 134 Kent Street
P.O. Box 577, Charlottetown PE C1A 7L1
Telephone: 902-892-3501 Toll free: 1-800-501-6268
Fax: 902-566-4076 Website: www.irac.pe.ca

NOTE:
Appeal process is a public process.

TAKE NOTICE that I/we hereby appeal the decision made by the Minister responsible for the administration of various development regulations of the **Planning Act** or the Municipal Council of Summerside (name of City, Town or Community) on the 19 day of October, 2023, wherein the Minister/Community Council made a decision to Site Plan Approval for Apartment building having PID # 72421 and reference # 2023-10-0356 = An application by a Nathan Kember/associated company & or Interests.

(attach a copy of the decision).

AND FURTHER TAKE NOTICE that, in accordance with the provisions of Section 28.(5) of the *Planning Act*, the grounds for this appeal are as follows: (use separate page(s) if necessary)

SEE ATTACHED SCHEDULE " A "

AND FURTHER TAKE NOTICE that, in accordance with the provisions of Section 28.(5) of the *Planning Act*, I/we seek the following relief: (use separate page(s) if necessary)

SEE ATTACHED SCHEDULE " B "

EACH APPELLANT MUST COMPLETE THE FOLLOWING: (print separate sheets as necessary)

Name(s) of Appellant(s): Randy Pitre Signature(s) of Appellant(s): Randy Pitre
Please Print

Mailing Address: 280 keppoch Road City/Town: Stratford

Province: P.E.I. Postal Code: C1B2J6

Email Address: randypitre67@outlook.com Telephone: (782) 377-6060

Dated this 29 day of October, 2023
day month year

IMPORTANT

Under Section 28.(6) of the *Planning Act*, the Appellant must, within seven days of filing an appeal with the Commission serve a copy of the notice of appeal on the municipal council or the Minister as the case may be.

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Development Permits are appealable to the Island Regulatory & Appeals Commission (IRAC)

Do not move. Do not cover

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Building Permits Issued

Reference Number	Issued Date	PID	Address	Appeal Deadline *	Description
2023-7-0248	28-Sep-23	439596	398 South Dr	8-Oct-23	Addition
2023-9-0340	28-Sep-23	562603	106 Lefurgey Av	8-Oct-23	Exterior Renovation
2023-9-0346	28-Sep-23	70078	73 Spruce Dr	8-Oct-23	Demolition - Detached Garage

* Per Section 24 of the Provincial Building Codes Act:
Request for review of decision or order
 (1) A person who is aggrieved by a decision of a building official under section 10 or an order issued by a building official under section 14 or subsection 16(2) may request a review of the decision or order by the Chief Building Official by submitting a request for review in the form approved by the Minister to the Chief Building Official within 10 days after receipt of the decision or order.

Development Permits (Official Plan/Zoning Amendments, Subdivisions, Site Plan, Variances, and Other)

Reference Number	Decision Date	PID	Address	Appeal Deadline	Description
2023-9-0320	13-Sep-23	317776	161 Ranchview Av	4-Oct-23	Conditional Use - Denied
SD-2022-11-0031	15-Sep-23	309690	281 Water St.	6-Oct-23	Minor Subdivision - Final Approval
SD-2022-11-0031	15-Sep-23	309690	281 Water St.	6-Oct-23	Minor Subdivision - Final Approval
SD-2023-08-0022	18-Sep-23	72421	678 Water St East	9-Oct-23	Major Subdivision - Preliminary Approval
2023-8-0256	18-Sep-23	73536	674 Water St East	9-Oct-23	Zoning Amendment
2023-8-0257	18-Sep-23	72421	678 Water St East	9-Oct-23	Zoning Amendment
2023-7-0244	18-Sep-23	302711	489 North Market St.	9-Oct-23	Discretionary Use - Apartment Building - 4 units
2023-8-0286	19-Sep-23	67538	93 East Dr	10-Oct-23	Site Plan Approval - Single Family Dwelling
2023-8-0306	19-Sep-23	313361	68 Water St	10-Oct-23	Site Plan Approval - Commercial Building
2023-8-0311	21-Sep-23	314336	31 Granville St	12-Oct-23	Conditional Use - Home-Based Business
2023-9-0331	22-Sep-23	1519073	732 Starling St	13-Oct-23	Site Plan Approval - Detached Garage
2023-8-0297	28-Sep-23	1145192	425 Granville St	19-Oct-23	Preliminary Site Plan Approval - health Centre
2023-9-0329	28-Sep-23	313833	91 Water St	19-Oct-23	Site Plan Approval - Drive Thru
2023-9-0325	28-Sep-23	319285	87 Ottawa St	19-Oct-23	Site Plan Approval - Child Care Facility (Addition)
SD-2023-09-0025	28-Sep-23	663211	455 Central St.	19-Oct-23	Minor Subdivision - Final Approval
2023-6-0216	28-Sep-23	70391	98 North Dr	19-Oct-23	Site Plan Approval - Detached Garage

Development Permits are appealable to the Island Regulatory & Appeals Commission (IRAC)

Do not move. Do not cover

RE: Strategic Holdings Inc.

askcorporateregistry <askcorporateregistry@gov.pe.ca>

Tue 5/23/2023 1:10 PM

To: Randy Pitre <RandyPitre67@outlook.com>

Good afternoon,

Based on our records, Strategic Holdings Inc. re-registered in the Online Registry on April 28, 2023. The registered address was updated as part of that filing, which was completed by Cox and Palmer.

Regards,

PEI Corporate Business Registry

From: Randy Pitre <RandyPitre67@outlook.com>

Sent: Tuesday, May 23, 2023 12:04 PM

To: askcorporateregistry <askcorporateregistry@gov.pe.ca>

Cc: Randy Pitre <RANDYPITRE67@OUTLOOK.COM>

Subject: Strategic Holdings Inc.

Strategic Holdings Inc has had a " Registered Address " of 364 Blue Shank Road Route 107 Wilmot Valley, PE C1N 4J9 for Years. The Registered Address has appeared to have just recently changed in the last 7-10 days. Please confirm the date the Registered Address was Changed and by whom. If you could confirm as soon as possible that would be great. I am aware of the Online Registry but the online Registry does not have the information that I am Requesting.

Thanks



Justice and
Public Safety

Justice et
Sécurité publique



Financial and Consumer Services

PO Box 2000, Charlottetown
Prince Edward Island
Canada C1A 7N8

Services financiers et aux consommateurs

C.P. 2000, Charlottetown
Île-du-Prince-Édouard
Canada C1A 7N8

March 24, 2023

VIA EMAIL

Randy Pitre
RandyPitre67@outlook.com

Dear Mr. Pitre:

Re: Confirmation of Corporate Registry Status

Further to your email request of March 23, 2023, we completed a search of the below listed names in our new and old corporate registries:

- | | |
|------------------------------|---|
| 1. Omega Real Estate | 11. Strategic technologies |
| 2. Omega Property | 12. Strategic Equipment Rentals & sales |
| 3. Omega Rentals | 13. Strategic Municipal Products |
| 4. Platinum Kitchens | 14. Strategic Flooring |
| 5. Platinum Floors | 15. Strategic landscaping |
| 6. Platinum Floral decor | 16. Strategic Sales |
| 7. Strategic Business Center | 17. Strategic Property Management |
| 8. Strategic Enterprises Inc | 18. Strategic Associates |
| 9. Strategic Enterprises | 19. Strategic Cabinetry & Furniture. |
| 10. Strategic Cold Storage | |

We confirm that STRATEGIC FLOORING is actively registered as a trade name by NK QUALITY RESTORATION INC. We note that STRATEGIC CONSTRUCTION is also actively registered as a trade name by NK QUALITY RESORTATION INC.

Regards,

Registry and Licensing Counsel
Lauren Keefe Hogan

PETROLEUM PRICES ([HTTPS://IRAC.PE.CA/PETROL/CURRENT-PETROLEUM-PRICES/](https://irac.pe.ca/petrol/current-petroleum-prices/))

COVID ([HTTPS://IRAC.PE.CA/COVID/](https://irac.pe.ca/covid/))



PRINCE EDWARD ISLAND

Regulatory & Appeals Commission

Commission de réglementation et d'appels

ÎLE-DU-PRINCE-ÉDOUARD

(<https://irac.pe.ca/>)

Planning Appeals

Under the *Planning Act* (https://www.princeedwardisland.ca/sites/default/files/legislation/p-08-planning_act.pdf) and other provincial statutes, the Commission hears appeals relating to land use, including municipal and ministerial planning decisions.

(https://www.princeedwardisland.ca/sites/default/files/legislation/p-08-planning_act.pdf)

Instructions on how to file an appeal are contained in the Frequently Asked Questions below.

Planning Appeals

▼ Planning Appeals – Current

- LA23020 – Environmental Coalition of PEI v. Minister of Housing, Land and Communities (<https://irac.pe.ca/planning/la23020-environmental-coalition-of-pe-i-v-minister-of-housing-land-and-communities/>)
- LA23019 – Geraldine Johnston-Grinton & Paul Grinton v. Town of Three Rivers (<https://irac.pe.ca/planning/la23019-geraldine-johnston-grinton-paul-grinton-v-town-of-three-rivers/>)
- LA23018 – J. Alex Harris & Darlene A. Worth v. Town of Borden-Carleton (<https://irac.pe.ca/planning/la23018-j-alex-harris-darlene-a-worth-v-town-of-borden-carleton/>)
- LA23017 – Martin Dutton v. Minister of Housing, Land and Communities (<https://irac.pe.ca/planning/la23017-martin-dutton-v-minister-of-housing-land-and-communities/>)
- LA23016 – Robert & Judi Gosbee v. Minister of Housing, Land and Communities (<https://irac.pe.ca/planning/la23016-robert-judi-gosbee-v-minister-of-housing-land-and-communities/>)



- LA23015 – Gordon MacCallum v. Minister of Housing, Land and Communities (<https://irac.pe.ca/planning/la23015-gordon-maccallum-v-minister-of-housing-land-and-communities/>)
- LA23014 – Dwayne & Virginia Higginbotham v. Minister of Housing, Land and Communities (<https://irac.pe.ca/planning/la23014-dwayne-virginia-higginbotham-v-minister-of-housing-land-and-communities/>)
- LA23013 – Strategic Holdings Inc. v. City of Summerside (<https://irac.pe.ca/planning/la23013-strategic-holdings-inc-v-city-of-summerside/>)
- LA23012 – Sabine Nuesch v. Rural Municipality of Victoria (<https://irac.pe.ca/planning/la23012-sabine-nuesch-v-rural-municipality-of-victoria/>)
- LA23011 – Christine Beck v. City of Charlottetown (<https://irac.pe.ca/planning/la23011-christine-beck-v-city-of-charlottetown/>)
- LA23010 – Randy Pitre v. City of Summerside (<https://irac.pe.ca/planning/la23010-randy-pitre-v-city-of-summerside/>)
- LA23009 – Andrea Battison v. City of Charlottetown (<https://irac.pe.ca/planning/la23009-andrea-battison-v-city-of-charlottetown/>)
- LA23008 – Linda MacMillan v. Minister of Agriculture and Land (<https://irac.pe.ca/planning/la23008-linda-macmillan-v-minister-of-agriculture-and-land/>)
- LA23007 – William & Olive Sargeant v. City of Charlottetown (<https://irac.pe.ca/planning/la23007-william-olive-sargeant-v-city-of-charlottetown/>)
- LA23006 – Vaughan Davies v. City of Charlottetown (<https://irac.pe.ca/planning/la23006-vaughan-davies-v-city-of-charlottetown/>)
- LA23005 – Karen Cudmore v. City of Charlottetown (<https://irac.pe.ca/planning/la23005-karen-cudmore-v-city-of-charlottetown/>)
- LA23004 – Mike James & Sheldon Stewart v. Minister of Agriculture and Land (<https://irac.pe.ca/planning/la23004-mike-james-sheldon-stewart-v-minister-of-agriculture-and-land/>)
- LA23003 – Alan Thompson et al. v. Town of Cornwall (<https://irac.pe.ca/planning/la23003-alan-thompson-et-al-v-town-of-cornwall/>)
- LA23002 – Betty Ann Bryanton v. Minister of Agriculture and Land (<https://irac.pe.ca/planning/la23002-betty-ann-bryanton-v-minister-of-agriculture-and-land/>)
- LA22020 – Martin and Leslie-Ann Ruben v. Rural Municipality of Victoria (<https://irac.pe.ca/planning/la22020-martin-and-leslie-ann-ruben-v-rural-municipality-of-victoria/>)
- LA22024 – Timothy Banks v. Minister of Agriculture and Land (<https://irac.pe.ca/planning/la22024-timothy-banks-v-minister-of-agriculture-and-land/>)
- LA22022 – Gaelyne Coffin and David Murphy v. Minister of Agriculture and Land



- (<https://irac.pe.ca/planning/la22022-gaelyne-coffin-and-david-murphy-v-minister-of-agriculture-and-land/>)
- LA23001 – Sheila Scott v. City of Charlottetown (<https://irac.pe.ca/planning/la23001-sheila-scott-v-city-of-charlottetown/>)
 - LA22019 – Margaret MacKay v. Rural Municipality of Linkletter (<https://irac.pe.ca/planning/la22019-margaret-mackay-v-rural-municipality-of-linkletter/>)
 - LA22018 – Heather and Arthur Neill v. Rural Municipality of Miltonvale Park (<https://irac.pe.ca/planning/la22018-heather-and-arthur-neill-v-rural-municipality-of-miltonvale-park/>)
 - LA22004 – Sabine Nuesch v. Municipality of Victoria (<https://irac.pe.ca/planning/la22004-sabine-nuesch-v-municipality-of-victoria/>)
 - LA22014 – Blair Neill v. Minister of Agriculture and Land (<https://irac.pe.ca/planning/la22014-blair-neill-v-minister-of-agriculture-and-land/>)
 - LA22012-Willemina and Floyd Squires v. Minister of Agriculture and Land (<https://irac.pe.ca/planning/la22012/>)
 - LA22011 – Nancy Dahl v. Minister of Agriculture and Land (<https://irac.pe.ca/planning/la22011/>)
 - LA22003 – Sheila Scott v. City of Charlottetown (<https://irac.pe.ca/planning/la22003/>)
 - LA22002-Parry Aftab & Allan McCullough v. Minister of Agriculture & Land (<https://irac.pe.ca/planning/la22002/>)

► Planning Appeals – **Decisions**

► Planning Appeals – **Archived**

Legislation

Planning Act

- Planning Act (https://www.princeedwardisland.ca/sites/default/files/legislation/p-08-planning_act.pdf)
- Planning Act – Exemption Order Regulations (<https://www.princeedwardisland.ca/sites/default/files/legislation/P%2608-1-Planning%20Act%20Exemption%20Order%20Regulations.pdf>)
- Planning Act – Province-Wide Minimum Development Standards Regulations



(<https://www.princeedwardisland.ca/sites/default/files/legislation/P%2608-2-Planning%20Act%20Province-Wide%20Minimum%20Development%20Standards%20Regulations.pdf>)

- Planning Act – Subdivision and Development Regulations
(https://www.princeedwardisland.ca/sites/default/files/legislation/p08-3-planning_act_subdivision_and_development_regulations_0.pdf)

General Information

- Frequently Asked Questions (<https://irac.pe.ca/planning/frequently-asked-questions/>) (Version française) (<https://irac.pe.ca/planning/foire-aux-questions/>)
- Notice of Appeal Form (<https://irac.pe.ca/wp-content/uploads/Planning-Appeal-Form.pdf>)
- (<https://irac.pe.ca/wp-content/uploads/rulesofpracticeandprocedure-hearings.pdf>) Commission (<https://irac.pe.ca/wp-content/uploads/rulesofpracticeandprocedure-hearings.pdf>) Rules of Practice & Procedure (<https://irac.pe.ca/wp-content/uploads/rulesofpracticeandprocedure-hearings.pdf>)

Municipal Planning Links

- PEI Planning Decisions (<http://bl3.baselinegeo.com/pns/view.aspx>)
- City of Charlottetown (<https://www.charlottetown.ca/cms/one.aspx?pagelId=10948582>)
- City of Summerside (<https://www.summerside.ca/cms/One.aspx?portalId=4499374&pagelId=5083782>)
- Town of Cornwall (<https://cornwallpe.ca/departments/planning-and-development/>)
- Town of Stratford (<https://www.townofstratford.ca/cms/One.aspx?portalId=11992863&pagelId=13679090>)

Anyone wishing to file an appeal related to Highway Access, Unsightly Property, or Heritage Places should contact the Appeals Administrator for details on filing.

Philip Rafuse, Appeals Administrator | appealinquiries@irac.pe.ca (<mailto:appealinquiries@irac.pe.ca>) |

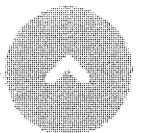
002-892-2501



002-002-0001

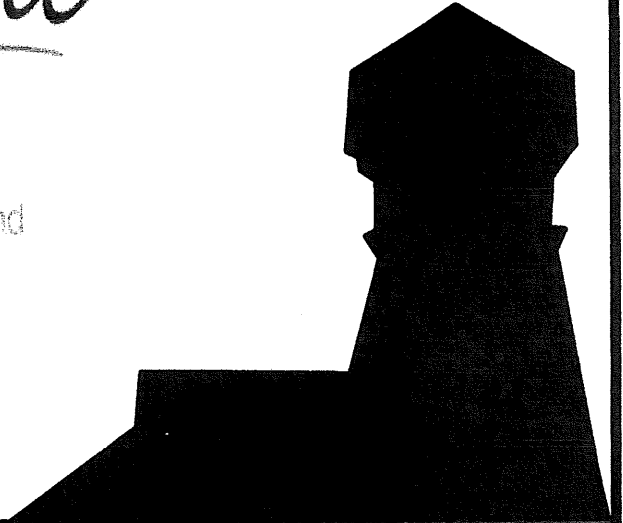
- ▶ Highway Access Appeals
- ▶ Unsightly Property Appeals
- ▶ Heritage Places Appeals

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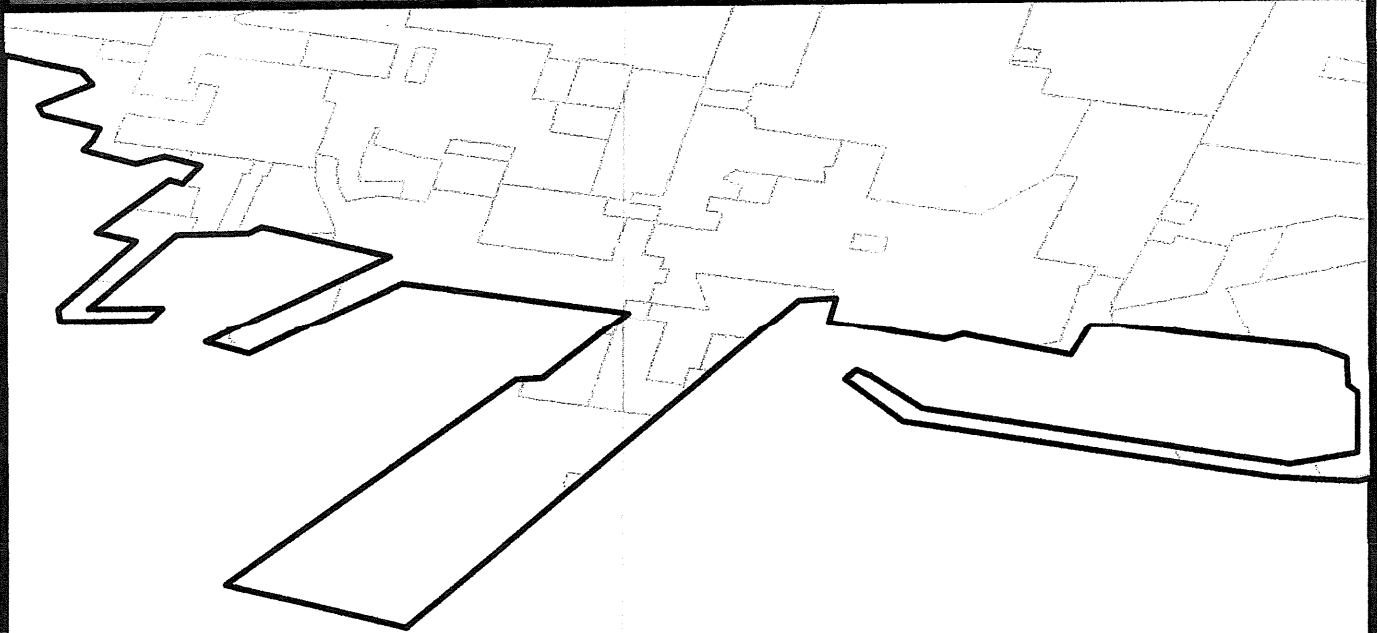


City of
Summerside

Prince Edward Island



ZONING BYLAW SS-15



5.8 Time Limitation of Applications

- a. A development application which is not completed within 12 months of the original submission in accordance with section 5.2 (c) shall be considered null and void.
- b. A development application shall be considered with respect to the provisions of this Bylaw existing at the date the application is completed in accordance with section 5.2 (c), regardless of any subsequent amendments to the Bylaw.
- c. Should a development application be denied, a similar application shall not be considered within 12 months of the initial application being denied, except when the Development Officer considers it justified because of valid new evidence or a change in conditions, or as the result of an appeal or review procedure allowed under this Bylaw.

5.9 Official Plan (OP), Secondary Plans (SP) and Zoning Bylaw (ZBL) Amendments

- a. A change to either the text or the zoning map of this Bylaw shall be considered a zoning amendment and shall be consistent with Official Plan and Secondary Plan policies.
- b. Council may amend its official plan to enable a zoning amendment including policy statements in Schedule 'A' (text) and/ or the future land use plan (FLUP) in Schedule 'B', but any such official plan amendment shall precede the zoning amendment.
- c. Council may amend any secondary plan in conjunction with an official plan and/ or zoning bylaw amendment in accordance with Section 5.9 (b).
- d. The Development Officer may require additional supporting information from applicants necessary for the City to adequately review their proposed zoning or official plan amendments against the general criteria listed in section 5.7, such as:
 - i. general development concept showing proposed land uses, any subdivisions, buildings, means of servicing, traffic access and parking;
 - ii. substantiation of marketing and financial feasibility; and
 - iii. assessment of any potentially significant development impacts on City infrastructure and the natural environment.

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This document, is an office consolidation of this Bylaw

It is intended for information and reference purposes only.

This document is *not* the official version of the Bylaw.

We have tried to ensure these versions of the bylaws are as accurate as possible;

however, where accuracy is critical, please consult official sources.

**If you find any errors or omissions in this consolidation, please contact,
Department of Human Resources and Legal Affairs**

Phone: 902-432-1262

Email: sandra.corkum@city.summerside.pe.ca

Council Approved July 16 2018

Approved by the Province November 6 2019

Amended October 1, 2019

Amended September 13, 2021

This Zoning Bylaw is effective as of the date signed by the Minister

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Notice: Basic HTML

You are viewing Basic HTML view. Some features may be disabled.

Switch to standard version.

PEI Business / Corporate Registry

Please note: You may need to search two corporate registries until we fully transition to our new online registry system.

If the business name you are searching does not appear below, please continue your search at PEI Corporate Registry – Original.

Business Type	Incorporated
Business Number	705361319
Entity Name	STRATEGIC HOLDINGS INC.
Entity Secondary Name	
Registration Date	February 15, 2019
Registration Number	20323
Status	Active
Corporation Type	Non-distributing
Last Return Date	February 15, 2023
Address	674 WATER ST E Suite 5SUMMERSIDE Prince Edward Island C1N 4J1
End Date	
Amalgamated Name	
Converted From	
Converted To	
Former Name(s)	
Nature of Business	Construction
Continued From	
Discontinued To	
Gazette Date	
Revival Date	



PRINCE EDWARD ISLAND
ÎLE-DU-PRINCE-ÉDOUARD

BUILDING CODES ACT

Limitation

- (5) A building official shall inspect only those classes or types of buildings or construction which he or she is qualified or authorized, in accordance with the regulations, to inspect.

Identification

- (6) Each building official
- (a) shall be issued identification by the authority by which he or she was appointed;
 - (b) shall carry his or her identification at all times when engaged in any duty or function under this Act or the regulations; and
 - (c) shall produce his or her identification to any person upon request. *2017,c.61,s.8.*

9. Repealed by 2022,c.55,s.10.

Permits**10. Application for permit**

- (1) An owner, or a constructor on behalf of an owner, may apply for a permit by submitting the prescribed information on the form established by the Minister to the Chief Building Official or, in respect of a building or real property located in a municipality referred to in subsection 8(3), to the appropriate building official for the municipality.

Fee

- (2) An application submitted under subsection (1) shall be accompanied by the prescribed fee.

Review of application

- (3) The building official to whom an application is submitted under subsection (1) shall review the application and shall issue a permit for the proposed construction, demolition or other work if the building official is satisfied that
- (a) based on the information provided with the application, the proposed construction, demolition or other work will comply with this Act and the regulations;
 - (b) the accompanying documents, if any, required for the application contain the prescribed information;
 - (c) the application is otherwise complete; and
 - (d) the prescribed fee has been paid.

Revocation of permit

- (4) A building official may revoke a permit issued under this Act
- (a) if it was issued based on mistaken, false or incorrect information;
 - (b) if, within 2 years after the date of its issuance, the construction or demolition in respect of which it was issued has not, in the opinion of the building official, been substantially commenced;
 - (c) if the construction or demolition in respect of which the permit was issued has been, in the opinion of the building official, substantially suspended or discontinued for a period of more than 12 months;
 - (d) if it was issued in error; or
 - (e) if the holder of the permit requests in writing that it be revoked.

PLEASE NOTE

This document, prepared by the *Legislative Counsel Office*, is an office consolidation of this Act, current to May 6, 2022. 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 King'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:

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BUILDING CODES ACT

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Crown and Government Liability - Misfeasance in Public Office

MORE CASES

[Part 2](#)

. [The Catalyst Capital Group Inc. v. Dundee Kilmer](#)

In [The Catalyst Capital Group Inc. v. Dundee Kilmer](#) (Ont CA, 2022) the Court of Appeal considered the tort of misfeasance in public office:

[13] As this court set out in *L. (A.) v. Ontario (Minister of Community and Social Services)* (2006), 2006 CanLII 39297 (ON CA), 218 O.A.C. 150 (C.A.), at para. 35, leave to appeal refused, [2007] S.C.C.A. No. 36:

The tort of misfeasance in public office is founded on the principle that those that hold public office and exercise public functions are subject to the law and must not abuse their powers to the detriment of ordinary citizens.

[14] The elements of the misfeasance tort were set out by the Supreme Court of Canada in *Odhavji Estate v. Woodhouse*, 2003 SCC 69, [2003] 3 S.C.R. 63. The court explained that the tort of misfeasance in

- [Bias and Conflict of Interest](#)
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public office can arise in one of two ways. What it called Category A involves conduct that is specifically intended to injure a person or a class of persons. Category B involves a public officer who acts with knowledge both that she or he has no power to do the act complained of and that the act is likely to injure the plaintiff. The court explained, at para. 23, that there are elements common to both forms of the tort:

First, the public officer must have engaged in deliberate and unlawful conduct in his or her capacity as a public officer. Second, the public officer must have been aware both that his or her conduct was unlawful and that it was likely to harm the plaintiff. What distinguishes one form of misfeasance in public office from the other is the manner in which the plaintiff proves each ingredient of the tort.

[15] The court in *Odhavji* went on to explain that the requirement that the defendant must have been aware that his or her conduct was unlawful reflects the well-established principle that misfeasance in public office requires an element of “bad faith” or “dishonesty”. The fact that a public official makes a decision that harms a member of the public is not, in and of itself, a basis to infer bad faith. As the court stated at para. 28:

In a democracy, public officers must retain the authority to make decisions that, where appropriate, are adverse to the interests of certain citizens. Knowledge of harm is thus an insufficient basis on which to conclude that the defendant has acted in bad faith or dishonestly. A public officer may in good faith make a decision that she or he knows to be adverse to interests of certain members of the public. In order for the conduct to fall within the scope of the tort, the officer must

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deliberately engage in conduct that he or she knows to be inconsistent with the obligations of the office.

[16] In *Pikangikum First Nation v. Nault*, 2012 ONCA 705, 298 O.A.C. 14, at para. 77, leave to appeal refused, [2013] S.C.C.A. No. 10, this court explained that:

The tort of misfeasance of public office is difficult to establish. The plaintiff must prove more than mere negligence, mismanagement or poor judgment. To succeed, the plaintiff must demonstrate that the defendant knowingly acted illegally and in bad faith chose a course of action specifically to injure the plaintiff.

. **Meekis v. Ontario**

In *Meekis v. Ontario* (Ont CA, 2021) the Court of Appeal extensively considered the elements of the tort of misfeasance of public office:

[70] In *Ontario (Attorney General) v. Clark*, 2021 SCC 18, 456 D.L.R. (4th) 361, at para. 22, a majority of the Supreme Court summarized the tort of misfeasance in public office in the following terms:

A successful misfeasance claim requires the plaintiff to establish that the public official engaged in deliberate and unlawful conduct in his or her capacity as a public official, and that the official was aware that the conduct was unlawful and likely to harm the plaintiff. [Citations omitted.]

[71] This court described the purpose of the tort of misfeasance in public office in *Freeman-Maloy v. Marsden* (2006), 2006 CanLII 9693 (ON CA), 79 O.R. (3d) 401 (C.A.), at para. 10, leave to appeal refused, [2006] S.C.C.A. No. 201, as follows:

The tort of misfeasance in a public office is founded on the fundamental rule of law

- [Injunctions and Stays](#)
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principle that those who hold public office and exercise public functions are subject to the law and must not abuse their powers to the detriment of the ordinary citizen. As Lord Steyn put it in *Three Rivers District Council v. Bank of England (No. 3)*, [2000] 2 W.L.R. 1220 (U.K. H.L.), at 1230: “The rationale of the tort is that in a legal system based on the rule of law executive or administrative power ‘may be exercised only for the public good’ and not for ulterior and improper purposes”. The “underlying purpose” of the tort of misfeasance in a public office “is to protect each citizen’s reasonable expectation that a public officer will not intentionally injure a member of the public through deliberate and unlawful conduct in the exercise of public functions”: *Odhavji ...* at para. 30.

[72] The past four decades have seen a revival in the application of the tort of misfeasance in public office, both in Canada and abroad. The wide-ranging situations in which plaintiffs have claimed misfeasance against various kinds of public officials illustrate that it is “a tort of great flexibility and breadth”: Erika Chamberlain and Stephen G.A. Pitel, *Fridman’s The Law of Torts in Canada* (Toronto: Thomson Reuters, 2020), at p. 1099.

The elements of misfeasance in public office

[73] *Iacobucci J.* set out the elements of the tort of misfeasance in public office in *Odhavji*, at para. 32. As summarized in *Lewis N. Klar et al., Remedies in Tort* (Toronto: Thomson Reuters, 2021), at §60, to succeed on a misfeasance claim, a plaintiff must show that:

- 1) the defendant was a public official exercising public functions at the relevant time;

- [Parks](#)
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2) the public official deliberately engaged in an unlawful act in their public capacity, which, as affirmed in Clark, at para. 23, is typically established by proving any of (a) an act in excess of the public official's powers, (b) an exercise of a power for an improper purpose, or (c) a breach of a statutory duty (the "unlawful act element");

3) the public official was aware both that their conduct was unlawful and that it was likely to harm the plaintiff, which, as noted in Clark, at para. 23, may be established through actual knowledge, subjective recklessness, or "conscious disregard" for the lawfulness of the conduct and the consequences to the plaintiff (the "knowledge element");

4) the public official's tortious conduct was the legal cause of the plaintiff's injuries; and

5) the injuries suffered are compensable in tort law.

[74] The first three of these elements are unique to the tort of misfeasance in public office, while the other two are common to torts generally: *Foschia v. Conseil des Écoles Catholique de Langue Française du Centre-Est*, 2009 ONCA 499, 266 O.A.C. 17, at para. 22.

[75] I do not take the respondents to be disputing that the coroners involved in the investigation into Brody's death were public officials exercising public functions at the relevant times. As such, I will focus my analysis below on the remaining four elements of the tort, and in particular the unlawful act and knowledge elements.

A "narrow window of opportunity" to succeed at trial is sufficient

[76] While the material facts may lack detail

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- [Telecommunications](#)
- [Territories](#)
- [TORTS](#)
- [Trademarks](#)
- [Transportation](#)
- [Travel](#)
- [Trusts](#)
- [Unconsolidated Statutes](#)
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- [Vital Statistics](#)
- [War](#) [with Guide]
- [Welfare \(Ontario Works\)](#) [with Guide]
- [Wildlife](#)
- [Wild Animals \(Canada\) \(2016\)](#)
- [Workplace Safety and Insurance Act \(WSIA\)#](#)

TRIBUNALS

ONTARIO

- [Animal Care Review Board](#)
- [Agriculture, Food & Rural Affairs Appeal Tribunal](#)
- [Alcohol and Gaming Commission of Ontario](#)
- [Assessment Review Board](#)
- [Building Code Commission](#)
- [Capital Markets Tribunal](#)
- [Child and Family Services Review Board](#)
- [College of Chiropractors of Ontario](#)
- [College of Dental Hygienists of Ontario](#)
- [College of Early Childhood Educators](#)
- [College of Massage Therapists of Ontario](#)

in the early stages of a proceeding, at the pleadings stage it is generally enough for a plaintiff to establish “a narrow window of opportunity” to make out a misfeasance claim at trial: *Granite Power Corp. v. Ontario*, 2004 CanLII 44786 (ON CA), 72 O.R. (3d) 194, at para. 40.

[77] However, the tort requires more than a “bald pleading” that a public official acted for an improper purpose; there must be material facts about specific officials and their specific unlawful purpose in acting as they did: *Trillium Power Wind Corporation v. Ontario (National Resources)*, 2013 ONCA 683, 117 O.R. (3d) 721, at paras. 59-61.

Discriminatory conduct may satisfy the unlawful act element

[78] In *Castrillo v. Workplace Safety and Insurance Board*, 2017 ONCA 121, 136 O.R. (3d) 654, at para. 45, Lauwers J.A. found that a misfeasance claim based on an alleged improper purpose in the exercise of a discretionary public spending power was “adequate in strictly pleadings terms”. He explained that this amounted to a specific application of “the more general proposition that a statutory power must only be used for a proper purpose” [Emphasis added].

[79] It is well-settled that exercising discretion based on discriminatory considerations constitutes an improper purpose: *Baker v. Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC), [1999] 2 S.C.R. 817, at para. 53. There can be no doubt that a failure to act, if based on discriminatory considerations, is equally improper. Indeed, in his oft-cited judgment in *Roncarelli v. Duplessis*, 1959 CanLII 50 (SCC), [1959] S.C.R. 121, Rand J. affirmed that using one’s public power to discriminate against a particular class of persons is “knowingly foreign” to the proper exercise of discretionary statutory decision-making.

[80] In *Madadi v. Nichols*, 2021 BCCA 10, 455 D.L.R. (4th) 471, the British Columbia Court of Appeal recently considered the adequacy of pleadings in support of a claim

- [College of Nurses of Ontario](#)
- [College of Occupational Therapists of Ontario](#)
- [College of Optometrists of Ontario](#)
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- [Condominium Authority Tribunal](#)
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- [Court of Revision \(Drainage\)](#)
- [Custody Review Board](#)
- [Financial Services Regulatory Authority of Ontario](#)
- [Financial Services Tribunal](#)
- [Fire Safety Commission](#)
- [Grievance Settlement Board](#)
- [Health Professions Appeal and Review Board](#)
- [Health Services Appeal and Review Board](#)
- [Horse Racing Appeal Panel](#)
- [Human Rights Tribunal of Ontario](#)
- [Information and Privacy Commissioner Ontario](#)

for misfeasance in public office where the plaintiff alleged that a disciplinary body penalized him for the improper purpose of discrimination. The court confirmed, at para. 72, that a misfeasance claim grounded in part on the pleading that a public body exercised its discretion based on “discriminatory reasoning”, coupled with “pleas of knowledge that the conduct was unlawful, subjective awareness of the consequential harm to the respondent, and improper purpose” was sufficient to establish a possible cause of action for misfeasance in public office.

Failures to act may be unlawful even where there is no positive duty to act

[81] Additionally, this court has confirmed that omissions by public officials may be the source of a claim for misfeasance in public office. In *Grand River, Epstein J.A.* explicitly rejected the argument that an omission to act cannot be unlawful without a deliberate breach of an express statutory duty. Rather, *Epstein J.A.* held as follows, at para. 81:

On my reading of the relevant paragraphs from *Odhavji*, there is no requirement for a breach of a statutory duty to make out a claim for misfeasance in public office. Conduct by a public officer may be unlawful even where there is no positive duty to act, provided that the conduct was done with the intent to harm. Similarly, a refusal to exercise a power with a specific intent to injure might satisfy the test for misfeasance in public office. Here, the respondents plead that “the Ministers’ continuous course of conduct (including their failure to act) ... was deliberate and unlawful in the exercise of their public functions: they knowingly acted for an improper purpose as described above and knowingly exceeded their authority”. Thus, I reject the Crown’s argument that the misfeasance claim

- [Landlord and Tenant Board](#)
 - [Law Society Tribunal](#)
 - [Licence Appeal Tribunal](#)
 - [Normal Farm Practices Protection Board](#)
 - [Office of the Integrity Commissioner of Ontario](#)
 - [Ombudsman Ontario](#)
 - [Ontario Civilian Police Commission](#)
 - [Ontario College of Pharmacists](#)
 - [Ontario College of Social Workers and Social Service Workers](#)
 - [Ontario College of Teachers](#)
 - [Ontario Labour Relations Board](#)
 - [Ontario Land Tribunal](#)
 - [Ontario Physicians and Surgeons Discipline Tribunal](#)
 - [Ontario Securities Commission](#)
 - [Ontario Special Education Tribunal](#)
 - [Pay Equity Hearings Tribunal](#)
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 - [Public Service Grievance Board](#)
 - [Social Benefits Tribunal](#)
 - [Skilled Trades Ontario](#)
 - [Workplace Safety and Insurance Appeals Tribunal \(Ont\)#](#)
 - [Workplace Safety and Insurance Board \(Ont\)#](#)
- FEDERAL**
- [Canada Agricultural Review Tribunal](#)

should have been struck because the respondents did not plead a failure to act in the face of a clear statutory duty. [Emphasis added.]

The two categories of misfeasance in public office

[82] In *Odhavji*, at paras. 22-23, Iacobucci J. discussed two ways in which the tort of misfeasance can arise: (a) through conduct that is specifically intended to injure a person or class of persons, sometimes called “targeted malice” (“Category A”); and (b) where a public official acts with knowledge “both that she or he has no power to do the act complained of and that the act is likely to injure the plaintiff” (“Category B”).

[83] In *Foschia*, at para. 24, this court elaborated on the key distinction between Category A and Category B claims of misfeasance in public office:

While the constituent elements of the tort do not change depending on the Category of misfeasance alleged, the way those elements are proven does. If the plaintiff proves that the public official was acting for the improper purpose of deliberately causing harm to the plaintiff, this will be sufficient to prove both the [unlawful act] and [knowledge] elements of the tort. If, on the other hand, the plaintiff is alleging misfeasance in the form of Category B, then it is necessary to individually prove both the [unlawful act] and [knowledge] elements. In proving the [knowledge] element, it is sufficient for the plaintiff to show that the public official acted with reckless indifference to both the unlawfulness of his or her act and the likelihood that it would injure the plaintiff. [Citations omitted.]

- [Canada Energy Regulator](#)
- [Canada Industrial Relations Board](#)
- [Canadian Broadcast Standards Council](#)
- [Canadian Human Rights Tribunal](#)
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....

[102] According to Iacobucci J. in *Odhavji*, at para. 25, the knowledge element may be satisfied by showing that the public official acted with recklessness or “conscious disregard” as to the unlawfulness of their conduct and the likelihood that it would injure the plaintiff.

. **Flood v. Boutette**

In [Flood v. Boutette](#) (Ont CA, 2021) the Court of Appeal quickly dismissed a tort claim of misfeasance in public office:

[114] Finally, the Papis’ claim of misfeasance in public office must fail. The City councillors were not acting unlawfully or in bad faith when they elected to vote on the site control plan application: see *Trillium Power Wind Corp. v. Ontario (Ministry of Natural Resources)*, 2013 ONCA 683, 117 O.R. (3d) 721, at paras. 37-39. They were acting in response to community opposition to the Papis’ proposed variance.

[115] In sum, the Papis sought a variance to a property. Community members objected and raised their concerns with City Council, the role of which is to resolve such disputes. There is nothing particularly unusual, much less tortious, about the events that followed.

. **Ontario (Attorney General) v. Clark**

In [Ontario \(Attorney General\) v. Clark](#) (SCC, 2021) the Supreme Court of Canada sets out the basics of the tort of misfeasance in public office:

[22] The elements and proper scope of the tort of misfeasance are not disputed in this appeal. A successful misfeasance claim requires the plaintiff to establish that the public official engaged in deliberate and unlawful conduct in his or her capacity as a public official, and that the official was aware that the conduct was unlawful and likely to harm the plaintiff (*Odhavji Estate v. Woodhouse*, 2003 SCC 69 (CanLII), [2003] 3 S.C.R. 263, at para. 23, per Iacobucci J.).

[23] The unlawful conduct anchoring a misfeasance claim typically falls into one of

- [Trademarks Opposition Board](#)
- [Transportation Appeal Tribunal of Canada \(TATC\)](#)
- [Veterans Review and Appeal Board of Canada](#)

three categories, namely an act in excess of the public official's powers, an exercise of a power for an improper purpose, or a breach of a statutory duty (Odhavji, at para. 24). The minimum requirement of subjective awareness has been described as "subjective recklessness" or "conscious disregard" for the lawfulness of the conduct and the consequences to the plaintiff (Odhavji, at paras. 25 and 29; Powder Mountain Resorts Ltd. v. British Columbia (2001), 2001 BCCA 619 (CanLII), 94 B.C.L.R. (3d) 14 (C.A.), at para. 7; Three Rivers District Council v. Bank of England (No. 3) (2000), [2003] 2 A.C. 1 (H.L.), at pp. 194-95, per Lord Steyn).

. **Conway v. The Law Society of Upper Canada**

In [Conway v. The Law Society of Upper Canada](#) (Ont CA, 2016) the Court of Appeal commented briefly on the elements of the tort of misfeasance in public office:

[20] The tort of misfeasance in public office has been variously described in the case law as the tort of abuse of public office or abuse of statutory power: *Odhavji Estate v. Woodhouse*, 2003 SCC 69 (CanLII), at paras. 25 and 30. Whatever the nomenclature, the essence of the tort is the deliberate and dishonest wrongful abuse of the powers given to a public officer, coupled with the knowledge that the misconduct is likely to injure the plaintiff: *Odhavji Estate v. Woodhouse*, at para. 23. Bad faith or dishonesty is an essential ingredient of the tort: *Odhavji Estate v. Woodhouse*, at para. 28 and *Gratton-Masuy Environmental Technologies Inc. v. Ontario*, 2010 ONCA 321, at para. 85.

. **Grand River Enterprises Six Nations Ltd. v. Attorney General (Canada)**

In [Grand River Enterprises Six Nations Ltd. v. Attorney General \(Canada\)](#) (Ont CA, 2017) the Court of Appeal set out the elements of the tort of misfeasance in public office as follows:

[74] Despite the motion judge's comment that the tort of misfeasance in public office is still developing and changing, there is no dispute about the test for establishing misfeasance in public office. The test was

summarized by the Supreme Court in its 2003 decision in *Odhavji Estate*, at para. 32:

[T]he tort of misfeasance in a public office is an intentional tort whose distinguishing elements are twofold: (i) deliberate unlawful conduct in the exercise of public functions; and (ii) awareness that the conduct is unlawful and likely to injure the plaintiff. Alongside deliberate unlawful conduct and the requisite knowledge, a plaintiff must also prove the other requirements common to all torts. More specifically, the plaintiff must prove that the tortious conduct was the legal cause of his or her injuries, and that the injuries suffered are compensable in tort law.

.....

[81] On my reading of the relevant paragraphs from *Odhavji*, there is no requirement for a breach of a statutory duty to make out a claim for misfeasance in public office. Conduct by a public officer may be unlawful even where there is no positive duty to act, provided that the conduct was done with the intent to harm. Similarly, a refusal to exercise a power with a specific intent to injure might satisfy the test for misfeasance in public office. Here, the respondents plead that “the Ministers’ continuous course of conduct (including their failure to act) ... was deliberate and unlawful in the exercise of their public functions: they knowingly acted for an improper purpose as described above and knowingly exceeded their authority”: para. 43 of the Fresh Statement of Claim. Thus, I reject the Crown’s argument that the misfeasance claim should have been struck because the respondents did not plead a failure to act in the face of a clear statutory duty.

Additionally, the court stated this with respect to the particularity of pleadings required in a malfeasance in public office claim, and otherwise in pleadings, where the plaintiff may not know the identities of all persons

involved in the causation of their damages at the Claim-drafting stage:

[88] This court's decision in *Granite Power Corp. v. Ontario* (2004), 2004 CanLII 44786 (ON CA), 72 O.R. (3d) 194 (C.A.), leave to appeal refused, [2004] S.C.C.A No. 409, supports the argument that the failure to name specific people within an organization may not necessarily result in a misfeasance claim being struck. In *Granite Power*, it was simply pleaded that the "Minister and/or his offices and staff" had acted with misfeasance. This court concluded the claim should not be struck even though it suffered from "a lack of clarity and precision": para. 34. This court held that there existed "a narrow window of opportunity for Granite to make out its claim of misfeasance" and that "[r]egardless of how difficult it may be to establish, Granite should not be 'driven from the judgment seat' at that juncture of the proceeding": paras. 40, 42.

[89] Cases such as the following reflect an acknowledgment that, at the outset of litigation, a plaintiff may not be privy to information about the internal workings of an organization and which particular individual or individuals within an organization may have taken or failed to take a particular action: *Capital Solar Power Corp. v. Ontario Power Authority*, 2015 ONSC 2116 (CanLII), at paras. 13-14; *Swift Current (City) v. Saskatchewan Power Corp.*, 2007 SKCA 27 (CanLII), 293 Sask. R. 6, at para. 29; and *Georgian Glen Development Ltd. v. Barrie (City)* (2005), 13 M.P.L.R. (4th) 194 (Ont. S.C.), at para. 11.

. **Castrillo v. Workplace Safety and Insurance Board**

In [Castrillo v. Workplace Safety and Insurance Board](#) (Ont CA, 2017) the Court of Appeal discusses the elements of the tort of misfeasance in public office in the below quotes (the case is generally a useful read for anyone suing a public agency in tort):

[17] To set the legal context, I observe that this court succinctly expressed the purpose of the tort of misfeasance in public office in *Freeman-Maloy v. Marsden* (2006), 2006 CanLII 9693 (ON CA), 79 O.R. (3d) 401, 267 D.L.R. (4th) 37 (Ont. C.A.), at para. 10:

The tort of misfeasance in a public office is founded on the fundamental rule of law principle that those who hold public office and exercise public functions are subject to the law and must not abuse their powers to the detriment of the ordinary citizen. As Lord Steyn put it in *Three Rivers District Council v. Bank of England (No. 3)*, [2000] 2 W.L.R. 1220, at 1230 “The rationale of the tort is that in a legal system based on the rule of law executive or administrative power ‘may be exercised only for the public good’ and not for ulterior and improper purposes”. The “underlying purpose” of the tort of misfeasance in a public office “is to protect each citizen’s reasonable expectation that a public officer will not intentionally injure a member of the public through deliberate and unlawful conduct in the exercise of public functions”: *Odhavji*, 2003 SCC 69 (CanLII), [2003 SCC 69, [2003] 3 S.C.R. 263] supra at para. 30.

....

[19] To pass scrutiny under r. 21.01(1)(b), a pleading of misfeasance in public office must allege facts capable of establishing the ingredients of the tort, in addition to the usual tort requirements of causation and damages. The ingredients are: (1) the defendant must be a public official; (2) the claim must arise from the exercise of power as a public official; and (3) the public official “must have acted with malice or bad faith” so as to satisfy the mental element: *Freeman-Maloy*, at para. 11.

[20] Another way of framing the test is that the plaintiff must show: first, the public official was engaged in unlawful conduct in the exercise of his or her public functions; and, second, the public official was aware that the conduct in question was unlawful and was likely to injure the plaintiff:

Trillium Power Wind Corporation, at paras. 38-39, drawing on the Supreme Court's decision in *Odhavji Estate v. Woodhouse*, at paras. 28, 30 and 32; see also, *Pikangikum First Nation v. Nault*, 2012 ONCA 705 (CanLII), 298 O.A.C. 14, at para. 54, leave to appeal refused, [2013] S.C.C.A. No. 10; *St. Elizabeth Home Society v. Hamilton (City)*, 2010 ONCA 280 (CanLII), 319 D.L.R. (4th) 74, at para. 20; *Granite Power Corporation v. Ontario* (2004), 2004 CanLII 44786 (ON CA), 72 O.R. (3d) 194 (C.A.), leave to appeal refused, [2004] S.C.C.A. No. 409, at paras. 37-39.

....

[39] The law, as set out in *Freeman-Maloy*, is that the claimant need not allege or prove actual malice in order to make out the mental element of the cause of action of misfeasance, only bad faith. ...

. **Clark v. Ontario (Attorney General)**

In [Clark v. Ontario \(Attorney General\)](#) (Ont CA, 2019) the Court of Appeal considered a claim in misfeasance in public office:

E. Does an action lie against the Crown for misfeasance in public office?

[97] The Attorney General's motion to strike the officers' claim for misfeasance in public office was brought under r. 21.01(1)(b) of the Rules of Civil Procedure. The applicable principles were reviewed in the preceding section of this decision.

[98] The elements of the tort of misfeasance in public office were set out by the Supreme Court of Canada in *Odhavji Estate v. Woodhouse*, 2003 SCC 69 (CanLII), [2003] 3 S.C.R. 263, at paras. 22-23. The motion judge succinctly and accurately detailed the elements of this tort for the category of claim made in this case, at para. 141:

[T]he tort is made out by “a public officer who acts with knowledge both that she or he has no power to do the act complained of and that the act is likely to injure the plaintiff.”

[Odhavji at para. 22] ... “[T]he tort involves deliberate disregard of official duty coupled with knowledge that the misconduct is likely to injure the plaintiff”: Odhavji (at para. 23). The tort of “misfeasance in a public office requires an element of bad faith or dishonesty”: Odhavji (at para. 28). For a public officer’s “conduct to fall within the scope of the tort, the officer must deliberately engage in conduct that he or she knows to be inconsistent within the obligations of the office”: Odhavji (at para. 28).

[99] The Attorney General makes two arguments: first, the tort of misfeasance in public office was inadequately pleaded and the motion judge erred in failing to so find; and second, the motion judge erred in failing to find that Crown attorneys are immune from civil liability for misfeasance in public office. We do not accept these arguments, for the reasons that follow.

Misfeasance in public office was adequately pleaded

[100] The motion judge set out the allegations made by the officers and stated, at para 149:

[T]he officers have pleaded that the Crown Attorneys acted unlawfully by acting in breach of their statutory duties under the Crown Attorneys Act and by breaching their oath of office. In my view, they have pleaded the essential elements of the tort of misfeasance in public office by asserting knowing, deliberate, and unlawful disregard of official duty coupled with knowledge that the misconduct is likely to injure the plaintiffs.

[101] The motion judge added, at para. 150:

The dispute between the parties largely relates to the proper construction of the statutory duties of Crown Attorneys and whether they were in fact breached in this case. At this stage, a motion to strike, I am not called upon to decide that the plaintiffs can prove their allegations; instead, I am required to assume they can.

[102] We agree with the motion judge's conclusion that the pleading of misfeasance in public office was adequate, as a careful review of the statement of claim reveals. The pleading of this tort focuses in particular on the Crown's conduct of the appeal. This court's reasons were especially hard on the officers, noting that their "conduct in this case might well be characterized as 'torture'". The court noted, at para 43, to repeat:

What occurred here was the administration of a calculated, prolonged and skilfully choreographed investigative technique developed by these officers to secure evidence. This technique involved the deliberate and repeated use of intimidation, threats and violence, coupled with what can only be described as a systematic breach of the constitutional rights of detained persons - including the denial of their rights to counsel. It would be naïve to suppose that this type of egregious conduct, on the part of these officers, would be confined to an isolated incident.

[103] The statement of claim asserts, in paras. 33 and 34:

During oral argument at the appeal, Justice Doherty, asked Ms. Alyea many questions about what had occurred. She never advised him, or the court, about the new material facts that

the Crown had learned about the conduct of Ms. Cressman, and more importantly, the exculpatory findings with respect to the conduct of the police officers which she had come to know.

As such, the Crown, either negligently or deliberately, attempted to protect its own agents conduct, rather than respecting their duty of care and responsibility to the officers and the administration of justice. [Emphasis added.]

[104] The statement of claim states plainly, at para. 47, that Crown counsel “committed the tort of misfeasance in public office by engaging in deliberate and unlawful conduct in their capacity as Crown attorneys, clearly in contravention of their sworn statutory duty.” It was “deliberate and unlawful conduct.” Further:

The new material facts Ms. Alyea and her superiors became aware of which clearly exonerated the police officers and implicated Ms. Cressman’s conduct, were suppressed by senior Crown Law Officers and were kept from the judges of the Court of Appeal. [Emphasis added.]

[105] Other critical elements of the tort were also pleaded, at para. 48:

Crown attorneys involved in this case deliberately engaged in conduct that they knew to be inconsistent with the obligations of the Crown attorney and they did so in bad faith, with the knowledge that this misconduct was likely to injure the officers. [Emphasis added.]

[106] The pleading of misfeasance in public office is adequate, properly particularized, and carefully tracks the elements of the Odhavji Estate test. The motion judge did not err in so finding.

Crown attorneys are not immune from civil liability for misfeasance in public office

[107] The Attorney General argues that Crown attorneys are immune from liability for misfeasance in public office, and enlists the same two grounds it deployed in the successful argument that Crown attorneys are immune from liability for negligence in the performance of their duties: the prospect of liability for misfeasance could divert Crowns from their duties and could have a chilling effect on their conduct. These were the policy reasons Moldaver J. rejected in Henry when he extended liability for Charter damages for wrongful non-disclosure in a criminal prosecution.

[108] The motion judge rejected these arguments in relation to the claim for misfeasance in public office.

[109] We conclude that Crown attorneys are not immune from claims of liability for misfeasance in public office. The trigger for liability provides the functional equivalent of the “high liability threshold” Moldaver J. set in Henry for liability for Charter damages for wrongful disclosure.

[110] The nerve of the Supreme Court’s decisions in the trilogy and in Henry is the deliberate abuse of authority by Crown attorneys. See Nelles, at paras. 55-56, per Lamer J.; and Proulx, at para. 35, per Iacobucci and Binnie JJ. In Miazga, Charron J. said, at para. 51:

Thus, the public law doctrine of abuse of process and the tort of malicious prosecution may be seen as two sides of the same coin: both provide remedies when a Crown prosecutor's actions are so egregious that they take the prosecutor outside his or her proper role as minister of justice, such that the general rule of judicial non-intervention with Crown discretion is no longer justified. Both abuse of process and malicious prosecution have

been narrowly crafted, employing stringent tests, to ensure that liability will attach in only the most exceptional circumstances, so that Crown discretion remains intact.

[111] In *Miazga*, several parties sought to amend the test from *Nelles* so that malice could be inferred because “independent evidence of malice presents too high a barrier,” but Charron J. rejected these arguments, at para. 52, because they “are ill-conceived and do not account for the careful balancing established in *Nelles* and *Proulx* between the right of individual citizens to be free from groundless criminal prosecutions and the public interest in the effective and uninhibited prosecution of criminal wrongdoing.” She concluded that “the ‘inherent difficulty’ in proving a case of malicious prosecution was an intentional choice by the Court, designed to preserve this balance.” See also paras. 79-84.

[112] The need to establish abuse of authority was noted by Moldaver J. in *Henry*, at para. 49, which we repeat for convenience:

It is a bedrock principle that the exercise of core prosecutorial discretion is immune from judicial review, subject only to the doctrine of abuse of process. The presence of bad faith and improper motives may indicate this type of conduct. [Citations omitted.]

[113] Drawing on *Henry*, there are “compelling good governance” concerns that require a “high liability threshold” in order for the tort of misfeasance in public office to be a tenable cause of action against Crown attorneys. That “high liability threshold” is satisfied by the requirement of the tort of misfeasance in public office set out in *Odhavji* that the claimants show the presence of bad faith or improper motives. We also note Moldaver J.’s qualification, at para. 83 of *Henry*, that “there may be case-specific policy concerns that militate against an award, even if the appellant has made out

the heightened per se threshold.” This qualification applies equally to the tort of misfeasance in public office, but requires cogent evidence to substantiate it.

[114] We agree with the motion judge’s conclusion that the pleading of misfeasance in public office was adequate and that Crown attorneys are not immune from claims of liability for misfeasance in public office.



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