

November 20, 2024

Via Electronic Mail (mwalshdoucette@irac.pe.ca)

Michelle Walsh-Doucette
Island Regulatory and Appeals Commission
National Bank Tower
134 Kent Street, 5th Floor
Charlottetown, PE C1A 8R8

Dear Ms. Walsh-Doucette:

Re: LA24-014 Victoria Business Association and Victoria Village Friends of the Park v. Rural Municipality of Victoria

We write on behalf of the Municipality.

On 25 September, we filed and served a reply to the notice of appeal. In this reply, we asserted that the named appellants have no ability to invoke the appellate jurisdiction of the Commission because they are not “aggrieved persons” as defined in s. 27.1 of the *Planning Act*.¹

On 8 November, the Commission invited submissions on whether the named appellants have the ability to invoke the Commission’s appellate jurisdiction.

The Municipality offers the following brief submissions as an addendum to its reply of 25 September.

Onus is on the named appellants

As a general point, the named appellants bear the onus of establishing that they are able to invoke the Commission’s appellate jurisdiction.²

Named appellants are not individuals

Section 27.1 of the *Planning Act* provides, in clause (d), that the term “aggrieved person” includes certain “individuals”. In our reply of 25 September, we argued that “individuals” means natural persons. We note that s. 26 of the *Planning Act* provides additional support for this argument. Subsection 26(1) applies to “individuals” whereas subsection 26(2) applies to “corporations”.

¹ [Planning Act, RSPEI 1988, c P-8](#).

² Sarah Blake, *Administrative Law in Canada*, 7th ed (Toronto: LexisNexis Canada, 2022) at §2.16 [Tab 1 of these submissions].

Named appellants are not incorporated organizations

Section 27.1 of the *Planning Act* provides, in clause (e), that the term “aggrieved person” includes certain “incorporated organizations”.

As noted, the named appellants bear the burden of proving that they are incorporated organizations within the meaning of clause 27.1(e). The appellant named as the “Victoria Business Association” has apparently conceded, by way of email dated 19 November, that it is not an incorporated organization.

We have not received any information to indicate that the appellant named as the “Victoria Village Friends of the Park” is an incorporated organization, let alone that it is an incorporated organization that meets the other criteria included in clause 27.1(e). To the contrary, the available evidence indicates that the appellant named as the “Victoria Village Friends of the Park” is not an incorporated organization.³

Conclusion

We thank the Commission for the opportunity to provide these brief submissions. We will await directions from the Commission on the next steps in this appeal.

Yours truly,

Stewart McKelvey



Curtis Doyle

- c. Philip Rafuse (pjrufuse@irac.pe.ca)
- Jessica Gillis (jgillis@irac.pe.ca)
- Michael Drake (michael.drake@mcinnescooper.com)
- Scott Travers (scott.travers@amar-seafoods.com)
- Michael Stanley (mike@michaelstanleypottery.com)
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³ Affidavit of Alan Macmillan [Tab 2 of these submissions].

TAB 1

Excerpt from *Administrative Law in Canada*

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Administrative Law in Canada, 7th Ed.

Sara Blake

Administrative Law in Canada, 7th ed. (Blake) > Part I Proceedings Before the Tribunal > Chapter 2 Tribunal Procedure

PART I PROCEEDINGS BEFORE THE TRIBUNAL

Chapter 2 TRIBUNAL PROCEDURE

§2.16 PROOF

1.

Onus of Proof

Which party presents their case first? The statute might prescribe which party has the burden of proof.¹ If not, the order of presentation does not matter, provided the parties are accorded a fair hearing.² Onus of proof is concerned with who bears the risk of a gap in the evidence. A party who advocates a particular position bears the onus of producing the evidence in support.³ An applicant has the onus of proving entitlement to the permit or other relief claimed.⁴ Entitlement to an exemption must be proven by the party who claims it.⁵

In proceedings concerning allegations of professional misconduct or violations of human rights, the onus of proof is on the complainant⁶ or on counsel employed or retained by tribunals to present the case. Legally the burden of proof never shifts to the respondent. However, if the complainant establishes a *prima facie* case that the alleged conduct was committed, a respondent would be wise to adduce evidence to rebut that case.⁷

In court trials, a party with the burden of proof may not split its case by holding back evidence to be presented after other parties have presented their evidence. This rule is not mandatory in tribunal hearings but the procedure is considered orderly. If new evidence is presented, responding parties should have an opportunity to respond, except to evidence tendered solely to rebut evidence presented by them.⁸

In inquisitorial proceedings, there may be an onus on the tribunal to obtain relevant evidence.⁹

2.

Non-Suit

If the party with the burden of proof fails to lead sufficient evidence to prove the case, it may be dismissed without the other parties being called upon to respond. The other parties may bring a "motion for non-suit". The motion should be granted only if a *prima facie* case has not been made out. This is a lower standard than the balance of probabilities applied when finally deciding whether the burden of proof has been met. If there is some evidence, however weak and viewed in a light most favourable to the party with the burden of proof, a *prima facie* case has been made out. Credibility of witnesses and weight of evidence is not considered at this stage. Evidence omitted through inadvertence may be admitted before the motion is decided. A party moving for dismissal is usually required to elect to call no evidence before the motion will be considered by the tribunal.¹⁰

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3.

Standard of Proof

When are facts proven? In tribunal proceedings, the standard of proof is the balance of probabilities. If on all the reliable evidence it has been proven that the alleged events probably occurred, they have been proven.¹¹ This standard is less onerous than the standard imposed in criminal cases where, to succeed, the Crown must prove that an offence was committed “beyond a reasonable doubt”. This lower standard applies even in disciplinary proceedings concerning allegations of criminal conduct.¹² Regardless how serious the allegations are, the standard of proof does not change. It remains a single standard — a simple balance of probabilities.¹³ Similarly, the high standard of scientific certainty need not be met even if the question to be decided is scientific in nature.¹⁴

The quality of evidence required to establish a fact on a balance of probabilities depends on the circumstances, including the nature of the facts to be proven. An unlikely fact may require more reliable evidence than does a likely fact.¹⁵ More reliable evidence may be required to prove serious allegations of wrongdoing than other types of facts.¹⁶ A statutory test requiring proof of future risk is met by proof of past and present circumstances from which future risk may be inferred. Predictions based on such evidence may not be dismissed as speculative.¹⁷

A statutory standard of “reasonable grounds” is lower than the standard of balance of probabilities.¹⁸ A statutory standard of “clear and convincing evidence” is higher than the balance of probabilities.¹⁹

A lower standard of proof may be prescribed for an interim order to protect the public interest pending a full evidentiary hearing. *Prima facie* evidence of a risk of harm may be enough.²⁰

Standards of proof are concerned with establishing what happened. They do not apply to policy questions such as those that require the balancing of factors to determine what is in the public interest.²¹

Footnote(s)

- 1 *Lemieux v. British Columbia (Superintendent of Motor Vehicles)*, [2019] B.C.J. No. 1153 (B.C.C.A.), leave to appeal refused [2019] S.C.C.A. No. 373.
- 2 *Denby v. Agriculture, Food and Rural Affairs Appeal Tribunal*, [2006] O.J. No. 1968 at para. 45 (Ont. Div. Ct.).
- 3 *Braille v. Calgary (City) Police Service*, [2018] A.J. No. 333 (Alta. C.A.); *Chopra v. Canada (Attorney General)*, [2007] F.C.J. No. 1134 at para. 42 (F.C.A.); *R. v. Peckham*, [1994] O.J. No. 1995 at para. 26 (Ont. C.A.); *Nova Scotia (Director of Assessment) v. Knickle*, [2007] N.S.J. No. 449 (N.S.C.A.).
- 4 *Law Society of Upper Canada v. Evans*, [2008] O.J. No. 2729 (Ont. Div. Ct.).
- 5 *Koressis v. Turner*, [1986] O.J. No. 287 (Ont. Div. Ct.).
- 6 *Floris v. Nova Scotia (Director of Livestock Services)*, [1986] N.S.J. No. 399 (N.S.T.D.); *Ontario (Liquor Control Board) v. Ontario (Human Rights Commission)*, [1988] O.J. No. 167 (Ont. Div. Ct.).
- 7 *Base-Fort Patrol Ltd. v. Alberta (Human Rights Commission)*, [1982] A.J. No. 687 (Alta. Q.B.); *UAJAPPI Local 488 v. Alberta (Industrial Relations Board)*, [1976] A.J. No. 355 at 97 (Alta. C.A.).
- 8 *Sood v. Council of the College of Physicians and Surgeons of Saskatchewan*, [1995] S.J. No. 721 (Sask. Q.B.).
- 9 *R. v. LePage*, [2006] O.J. No. 4486 (Ont. C.A.).
- 10 *Merchant v. Law Society of Saskatchewan*, [2002] S.J. No. 288 (Sask. C.A.); *Ontario v. Ontario Public Service Employees Union (OPSEU)*, [1990] O.J. No. 635 (Ont. Div. Ct.); *International Brotherhood of Electrical Workers, Local*

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348 v. AGT Ltd., [1997] A.J. No. 1004 (Alta. Q.B.); *Northern Lights Health Region v. United Nurses of Alberta, Local 124*, [2007] A.J. No. 366 (Alta. Q.B.); *Filgueira v. Garfield Container Transport Inc.*, [2006] F.C.J. No. 1005 (F.C.).

- 11 *Newfoundland and Labrador (Mineral Claims Recorder) v. Vinland Resources Ltd.*, [2008] N.J. No. 48 (N.L.C.A.).
- 12 *Stetler v. Agriculture, Food and Rural Affairs Appeal Tribunal*, [2005] O.J. No. 2817 (Ont. C.A.), leave to appeal refused [2005] S.C.C.A. No. 428; *Beaini v. Assn. of Professional Engineers of Nova Scotia*, [2003] N.S.J. No. 229 (N.S.S.C.), affd [2004] N.S.J. No. 383 (N.S.C.A.); *Rak v. British Columbia (Superintendent of Brokers)*, [1990] B.C.J. No. 2383 (B.C.C.A.); *Cambie Hotel (Nanaimo) Ltd. (c.o.b. Cambie Hotel) v. British Columbia (General Manager, Liquor Control and Licensing Branch)*, [2006] B.C.J. No. 501 (B.C.C.A.).
- 13 *V. (K.) v. College of Physicians and Surgeons of the Province of Alberta*, [1999] A.J. No. 440 (Alta. C.A.), leave to appeal refused [1999] S.C.C.A. No. 331; *Shalala v. Law Society of New Brunswick*, [1994] N.B.J. No. 473 (N.B.C.A.); *Bradley Air Services Ltd. (First Air) v. Landry*, [1995] F.C.J. No. 343 (F.C.T.D.), affd [1996] F.C.J. No. 818 (F.C.A.).
- 14 *British Columbia (Workers' Compensation Appeal Tribunal) v. Fraser Health Authority*, [2016] S.C.J. No. 25.
- 15 *Carrillo v. Canada (Minister of Citizenship and Immigration)*, [2008] F.C.J. No. 399 (F.C.A.).
- 16 *Newfoundland (Treasury Board) v. Newfoundland and Labrador Assn. of Public and Private Employees, Local 6206*, [2006] N.J. No. 380 (N.L.T.D.).
- 17 *Martin v. Canada (Attorney General)*, [2005] F.C.J. No. 752 (F.C.A.); *MacDonnell v. Canada (Attorney General)*, [2013] F.C.J. No. 799 (F.C.).
- 18 *Ontario (Alcohol and Gaming Commission, Registrar) v. 751809 Ontario Inc. (c.o.b. Famous Flesh Gordon's)*, [2013] O.J. No. 1139 (Ont. C.A.), leave to appeal refused [2013] S.C.C.A. No. 259; *Farwaha v. Canada (Minister of Transport, Infrastructure and Communities)*, [2014] F.C.J. No. 227 (F.C.A.); *Mendoza v. Canada (Minister of Public Safety and Emergency Preparedness)*, [2007] F.C.J. No. 1204 at para. 25 (F.C.); *Ospina v. Canada (Minister of Citizenship and Immigration)*, [2011] F.C.J. No. 887 (F.C.).
- 19 *Ottawa (City) Police Service v. Ottawa (City) Police Service*, [2016] O.J. No. 2431 (Ont. C.A.), leave to appeal refused [2016] S.C.C.A. No. 324.
- 20 *Durham (Regional Municipality) Police Service v. Ontario Civilian Police Commission*, [2020] O.J. No. 1490 (Ont. Div. Ct.); *Scott v. College of Massage Therapists of British Columbia*, [2016] B.C.J. No. 814 (B.C.C.A.).
- 21 *R. v. Peckham*, [1994] O.J. No. 1995 (Ont. C.A.).

TAB 2

Affidavit of Alan Macmillan

ISLAND REGULATORY AND APPEALS COMMISSION

BETWEEN:

VICTORIA BUSINESS ASSOCIATION

APPELLANT

AND

VICTORIA VILLAGE FRIENDS OF THE PARK

APPELLANT

AND

RURAL MUNICIPALITY OF VICTORIA

RESPONDENT

AFFIDAVIT

I, Alan Macmillan, of Charlottetown, Queens County, Province of Prince Edward Island,

MAKE OATH AND SAY AS FOLLOWS:

1. I am a corporate paralegal in the Charlottetown office of the law firm Stewart McKelvey. I have been employed in this position for 4 years. I have personal knowledge of the matters sworn herein except for information that arises from sources other than my own personal knowledge and, as to that information, the sources are identified and I verily believe the information to be true.

Provincial registries

2. As part of my employment, I regularly conduct searches on the business/corporate registries that are maintained by the Government of Prince Edward Island ("Government"). These registries provide information on businesses and corporations that are registered or incorporated under the laws of Prince Edward Island. To the best of my knowledge, the Government currently maintains two such business/corporate registries:

- (a) There is the original online PEI Business / Corporate Registry (“Original Corporate Registry”), which the Government maintains at the following address: <https://www.princeedwardisland.ca/en/feature/pei-business-corporate-registry-original#/>
 - (b) And there is the new online PEI Business / Corporate Registry (“New Corporate Registry”), which the Government maintains at the following address: <https://www.princeedwardisland.ca/en/feature/pei-business-corporate-registry#/>
3. On 19 November 2024, I searched the Original Corporate Registry and the New Corporate Registry for the name “Victoria Village Friends of the Park”. These search results did not reveal any corporation by that name. Based on the information revealed by these search results, which I believe to be true, “Victoria Village Friends of the Park” is not incorporated under the laws of Prince Edward Island.
 4. On 19 November 2024, I searched the Original Corporate Registry and the New Corporate Registry for the name “Victoria Business Association”. These search results did not reveal any corporation by that name. Based on the information revealed by these search results, which I believe to be true, “Victoria Business Association” is not incorporated under the laws of Prince Edward Island.

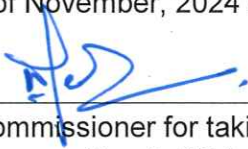
Federal registry

5. As part of my employment, I also regularly conduct searches on “Nuans”, a business name and trademark search tool that is maintained by the Government of Canada at the following address: <https://ised-isde.canada.ca/site/nuans-corporate-name-trademark-reports/en>
6. Based on the information on the Nuans website, which I believe to be true, the Nuans search tool uses a powerful algorithm to list Canadian corporate names registered under the *Canada Business Corporations Act* and the *Canada Not-for-Profit Corporations Act*.
7. On 19 November 2024, I searched Nuans for the name “Victoria Village Friends of the Park”. The search result did not reveal any corporation by that name. Based

on the information revealed by this search result, which I believe to be true, "Victoria Village Friends of the Park" is not incorporated under the *Canada Business Corporations Act* or the *Canada Not-for-Profit Corporations Act*.

8. On 19 November 2024, I searched Nuans for the name "Victoria Business Association". The search result did not reveal any corporation by that name. Based on the information revealed by this search result, which I believe to be true, "Victoria Business Association" is not incorporated under the *Canada Business Corporations Act* or the *Canada Not-for-Profit Corporations Act*.
9. I make this affidavit for the purpose of providing evidence in a proceeding identified by the Island Regulatory and Appeals Commission as "LA24-014", and for no other or improper purpose.

AFFIRMED at Charlottetown, in the Province of Prince Edward Island, this 20th day of November, 2024 before me:



A Commissioner for taking Affidavits in the Supreme Court of Prince Edward Island



Alan Macmillan