

Misfeasance By Officials Within Public Office

Involves Ulterior Motives With a Malicious Misuse of Statutory Powers

Helpful Guide to Understanding the Legal Elements as Constitute the Tort of Misfeasance in Public Office



With great power comes great responsibility; and accordingly, officials who hold high positions are empowered in certain ways that can do good when properly engaged or do harm when improperly misused. The elements of the tort were recently articulated as, essentially, a misuse of power. Misuses could arise from the misuse of power due to the holding of a grudge or possibly even the targeting of a specific individual for persecution as an example to others as was the issue alleged in *Conway v. The Law Society of Upper Canada*, [2016 ONCA 72](#) where it was said:

[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.

[21] The LSUC relies on the statutory immunity under [s. 9](#) of the [Law Society Act](#), for acts engaged in good faith in the performance of its duties or functions. [Section 9](#) of the [Law Society Act](#) provides as follows:



No action or other proceedings for damages shall be instituted against the Treasurer or any bencher, official of the Society or person appointed in Convocation for any act done in good faith in the performance or intended performance of any duty or in the exercise or in the intended exercise of any power under this Act, a regulation, a by-law or a rule of practice and procedure, or for any neglect or default in the performance or exercise in good faith of any such duty or power.

[22] Mere negligence in the good faith performance of the LSUC's duties or functions is not enough to establish liability. However, an absence of good faith or "bad faith", involving malice or intent, is sufficient to ground a properly pleaded cause of action against the LSUC. See: *Edwards v. Law Society of Upper Canada*, [2001 SCC 80 \(CanLII\)](#), [2001] 3 S.C.R. 562; *Finney v. Barreau du Québec*, [2004 SCC 36 \(CanLII\)](#), [2004] 2 S.C.R. 17.

Summary Comment

Persons in high power positions may cause considerable harm to both the person directly abused by such power as well as to the image and reputation of the institution in which the person wielding such power. Accordingly, persons with such power should be careful to remain impartial and refrain from conduct that is improperly motivated such as engaging in a personal vendetta or misusing a position as a means to gain personal advantages.