Citation: Lazy Bear Lodge Ltd v Manitoba, 2025 MBCA 57
Date: 20250609
Docket: AI25-30-10204

IN THE COURT OF APPEAL OF MANITOBA

Coram: Chief Justice Marianne Rivoalen
Mr. Justice Marc M. Monnin
Madam Justice Anne M. E. Turner

B E T W E E N:

LAZY BEAR LODGE LTD. and the said LAZY BEAR LODGE LTD. carrying on business under the firm name and style LAZY BEAR EXPEDITIONS and WALTER DAUDRICH	)	***R. C. Roy*** *and* ***P. Mueller*** *for the Appellants*
(Applicants) Appellants	)	***J. M. Langan*** *and* ***J. B. Wall*** *for the Respondents*
- and -	)	
THE GOVERNMENT OF MANITOBA, MINISTER OF NATURAL RESOURCES AND INDIGENOUS FUTURES and DIRECTOR OF WILDLIFE BRANCH	)	*Appeal heard and Decision pronounced:* ***May 15, 2025***
(Respondents) Respondents	)	*Written reasons:* ***June 9, 2025***

RIVOALEN CJM (for the Court):

[1] The appellants (Lazy Bear) appealed the order of a Court of King's Bench motion judge (the motion judge) dated April 17, 2025, in which he dismissed Lazy Bear's motion for urgent interlocutory relief.

[2] As will be explained, the interlocutory injunctive relief sought by Lazy Bear, if granted, would have required the Government of Manitoba (the government), the Minister of Natural Resources and Indigenous Futures (the minister), and the Director of the Wildlife Branch (the director) (collectively,

the respondents) to issue a permit to Lazy Bear authorizing the operation of two tundra vehicles for the purpose of viewing polar bears in an environmentally protected area located in Churchill, Manitoba.

[3] After hearing the appeal, we dismissed it with reasons to follow. These are those reasons. They deal with the evidence and law only to the extent necessary to determine the issue of interlocutory injunctive relief, given that the main application remains to be decided.

Background

[4] Lazy Bear has been operating a commercial ecotourism business in Churchill for approximately thirty years.

[5] Churchill and its surrounding area are subject to the Churchill Wildlife Management Area (the CWMA), an area designated as a wildlife management area by the *Use of Wildlife Lands Regulation*, Man Reg 77/99 [the *Regulation*] under *The Wildlife Act*, CCSM c W130 [the *Act*]. This designation allows for the management, conservation and enhancement of wildlife by the government within a specific geographical area. Pursuant to Division 6 of Schedule A of the *Act*, polar bears are designated as a protected species. Polar bears are also declared as a threatened species in the *Threatened, Endangered and Extirpated Species Regulation*, Man Reg 25/98, enacted pursuant to *The Endangered Species and Ecosystems Act*, CCSM c E111.

[6] Section 7 of the *Regulation* presumptively prohibits commercial activity and section 11 specifically prohibits the operation of vehicles within

the CWMA. However, the minister has the discretion, under section 46(1), to permit an activity that is otherwise prohibited. Section 46(1) reads as follows:

Permits **46(1)** Subject to subsections (2), (3), (4) and (5), the minister may grant a permit to a person authorizing an activity that is otherwise prohibited by this regulation.	**Licences** **46(1)** Sous réserve des paragraphes (2), (3), (4) et (5), le ministre peut accorder une licence autorisant une personne à exercer une activité interdite par le présent règlement.

[7] In 2013, the government published a CWMA Management Plan (see Manitoba, Conservation and Water Stewardship, *Management Plan: Churchill Wildlife Management Area* [the *management plan*]) to better understand the status of wildlife in the CWMA and manage the effects of human activity and ecotourism on polar bears and their northern habitats. The *management plan* limits the number of off-road tundra vehicles authorized to operate within the CWMA to eighteen.

[8] In 2020, for the first time, the minister issued to Lazy Bear a Wildlife Management Area Use Permit (the permit), subject to the provisions of the *Act* and section 46(1) of the *Regulation*. Pursuant to section 62(2) of the *Act,* the permit was for a specific period and was invalid and of no effect except during that period. It was issued on May 14, 2020 and expired on March 31, 2021. Subject to certain conditions, it authorized Lazy Bear to operate two tundra vehicles for providing tours and/or transportation for the purposes connected with commercial tourism in Zone 2 of the CWMA.

[9] The effect of the permit was to increase the number of off-road tundra vehicles authorized to operate within the CWMA from eighteen to twenty.

[10] As the permit expired every year, from 2021 to 2025, Lazy Bear would apply annually for a new permit. Over the years, the minister issued the following permits:

a) on April 1, 2021 to expire on March 31, 2022;

b) on April 4, 2022 to expire on March 31, 2023;

c) on April 3, 2023 to expire on March 31, 2024; and

d) on June 5, 2024 to expire on March 31, 2025.

[11] The director wrote to Lazy Bear on February 27, 2025 (the letter), stating: “Please be advised that after careful consideration Manitoba is rescinding the allocation licenses to your business of two tundra vehicles to operate in the [CWMA] for the forthcoming 2025 season.”

[12] The use of the word “rescinding” in the letter is not accurate. The director was not rescinding the remainder of the 2024/25 permit, which expired around one month later on March 31, 2025. Rather, the intention of the director was to inform Lazy Bear that they would not be issued a permit for the 2025/26 season.

[13] In the letter, the director provided reasons for her decision. She indicated, amongst other things, that the “decision [was] intended to align with Manitoba’s conservation priorities for polar bears and the protection of the

sensitive tundra ecosystem." She also referred to the *management plan*, a 2021 Government of Nunavut aerial survey, and demographic and body condition data collected annually by Environment and Climate Change Canada. The letter concluded: "In light of this information, the Province of Manitoba is returning to level of 18 that is in compliance with the [*management plan*]. We are committed to restoring a fair and transparent allocation process for the future. My staff will be contacting you to seek your input."

[14] There is no dispute that Lazy Bear received no notice and no communication from the respondents that they would not be issued a permit for the 2025/2026 ecotourism season prior to the letter.

[15] As a result of the letter, Lazy Bear applied for judicial review before the Court of King's Bench. As mentioned earlier, Lazy Bear moved, unsuccessfully, before the Court of King's Bench for interlocutory injunctive relief against the respondents pending the final determination of Lazy Bear's application for judicial review.

[16] As of the date we heard the appeal, Lazy Bear had not filed a statement of claim seeking damages and the hearing date for the application for judicial review had not been set.

[17] With this background in mind, we now turn to Lazy Bear's core arguments.

Issues

[18] Lazy Bear advances the following arguments:

1. The motion judge failed to properly apply the tripartite test for granting interlocutory injunctions found in *RJR — MacDonald Inc v Canada (Attorney General)*, [1994] 1 SCR 311 at 314-15, 1994 CanLII 117 (SCC) [*RJR*]:

    (a) Specifically, the motion judge's decision was based solely on his view of irreparable harm without making any determination on whether the interlocutory relief sought was prohibitive or mandatory in nature.

    (b) The motion judge made no determination of whether the balance of convenience favoured the granting or not of the interlocutory relief.

2. The motion judge misdirected himself as to the evidence and as to the law regarding his findings on irreparable harm and the balance of convenience.

Standard of Review

[19] The standard of review that applies to this discretionary decision of the motion judge is whether he misdirected himself as to the facts or law, which rendered the decision so clearly wrong as to amount to an injustice (see *Elsom v Elsom*, [1989] 1 SCR 1367 at 1375, 1989 CanLII 100 (SCC)).

The Law

[20] The parties agree that, in order to succeed, Lazy Bear's motion for interlocutory relief had to meet the test for the granting of injunctive relief as outlined by the Supreme Court of Canada in *RJR*. In his reasons, the motion

judge properly identified the tripartite test in *RJR* and described it as follows: "One, is there a serious issue to be tried? Two, will [Lazy Bear] suffer irreparable harm? And three, does the balance of convenience favour the granting of the injunctive relief?"

Serious Issue to Be Tried

[21] Before the motion judge, the respondents conceded, for the purpose of the motion only, that there was a serious issue to be tried. The motion judge therefore did not provide any substantive comments regarding the first branch of the *RJR* test.

[22] While this appeal focuses mostly on irreparable harm and the balance of convenience, we offer one comment on the serious issue to be tried aspect of the test in this case.

[23] Typically, the threshold for a serious issue to be tried is low and, "[o]nce satisfied that the application is neither vexatious nor frivolous, the motions judge should proceed to consider the second and third tests, even if of the opinion that the [applicant] is unlikely to succeed at trial (*RJR* at 337-38).

[24] There is a higher threshold, however, when an interlocutory mandatory injunction is being sought. As adopted by the Supreme Court in *R v Canadian Broadcasting Corp*, 2018 SCC 5 at paras 13-15, a motion judge should determine whether there is a strong prima facie case that the application will succeed.

[25] The respondents argue that Lazy Bear is asking for an interlocutory mandatory injunction. For reasons that we will explore in greater detail shortly, we agree with that characterization of the nature of the injunctive relief sought.

[26] That said, we note that the heightened test—whether there is a strong prima facie case that the application for judicial review will succeed—was not argued before the motion judge. Accordingly, and in light of the concession made by the respondents before the motion judge, we will not make any further comments regarding the first branch of the *RJR* test in this case.

Irreparable Harm

[27] On the second branch of the tripartite test—irreparable harm—Lazy Bear submits that "[i]rreparable harm in this case is as close to certain as it can be." They rely on this Court's *per curiam* decision in *Steinbach Credit Union Ltd v Hardman*, 2007 MBCA 25 at para 29:

> With respect to irreparable harm, the issue is whether an award of damages would be an adequate remedy (at p. 341 in *RJR*). The defendants say that damages would be an adequate remedy because any loss will be for any commissions inappropriately earned by Hardman. It is fair to say, as the plaintiffs do, that the alleged loss of market share, if proven, may be very difficult, if not impossible, to quantify and that the loss of client goodwill in the context of financial services industry demonstrates irreparable harm. See *RJR* at p. 341, *Gerrard-Ovalstrapping v. Dutko et al.* (1997), 119 Man. R. (2d) 178 (Q.B.) and *Polar Bear Rubber*.

[28] As before us, Lazy Bear argued before the motion judge that they would suffer irreparable harm if the injunction was not granted. They stated that, without the permit, it will cause harm to their business, reputation and

financial viability. They provided affidavit evidence that described how they would no longer be able to compete with the other two operators of ecotourism in Churchill, both of whom maintain, between the two of them, authorization to operate eighteen tundra vehicles.

[29] Lazy Bear deposed that they invested millions of dollars in specialized infrastructure, including state of the art tundra vehicles, as well as additional equipment, facilities and marketing efforts. According to Lazy Bear, these investments were made in reliance on the permits being allocated as they had been since 2020. They submit that they had already booked approximately seventy-five per cent of their summer 2025 tours and the cancellation of these bookings will result in substantial loss of revenue in the millions of dollars, customer refunds, reputational damage and loss of future market share, all of which cannot be quantified or easily remedied.

[30] The motion judge stated that there was no question that Lazy Bear would be negatively affected by the respondents' decision. However, the motion judge found that "Lazy Bear ha[d] quantified quite well the financial implications to its business and as such . . . [he did] not find that Lazy Bear ha[d] demonstrated irreparable harm that [could not] be compensated or cured if it [was] successful ultimately in its main application concerning this matter." The motion judge went on to state:

> Furthermore, such damages are almost certainly recoverable from the provincial government. In other words, Manitoba has the means to provide financial remedy if Lazy Bear is successful when the main application is considered by the court. In respect of today's motion for injunctive relief, however, the impact of Manitoba's decision concerning Lazy Bear's business is quantifiable and compensable by damages if granted.

[31] It is clear that the motion judge misspoke when he indicated that Lazy Bear could be entitled to damages if the application for judicial review is granted. Damages for an administrative decision are not recoverable on an application for judicial review. The relief that normally flows when an application for judicial review is successful, barring bad faith, is for the decision under review to be quashed and referred back to the minister for fresh consideration.

[32] Nonetheless, despite this misstatement, the motion judge's findings on whether any potential harm suffered by Lazy Bear could be quantifiable as damages require a high degree of deference (see *People Corporation v Mansbridge*, 2022 MBCA 37 at para 22). The question of whether the moving party will suffer irreparable harm is always fact specific. There is no doubt that such damages may be difficult to quantify, but it is not impossible (see *Landmark Solutions Ltd v 1082532 BC Ltd*, 2021 BCCA 29 at para 64). Furthermore, an action based on the respondents' alleged unlawful conduct and the damages that may flow from it has been threatened by Lazy Bear, leaving open the issue of whether they are compensable.

[33] The error committed by the motion judge is therefore not material to our decision.

Balance of Convenience

[34] The motion judge found as follows:

> Even if Lazy Bear's submissions on the balance of convenience issue were supported by the Court today, my determination on the issue of irreparable harm is overwhelming and determinative in this case. Taken together as a whole, the three factors to be

> considered in granting an interlocutory injunction do not support granting relief in this case.

[35] While he referenced the balance of convenience, the motion judge did not fully analyze the third branch of the test in *RJR*. In our view, it is necessary and we undertake this analysis.

[36] Before us, Lazy Bear argues that the balance of convenience is in their favour as there is no doubt that they will suffer irreparable harm and significant monetary damages if they do not immediately receive a permit for the 2025/2026 season. In contrast, they state that the respondents will suffer no harm whatsoever if they issue the permit.

[37] Lazy Bear argues that they are asking for an injunction to preserve the status quo. According to them, the status quo is that they are annually issued the permit. They state they held legitimate expectations that they would be issued the permit. Essentially, they frame their request as being an order "prohibiting" the respondents from acting upon the letter.

[38] In their factum, the respondents argued that an order requiring them to issue permits would be "*mandatory* in nature" [emphasis in original]. They stated that it would not be "merely prohibitive, as it would be an order that 'require[d] the [respondent] to act positively'." Aside from the higher threshold generally required for the issuance of interlocutory mandatory injunction orders, the respondents submitted that granting such an order in this case "would be totally inappropriate as it would *require the [m]inister to do something he was never obligated to do in the first place*" [emphasis in original].

[39] The respondents also submit, correctly in our view, that, while the doctrine of legitimate expectations may give rise to procedural rights, it is not a source of substantive rights (see *Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 at para 26 (SCC)).

[40] As a general statement of principle, it is clear that an interlocutory mandatory injunction is a very high threshold to meet. As stated by the Honourable Robert Sharpe, "[r]equiring a positive course of action has been seen to be more difficult to justify. Especially difficult to obtain are interlocutory mandatory injunctions" (Robert J Sharpe, *Injunctions and Specific Performance* (November 2024) at part I, ch 2, subpart I, s 2:18, online: (WL Can) Thompson Reuters Canada [footnotes omitted]).

[41] As noted earlier, we agree that the requested interlocutory relief is mandatory in nature. What Lazy Bear is actually seeking is not an injunction prohibiting the minister from acting; rather, it is an injunction requiring the minister to act—to issue a new permit when an earlier permit expired—something the minister is not obligated to do according to the legislative scheme.

[42] Further, relevant to the facts of this appeal, in many licencing decisions involving ministerial discretion, courts have observed that there is no automatic right to the renewal of a permit or licence. A representative example is *Canada (Attorney General) v Robinson*, 2021 FCA 39 [*Robinson*], where the Court opined at para 45:

> In my view, permission granted by the Minister under a fishing licence in her discretion is not permanent and terminates upon expiry of the licence. Accordingly, fishing licences must be renewed or replaced yearly, but this renewal is not automatic. The

> licence holder is given a limited privilege, rather than any kind of absolute or permanent right or property. (See *Elson FC* at para. 3.)

[43] The absence of an obligation to renew a licence is also in keeping with administrative law principles. As stated in Sara Blake, *Administrative Law in Canada*, 7th ed (Toronto: LexisNexis, 2022): "Statutes prescribe the term of a licence, typically one year, so that suitability *may be periodically reassessed in accordance with licensing purposes*, including the licensee's compliance with regulatory requirements. *There is no right to a renewal of a licence*" (at 147 [emphasis added]).

[44] Blake's reference to "licensing purposes" nicely frames this Court's views on the balance of convenience. A primary purpose of the *Act* and the *Regulation* is to manage, conserve and enhance the wildlife resources of the province in the public interest. This is particularly so when a protected or threatened species, such as polar bears, is involved.

[45] The importance of consideration of the public interest when an interlocutory injunction is requested was touched upon in *Robinson*. After noting that the minister and her delegates "manage, conserve and develop fisheries on behalf of all Canadians and for the public interest" (*ibid* at para 28), the Court turned its attention to the balance of convenience and made these apposite observations at paras 34-35:

> When considering the balance of convenience, the appellant relies on evidence putting forward the purpose of the 1996 Policy. As mentioned earlier in these reasons, I accept that the 1996 Policy was developed as an integral part of a number of federal government initiatives to restructure the commercial fisheries and lay [the] foundation for a fishery that is sustainable and economically viable. Its objectives were to reduce the harvesting capacity of each licence holder, improve the economic viability

> for participants to the fishery and prevent future growth of capacity in the commercial fishery.
>
> *The public interest, as an aspect of irreparable harm, will be considered both in the second and third stage of the analysis under the [RJR] test. Harm to Mr. Robinson must be balanced with harm to the appellant, including any harm to the public interest* (see *Canadian Federation of Students v. Greater Vancouver Transportation Authority,* 2007 BCCA 221, 282 D.L.R. (4th) 170 at para. 10).
>
> [emphasis added]

[46] As earlier noted, in the letter, the director, acting under the direction of the minister, indicates that her decision is intended to align with Manitoba conservation priorities for polar bears and the protection of the tundra ecosystem. Such decisions are made in the public interest and the balance of convenience clearly lies with the respondents in this instance.

[47] Again, it would have behooved the motion judge to consider the third branch of the *RJR* test, as well as consider the public interest. Regard may be had to *Interlake Reserves Tribal Council Inc v Government of Manitoba*, 2021 MBCA 17. In that case, the motion judge granted an interlocutory injunction preventing the government from continuing certain work on a flood control management system. In allowing an appeal from that order, the *per curiam* decision determined that the motion judge's analysis as to the balance of convenience was deeply flawed as he did not weigh the catalogue of harms to *both* the plaintiffs and the defendant. The Court then indicated that "[m]atters were compounded by the failure to consider the defendant's [government] interests, the rights of parties not before the Court *and the wider public interest as the law requires* (see *Sharpe* at para 2.530)" (at para 20 [emphasis added]).

[48] In our view, had the motion judge done so, a consideration of the public interest in the context of the balance of convenience would have further buttressed his decision to dismiss Lazy Bear's motion for an interlocutory injunction.

Conclusion

[49] In conclusion, we reached the same result as the motion judge and we dismissed the appeal. The decision rendered by the motion judge was not so clearly wrong as to amount to an injustice. Costs were awarded in the cause.

Rivoalen CJM

Monnin JA

Turner JA