



Taking care - municipal liability for roads

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July 8, 1986 was a sunny day in the RM of Ste. Anne. The driver of a tandem truck was heading east on Park Road at 50 mph when he started to gear down as he approached the corner of Municipal Road. About 200 yards from the uncontrolled intersection, he looked to the right and saw that his way was clear. A bit further, he looked to his left, but could not see anything through the bush at the northwest corner. Suddenly, a car

appeared from the left. The truck struck the Monte Carlo at 30 to 40 mph. The intoxicated driver of the car was killed and his passengers were injured.

The passengers sued the driver of the truck and the RM. Although the car driver's negligence was acknowledged, the passengers alleged that the Municipality was also negligent in that it failed to erect stop or yield signs at the intersection and failed to cut back the

bush to permit a better view. They relied on the provisions of *The Highway Traffic Act* that permit a municipality to enter property adjoining an intersection to remove trees and other obstructions to permit a clear and unobstructed view of traffic. They alleged that the RM failed to use this power to protect drivers.

These are the facts in the case of *Thiessen v. Friesen*, decided in 1996. The Court found that although the Municipality could have placed traffic control signs and could have cut back bush and trees at the intersection, it was under no legal duty to do so and was, therefore, not negligent.

The Municipal Act (the *Act*) specifies that a municipality is under a duty to maintain roads within its boundaries:

A municipality is required to construct or maintain a municipal road only to a standard that is appropriate for the use to which the municipality expects the road to be put.

When the *Act* was replaced in 1996, the limitations on liability of municipalities were increased. Whether individuals who suffer injury as a result of road conditions or the municipality at large is in a better position to bear this risk is up for debate. A municipality is not liable for a failure to construct or maintain a road beyond the stated standard. Nor is it liable for installing or failing to install guardrails, traffic control devices, lighting or other traffic safety devices except where it fails to repair or replace those already installed in a reasonable time after knows or ought to know of the need to repair or replace them. A municipality is not liable for obstructions that are on the part of the road not designed for vehicle use. (Remember, the "road" includes the whole road allowance: ditches, boulevards and even sidewalks.) A municipality is only responsible for rain, hail, snow, ice, sleet or slush on a road or sidewalk if the municipality is "grossly negligent." Anyone who wishes to make a claim against a municipality must give written notice of the event on which the claim is based within three days of the event.




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Despite these protections, the case law is clear that municipalities can still be liable for neglect in relation to roads. The cases show that the following measures can be taken to reduce that liability.

- **Know the standard of care.** Familiarize yourself with the municipal duties and powers in the *Act* and *The Highway Traffic Act*.
- **Comply with recognized standards or guidelines.** Where there is new construction, ensure that it is carried out to the appropriate standard. This does not mean that all old roads need to be brought up to this standard.
- **Develop internal policies and guidelines and follow them.** If a municipality has developed reasonable internal policies and can demonstrate that these have been complied with, it is more likely to be able to successfully defend a claim. On the other hand, if policies are in place and they are not being followed, the chances of a successful defence are reduced.
- **Keep good records.** There is no point in carrying out regular inspections if the Municipality cannot prove they have been done. Keep records of complaints about road conditions and actions taken to address them. Keep detailed records of accidents, gradings, inspections and the results of those inspections and activities undertaken to address any defects. If a problem is identified, the municipality is expected to act reasonably in dealing with it.
- **Look for change.** If traffic volumes change or if repeated incidents occur over the same stretch of road, there is a greater likelihood that action is needed.
- **Watch your neighbours.** The Courts are interested in knowing what the general standards of repair and maintenance are in other municipalities. If you are not meeting the standards of your neighbours, consider whether your inaction is still reasonable.
- **Make it a budget item.** The law does not expect a municipality to undertake unreasonable expense. However, if a dangerous condition can be remedied with nominal expenditure of money or time, such as reducing a speed limit, the courts are not likely to be sympathetic if the work has not been done.

- **Keep an eye on the weather.** Manitobans, by and large, know what it means to live in our climate. However, do not use this as an excuse for failing to deal with conditions that are unreasonably unsafe.

Taking these steps will help to provide better safety and service for residents, better financial protection for your municipality and increased peace of mind for your CAO, Council and insurer. ⚡

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