



Avoiding personal liability for municipal officers

by Elmer Gomes, Thompson Dorfman Sweatman

When performing your functions as an officer of a municipality, it is important to continuously be aware of your personal liability under *The*

Municipal Act of Manitoba (the “Act”). This is especially important if you hold a position for which the *Act* or a municipal by-law (or regulation) provides for specific responsibilities, duties or functions.

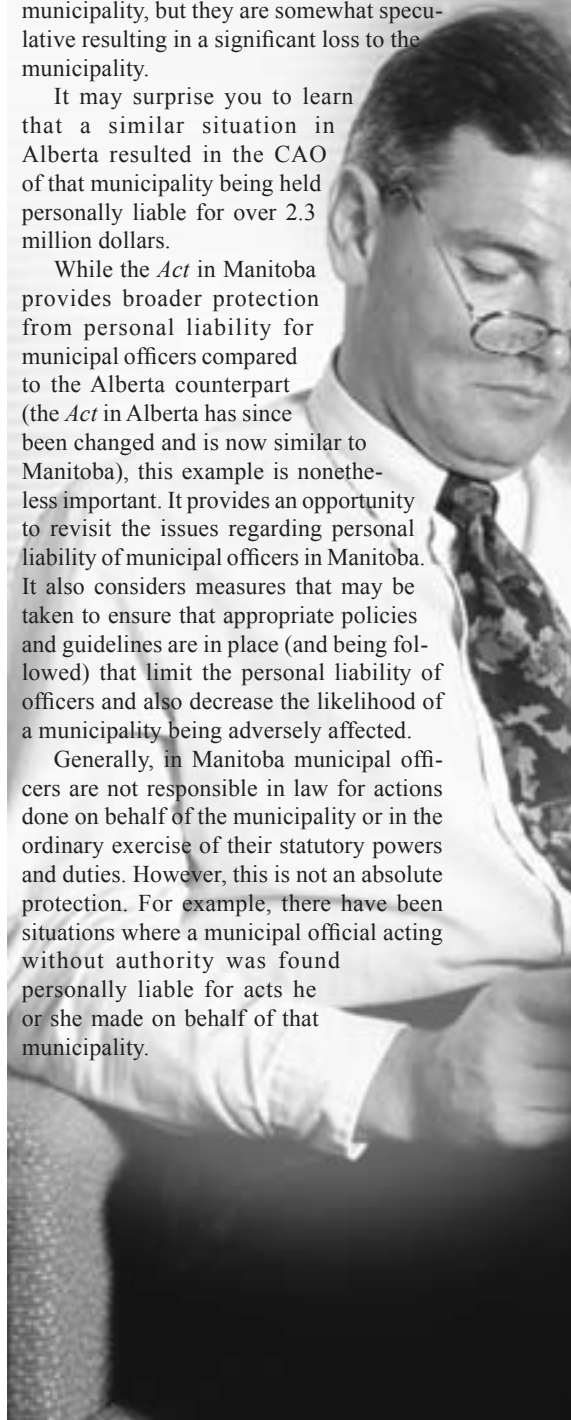
Consider the following scenario. You are the CAO of your municipality and have held that position for a number of years. You’ve always tried to discharge your responsibilities as competently as possible and with a view to the best interests of the municipality. Naturally, you are required to oversee the other officers and employees of the municipality. One of the responsibilities of the treasurer of the municipality is the investment of surplus funds according to the applicable investment policies. You have always had confidence in your treasurer and found him to be a very trustworthy person. You hold ‘manager meetings’ at least once or twice every week with your staff to make sure that you are being advised of the progress and status of various matters and stay informed about developing municipal events to report to the Council accordingly. In addition, you inquire with the treasurer about the nature of investments that are being made and you have reviewed with him the investment binder. Your treasurer assures you that the investments are authorized by the

applicable legislation and the by-laws and policies of the municipality. Unfortunately, you subsequently discover that, not only are the nature of the investments not authorized by the *Act* or the investment policies of the municipality, but they are somewhat speculative resulting in a significant loss to the municipality.

It may surprise you to learn that a similar situation in Alberta resulted in the CAO of that municipality being held personally liable for over 2.3 million dollars.

While the *Act* in Manitoba provides broader protection from personal liability for municipal officers compared to the Alberta counterpart (the *Act* in Alberta has since been changed and is now similar to Manitoba), this example is nonetheless important. It provides an opportunity to revisit the issues regarding personal liability of municipal officers in Manitoba. It also considers measures that may be taken to ensure that appropriate policies and guidelines are in place (and being followed) that limit the personal liability of officers and also decrease the likelihood of a municipality being adversely affected.

Generally, in Manitoba municipal officers are not responsible in law for actions done on behalf of the municipality or in the ordinary exercise of their statutory powers and duties. However, this is not an absolute protection. For example, there have been situations where a municipal official acting without authority was found personally liable for acts he or she made on behalf of that municipality.



hayles
1/8v
bw
33

thompson
1/4h
bw
29

With respect to personal liability, the *Act* provides as follows at section 403(1):

“A member of a council or council committee, or a municipal officer or volunteer worker is not liable for any loss or damage suffered by a person by reason of anything said or done or omitted to be done by the member, officer or volunteer worker in good faith in the performance or intended performance of powers, duties or functions under this or any other Act.”

It is important to recognize and emphasize that the *Act* shields an officer from personal liability from anything done (or omitted) *in good faith* in the performance of his/her powers, duties or functions. Good faith, or lack of it, has been expressed by the courts as containing elements of dishonesty and often includes recklessness or gross negligence. It goes without saying that whether or not good faith exists will depend on the particulars of each individual situation.

In the above situation, the Alberta Court of Appeal affirmed the decision of the Alberta Court of Queen’s Bench in finding that the CAO was grossly negligent in performing his statutory duties under Alberta’s *Municipal Government Act*. Alberta’s *Municipal Government Act* does not shield a municipal officer from liability if that officer was dishonest, grossly negligent or guilty of willful misconduct. This is less protection for municipal officers than the good faith requirements of the Act.

However, this case is important because the courts refer to certain measures that could have been taken by that CAO that could have avoided or minimized the loss suffered by that municipality and which could have protected the CAO from personal liability.

Regardless of the prevailing legislation, municipal officers should ensure that certain policies and guidelines are implemented and followed which would serve to reduce their own exposure and also have the likely effect of preventing a municipality from suffering a substantial loss.

First and foremost, it is important that a municipal officer is aware of, and complies with, the obligations imposed under the *Act* and regulations (or any other applicable legislation) that govern his or her position. In addition, the municipal officer should be aware of the responsibilities or duties assigned to him or her by any municipal by-law or regulation. While the ability to delegate certain duties may exist, it is important to understand who is ultimately responsible for ensuring those duties are met.

Where the power to delegate is exercised, a written record of the delegation should be created and a schedule should be implemented to follow up the progress of those matters. Depending on the nature of the duties and the timing of the follow up schedule (i.e., monthly, semi-annually, etc.), a written report may be appropriate. Even if the written report is fairly simplistic, it will at least provide a record to refer to if the need arises in the future.

It is strongly encouraged to have subordinates also provide periodic written reports for their responsibilities (regardless of whether or not their duties have been delegated). While there may be no reason to doubt the accuracy of the reports or information being provided, it is very important

to independently verify this information. The frequency of reporting and independent verification will vary depending on the nature of the duty or responsibility and the potential consequence if that duty or responsibility is not met.

Finally, if you have any uncertainty about a certain matter, ask questions – lots of them. Consult a lawyer, accountant, auditor or consultant as necessary and, depending on the nature of the uncertainty, until you are satisfied that appropriate actions are being taken and your responsibilities are being met.

data link

1/8v

bw

16

brock white

1/4h

bw

28