



Limited Liability for Municipalities

By Bernice R. Bowley, Fillmore Riley LLP

As Canadian society has become more litigious lately, with more and more liability claims against municipalities, it seems prudent to review *The Municipal Act* (the “Act”) and the express provisions dealing with municipal liability.

We all know that municipalities are agents of the Provincial Crown to which significant areas of authority and activities have been delegated. Municipalities should remember that while they are created by legislation and must abide by that legislation, that same legislation also gives them significant discretion in which to carry out their mandated purposes. Also, courts often respect and give deference to acts within a municipality’s discretion.

Recognizing municipalities’ wide scope of authority, often with limited funds avail-

able to fulfill their tasks, the Act contains provisions so that certain common areas of municipal function have limitations or other restrictions on liability.

Section 386 deals with a municipality’s obligation to maintain Roads. Briefly, a municipality is not liable for loss or damage in respect of a municipal road for failing to construct or maintain the road properly, by installing or failing to install a fence, guard-rail, railing, curb, traffic control device, or barrier adjacent to or in, along or on the road (if the municipality knew or ought to have known of the defect and failed to correct it in a reasonable period of time). Similarly, the section says that a municipality is not liable for loss or damage caused by any construction, obstruction or erection, or the situation, arrangement or disposition of any

earth, rock, tree or other material or thing, adjacent to or in, along or on the portion of the road that is not designed for vehicle use, or caused by rain, hail, snow, ice, sleet or slush on the road or on a sidewalk adjacent to or along the road, unless the municipality is grossly negligent.

To a large degree, the liability limiting provisions of that section are superfluous in relation to automobiles because of the no fault legislation which came into effect on March 1, 1994. In a 1997 Manitoba Court of Appeal decision, a fellow named McMillan was injured in an automobile accident when his vehicle fell through a washed-out bridge. There were no warning signs posted alerting drivers to the danger. McMillan sued the municipality saying it was negligent for failing to maintain the bridge and for failing to warn

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users of possible danger. The municipality argued that the accident was subject to the comprehensive no-fault insurance scheme found in *The Manitoba Public Insurance Act* and that the action was therefore barred.

The Court of Appeal agreed, saying that where an automobile or the use of an automobile in some manner causes, contributes to or adds to injury, that act applies and tort actions against the negligent party are barred. Therefore, most motor vehicle accidents that might be caused by the negligent maintenance of municipal roads cannot result in a successful civil action against the municipality.

However, section 386 may still be used to defend and avoid slip and falls and other accidents where the incident occurs on a sidewalk adjacent to or along a municipal road.

Section 387 outlines a municipality's liability for Building Inspections. A municipality is not liable for losses related to the manner or extent of an inspection, or the frequency, infrequency or absence of inspection unless the inspection was requested at the appropriate stage of construction with reasonable advance notice, and the municipality failed to conduct the inspection or conducted it in a negligent manner. An inspection is conducted in a negligent manner only if it fails to disclose a defect or deficiency that it is reasonably expected to detect and which falls within the scope of the inspection. Liability claims against municipalities relating to building inspections are becoming more frequent. Inspectors should be aware of these provisions and attempt to inspect on a timely basis.

Pursuant to section 388, a municipality is not liable for failing to maintain a Public Facility in a reasonable state of repair unless the municipality knew or ought to have known of the state of disrepair and failed to take steps to rectify the state of disrepair within a reasonable period of time.

Obviously recognizing that Utility, sewer and water services are an active area for liability claims, the Act contains several liability limiting sections for municipal services in these areas. Section 389 states that where a municipality operates a utility or provides a service, it is not liable for loss or damage as a result of the breaking of a pipe, service line, conduit, pole, wire, cable or other part of the utility or service, or the discontinuance or interruption of a service or connection by reason of accident, disconnection for non-payment or non-compliance with a term or condition of service, or necessity to repair or replace a part of the utility or service.

Similarly, section 390 holds that where an

Overflow of Water from a sewer, drain, ditch or watercourse is a consequence of excessive snow, ice or rain, a municipality is not liable for the loss resulting from the overflow.

In section 395, the Act says that a municipality is not liable for a Nuisance as a result of the construction, operation or maintenance of a system or facility for collection, conveyance, treatment or disposal of sewage or storm water, or both sewage and storm water, unless the municipality is negligent.

Keep in mind that the legislation only limits liability, not eliminates it. In many

cases, a municipality will still be liable for its own negligence. Further, none of these liability-limiting provisions prevent a claim from being made. They only assist in a successful defence of the claim. §

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