

ROADS

Caution Ahead: Municipal Roles, Responsibilities and Liability Issues

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Traffic Safety Act – Distracted Driving Regulation

- Hands free mode means voice activated or one touch without holding device.
- Cannot drive or operate a vehicle while holding a cellular phone, radio communication device, holding, viewing or manipulating a hand held electronic device.
- May operate electronic device with hands free mode.

Traffic Safety Act – Distracted Driving Regulation

- Exceptions include:
 - Operating as an escort pilot or trail vehicle required to maintain a 2 way radio.
 - Required for 2 way communication with an employer where driver required to do so and acting in scope of employment when 2 way radio not available.

Traffic Safety Act – Distracted Driving Regulation

- 2 way radio necessary for search, rescue or emergency management situation when 2 way radio not available.
- Contact of emergency personnel while driving.

Continued

Traffic Safety Act – Distracted Driving Regulation

- Excludes emergency vehicle operator while in the course of employment.
- Display screen visible to driver prohibited (ie. television, computer, other device).
- Screen prohibition does not apply to GPS, hands free mode, logistical transportation tracking system to track for commercial purposes, dispatch system for passenger transport, collision avoidance device, device for location of vehicle.

Traffic Safety Act – Distracted Driving Regulation

- GPS may be used if programmed before driving, or voice activated.
- Cannot be hand held and is securely affixed to vehicle so not interference with safe operation.

Traffic Safety Act – Distracted Driving Regulation

- Prohibited activities:
 - Reading.
 - Writing, printing and sketching.
 - Personal grooming or hygiene.

Relevant Sections of the MGA

- Obligations for municipalities with respect to roads are set out in the *Municipal Government Act* and case law.

Relevant Sections of the MGA

- Road defined:
 - “road” means land
 - ~ shown as a road on a plan of survey that has been filed or registered in a land titles office; or
 - ~ used as a public road, and includes a bridge forming part of a public road and any structure incidental to a public road.

Title

- Title to all roads in a municipality, other than a City rests in the Crown.
- Title to all roads in a City rests in the City unless another Act or agreement provides otherwise.
- City has the power to dispose of an interest in a road so long as disposition is not to a sale or lease or require a road closure.

Control

- A municipality has direction, control and management of all roads within the municipality.
- Does not include mines and minerals.

Road Closure

- No road subject to municipality control may be closed except by bylaw.
- Bylaw must be advertised.
- Before passing a bylaw closing a road, a person claiming to be prejudicially affected has the right to be heard.

Compensation

- Compensation paid to someone who has an interest in land and sustains damages by road closure.

Temporary Closure

- Council may, by resolution, or a designated office authorized by resolution, temporarily close a road for a construction or maintenance project which may create a hazard.

Relevant Sections of the MGA

- Section 529: Exercise of Discretion
 - A municipality that has the discretion to do something is not liable for deciding not to do that thing in good faith or for not doing that thing.
 - Remember: this provision **ONLY** applies to areas in which the municipality has **DISCRETION**.

Continued

Relevant Sections of the MGA

- Acting in Accordance with Statutory Authority – Section 527.2.
 - Subject to this and any other enactment, a municipality is not liable for damage caused by any thing done or not done by the municipality in accordance with the authority of this or any other enactment unless the cause of action is negligence or any other tort.

Continued

Relevant Sections of the MGA

- Section 532 – Repair of Roads, Public Places and Public Works.
 - Every road or public place created by the municipality must be kept in reasonable repair.
 - A municipality will be liable for damages caused by failing to keep a municipality in reasonable repair.

Continued

Relevant Sections of the MGA

- A municipality is liable only if it knew or should have known about the state of repair.
- A municipality may not be liable if it can show that it took steps to prevent the disrepair from arising.

Continued

Relevant Sections of the MGA

- Section 532 mandates municipalities to keep in a reasonable state of repair roads subject to direction, control or management of the municipality.
- Comes down to the definition of road as to whether the municipality has an obligation.
- Cannot opt out of the obligation with policy.

Relevant Sections of the MGA

- A municipality should take reasonable steps in implementing road policy.
- Policy may cover how particular categories of roads are maintained considering:
 - The character of the road;
 - The area of the municipality in which it is located.

Continued

Relevant Sections of the MGA

- Policy may deal with how access ought to be restricted on certain roads.
- Policy may deal with differing levels of maintenance depending on factors in section 532.

Continued

Relevant Sections of the MGA

Lemna v. City of Calgary

- A lady fell while crossing C-train tracks at a cross walk.
- The City knew of the state of repair of the cross walk area where the lady fell.
- After the fall, the area was inspected and determined that it did not need repair.

Relevant Sections of the MGA

- The Court applied the following test:
 - Did the fall occur and if so where?
 - Did the fall cause the injury?
 - Was the cross walk in a state of disrepair?
 - Was the state of disrepair unreasonable?
 - Should the City have known about the state of disrepair?

Continued

Relevant Sections of the MGA

- Did the City have a reasonable system of inspection?
 - ~ Did the City have a reasonable standard of inspection?
 - ~ “Whether the standards for repair based upon such reasonable inspection as may be required are meant to insure that the cross walk is in a state of repair that is reasonable”.

Continued

Relevant Sections of the MGA

- Section 523: Non-Negligent Action
 - A municipality is not liable in an action based on nuisance, or on any other tort that does not require a finding of intention or negligence, if the damage arises, directly or indirectly, from roads or from the operation or non-operation of:
 - (a) a public utility; or
 - (b) a dike, ditch or dam.

Continued

Relevant Sections of the MGA

- Section 530(1) – A municipality is not liable for damage caused by:
 - (a) A system of inspection, or the manner in which inspections are to be performed, or the frequency, infrequency or absence of inspections, and
 - (b) A system of maintenance, or the manner in which maintenance is to be performed, or the frequency, infrequency or absence of maintenance.

Continued

Relevant Sections of the MGA

Shanks v. City of Calgary

- A lady was walking down a side walk and tripped on a 1 inch “trip edge”.
- Soon after getting the report, the area was marked and repaired.
- City had an annual drive by system of inspection. Repairs are recorded and categorized and repaired based on City resources.
- There was no public warning.

Continued

Relevant Sections of the MGA

- What do you think the result was?
- In light of s. 530, should reasonableness of the system come into play?

Continued

Relevant Sections of the MGA

- Section 531 – Snow on the Roads
 - Municipality is only liable for injury to person or property caused by snow if the Municipality is grossly negligent.
 - Except for the reasons in s. 531(3), a person claiming damages because a Municipality is grossly negligent must notify the Municipality within 21 days.

Relevant Sections of the MGA

Nicholas v. City of Edmonton

- Mr. Nicholas was claiming compensation from the City for damages to his car caused by a ridge created by a snow plow.
- Mr. Nicholas argued that the ridge should have been caught by the snow plow operator or an inspector or supervisor.
- The City argued that part 13 of the MGA limited their liability.

Continued

Relevant Sections of the MGA

- The Court found:
 - The damage to the Plaintiff's property was caused by ice and snow.
 - Under s. 531 of the MGA a municipality is only liable if it is grossly negligent.

Relevant Sections of the MGA

- On these facts, there was nothing to suggest the City was grossly negligent.
- Therefore, the City was protected from liability under s. 531 of the MGA.

Continued

Relevant Sections of the MGA

- Section 533 – Things On or Adjacent to Roads:
 - A municipality is not liable for damage caused by the presence or absence of things such as a wall, guardrail, etc.
 - A municipality is not liable for any construction or obstruction or earth, rock, tree, etc., on a road.

Continued

Relevant Sections of the MGA

Malmas Estate v. Mittelstadt

- Two cars collided at an intersection
 - The RCMP officer determined that the collision occurred because there was a clump of trees on the corner of a lot blocking the driver's vision.
 - The County knew of this safety hazard but it had not dealt with the concern.
 - Should the County be liable?

Policy - Operational Dichotomy

- Policy – the determination whether or not to do something.
- Operational – how that activity is carried out.
- Municipalities are protected from liability if a decision is policy based. A municipality will carry liability if it decides to do some policy and carries out that policy negligently.

Policy - Operational Dichotomy

- Policy decisions are exercises of discretion based upon social, political or economic factors.
 - Deciding to maintain roads by an inspection system.
- Operational decisions are the practical executions of the policy decisions.
 - The manner and quality of those inspections.

Continued

Policy - Operational Dichotomy

Brown v. British Columbia

- The Plaintiff slid off the road and over an embankment due to ice on the road.
- Three other accidents had happened earlier that same morning.
- The RCMP had contacted the highways department after the first accident, but the department was unable to get the sanding truck to the area until an hour after the first call.

Continued

Policy - Operational Dichotomy

- The department was on a summer schedule and did not have a sander available to go out all the time.
- Instead it had on-call employees.
- The department was unable to contact the on-call employee immediately, and so did not have a sander on the road immediately after the first accident.

Continued

Policy - Operational Dichotomy

- Was the Department liable?
- How did the Supreme Court of Canada determine that the department was/was not liable?

Continued

Policy - Operational Dichotomy

- How does the Policy – Operational Dichotomy apply to Municipalities?
 - Where there is a statutory imposed obligation to do an activity a Municipality has a duty of care.

Responsibilities and Liabilities of a Municipality

- A municipality can make policy decisions without attracting liability.
- Policies are to be made in good faith.
- Operational decisions may attract liability.

Continued

Responsibilities and Liabilities of a Municipality

- Policy may cover how particular categories of roads are maintained considering:
 - The character of the road;
 - The area of the municipality in which it is located.
- Policy may deal with how access ought to be restricted on certain roads.

Continued

Responsibilities and Liabilities of a Municipality

- Policy may deal with differing levels of maintenance depending on factors in s. 532.
- A Municipality's obligations do not extend to a private road.
- If the road is open to public travel it may become a public road and may be subject to municipal policy.

Continued

Responsibilities and Liabilities of a Municipality

- Create a policy and then follow the policy.
- Ensure that the policy is reasonable.
- Indemnity clauses.

R. v. Pawlowski – Alberta Queen's Bench

- Plaintiff ministered to homeless and people who may be abusing drugs.
- Church's job to care for poor, orphans, widows and brokenhearted.
- Reach people by setting up tables, signs, cross banners, boxes of food and drinks on sidewalk in front of Calgary City Hall.

Continued

R. v. Pawlowski – Alberta Queen's Bench

- Use sound amplification system to amplify his voice in a public park.
- Did this all without a permit.
- Charged under City of Calgary bylaws and Provincial traffic safety legislative.

Continued

R. v. Pawlowski – Alberta Queen's Bench

- Provincial Court found s. 21(e) of the Calgary Parks and Pathways Bylaw and s. 17(1)(a) of the Street Bylaw violated the Plaintiff's rights under Canadian Charter of Rights and Freedoms.
- City appealed to Queen's Bench.

Continued

R. v. Pawlowski – Alberta Queen's Bench

- Provincial Court found the bylaws were vague or over broad and there was abuse of process by the City issuing tickets and refusing applications for permits.

Continued

R. v. Pawlowski – Alberta Queen's Bench

Material on Street

- Provincial Court Judge found the term in the bylaw was vague and overly broad.
- Recognized pressing and substantial concern regarding litter and aesthetics of streets.
- Constitutional breach of fundamental justice and was not saved under Charter as no rational connection between broad term and purpose of bylaw.

Continued

R. v. Pawlowski – Alberta Queen's Bench

- Violated freedom of religion.
- Freedom of expression was impaired by effect of the bylaw.

Continued

R. v. Pawlowski – Alberta Queen's Bench

Amplification System in Park

Provincial Court Found:

- Amplification system, although not defined, was not vague or overly broad.
- The Plaintiff believed amplification is part of what Jesus did to communicate messages so was connected to religious belief.
- Freedom of religion infringed with enforcement.

Continued

R. v. Pawlowski – Alberta Queen's Bench

- Freedom of religion infringed with enforcement.
- Recognized City had a valid interest in parks being for use and enjoyment of large cross section.
- Recognized eliminatory noise that could detract from enjoyment was valid.
- Permit process did not have clear rules and regulations – arbitrary so not minimal impairment and not saved by s. 1 of Charter.

Continued

R. v. Pawlowski – Alberta Queen's Bench

Abuse of Power

- Conflicts escalated between the Plaintiff and the City throughout time tickets were issued - came close to abuse of power but was not one of the cleanest cases.

Continued

R. v. Pawlowski – Alberta Queen's Bench

Queen's Bench

- City argued judge's decision virtually strips away City's powers to regulate activities within its jurisdiction.
- City acted in shadow of another Queen's Bench decision involving the Plaintiff.

R. v. Pawlowski – Alberta Queen's Bench

Street Bylaw

- Over breadth of wording of Street Bylaw prohibits placement of any object on street.
- City appeal dismissed on Street Bylaw issue.

Continued

R. v. Pawlowski – Alberta Queen's Bench

Parks and Pathways Bylaw

- Is not a noise control bylaw.
- Object of bylaw was to provide a safe, aesthetic and comfortable environment.
- Provision interpreted to prohibit amplification from interfering with park user enjoyment.
- Purpose to preserve peaceful nature of public spaces.

Continued

R. v. Pawlowski – Alberta Queen's Bench

- Unless municipal power is exercised unreasonably, court will show deference.
- Bylaw was not vague nor overly broad and was intra vires.
- Prohibiting amplification does not impair the Plaintiff's right to conduct his religious beliefs.

R. v. Pawlowski – Alberta Queen's Bench

- Prohibition on amplification prohibits freedom of expression.
- The objective of the bylaw was pressing and substantial-provision was to achieve the purposes.
- Impairment is minimal and practical method of controlling noise in parks.

Continued

R. v. Pawlowski – Alberta Queen's Bench

- No abuse of power by City.
- Allowed appeal on Parks and Pathways Bylaw.

Thank You

Questions are welcome

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