

“Reasonable Steps” Crucial to Municipal Immunity from Road Disrepair Claims – Marsten v. The City of Grande Prairie, 2022 ABPC 236

Brownlee was successful in defending the City of Grande Prairie against a claim for vehicle damages due to road disrepair, by relying on provisions of Part 13 of the *Municipal Government Act (MGA)*.

Summary

In *Marsten v. The City of Grande Prairie, 2022 ABPC 236*, the City was sued by the Plaintiff after she drove over a pothole and suffered damages to her vehicle while travelling on a City road. Under the *MGA*, all municipalities are required to keep their roads in a “reasonable state of repair”, keeping in mind the character of the road, and the area in which it is located.¹ The City’s defence heavily relied on the *MGA* sections pertaining to a municipality’s immunity from liability with respect to road disrepair. Namely, we argued that the City should not be held liable, as they did not have prior knowledge of the area of disrepair the Plaintiff encountered, and had taken reasonable steps to prevent any disrepair from arising.

The Court favoured the City’s evidence, and dismissed the Plaintiff’s claim for damages. The decision provides useful commentary and analysis regarding a municipality’s responsibilities under the *MGA* with respect to roads, especially in a harsh climate like Alberta.

Background

The Plaintiff was travelling in her vehicle on a major, arterial road in the City in May of 2020. While on her normal route to work, she drove over a pothole, which she claimed caused damages to her vehicle’s tire and rim.

The City’s Transportation Services sector oversees the inspection and maintenance of the roads which are under the direction and control of the City. The City’s system of inspection and maintenance is primarily complaint-based, meaning the City relies on drivers to report areas that require attention and/or repair. Drivers have the opportunity to report areas of disrepair by phone, e-mail, social media, or the City website. Once reported, the City’s target response time is 24 hours to assess and/or repair the area. Particularly large or dangerous areas of disrepair are attended to first where possible.

Approximately two months following this incident, the City completed a road rehabilitation and resurfacing project for the arterial road which the Plaintiff was travelling on. This resurfacing had been planned by the City prior to the Plaintiff’s claim.

Prior Knowledge of Pothole

Section 532(6) of the *MGA* dictates that municipalities in Alberta may only be held liable for a road’s state of repair if they knew, or ought to have known, about the state of repair. A broader approach was utilized by the Court in determining what standard of knowledge the City should

¹ *Municipal Government Act*, RSA 2000, c M-26, s 532(1).

be held to, considering this section. Past case law in Alberta has endorsed the proper standard of knowledge for a municipality to be what the “prudent municipal councillor” would have known.²

The Court did not require the Plaintiff to demonstrate that the City knew, or ought to have known, of the specific pothole she encountered, but simply that the City was aware of potholes “at or near that location.” Therefore, the Court considered the context of other drivers’ reports of disrepair in that general area, and the road’s impending resurfacing to be relevant. In this case, the Court found that the City did have sufficient knowledge of the state of disrepair of this “stretch of road” and was not immune from liability under section 532(6) of the *MGA*.

Evidence of Reasonable Steps

The Court subsequently considered whether the City could seek immunity from liability pursuant to section 532(7) of the *MGA* – that the City took reasonable steps to prevent road disrepair from arising in the circumstances. The City was found to have taken reasonable steps to prevent disrepair from arising, despite the presence of potholes on their roads.

In particular, the Court accepted the evidence of the City that the pothole the Plaintiff came across appeared to have been repaired at an earlier date. This spoke to the repair challenges that municipalities in Alberta face – often pothole patches and repairs are temporary in nature, and can necessitate further repair at a later date. Moreover, the fact that numerous other vehicles travelled over this stretch of road without issue or damage was regarded persuasively by the Court. The City’s inspection and maintenance system was deemed to be objectively reasonable.

Notably, the Court did critique the City for failing to have a more rigorous inspection system in place, considering the road in question was prone to potholes, and was scheduled to undergo necessary resurfacing. Section 530 of the *MGA* was not heavily relied on in the City’s defence, yet the Court still noted the section immunizes municipalities from liability with respect to the frequency or infrequency of inspections. The Court’s mention of section 530 is especially interesting in light of the narrowed application of the section advocated for by the Alberta Court of Queen’s Bench in *Pyke v. Calgary (City)*, 2022 ABQB 198 – a decision which has been appealed for Alberta’s highest court to now weigh in on.

Conclusion

A key takeaway from this decision is the reluctance of courts to hold municipalities to a standard of perfection with respect to road maintenance, when reasonableness is stressed in the legislation. Alberta courts appear willing to assess the wider context of road inspection and maintenance for municipalities, including, but not limited to, consideration of the municipality’s climate and the way other users of the road fared. In turn, though, courts may also evaluate the broader context when analyzing a municipality’s knowledge of disrepair – considering their prior knowledge of the general “stretch of road”, not just a specific hazard.

The Court in *Marsten* confirmed the appropriate duty of care for municipalities is to ensure that the ordinary driver, acting reasonably, can travel safely upon the municipality’s roads.

² *Housen v. Nikolaisen*, 2002 SCC 33 at 274, 276; *Ellis v City of Lethbridge*, 2020 ABQB 783 at para 39.

Municipalities should be aware, though, that if they recognize a road is prone to disrepair or know it will be undergoing resurfacing in the future, a more frequent system of inspection may be demanded.

The City was represented at trial by Molly Clark, of Brownlee's Edmonton office. The full decision can be found [here](#).