

Court of King's Bench Confirms Stigma Damages and Strict Interpretation of MGA Defences
Legare v Acme (Village), 2023 ABKB 145

In *Legare v Acme (Village)*, 2022 ABPC 54, the Provincial Court of Alberta determined the Village of Acme was liable to the Plaintiff resident homeowners for a sewage block that caused extensive damage to their house. Most of their damages were covered by insurance but they were awarded stigma damages. Stigma damages compensate a property owner for the diminution in value of property caused by negative perceptions despite the property being remedied to a high standard.

The Village recently appealed to the Alberta Court of King's Bench but the Provincial Court's decision was upheld on appeal (*Legare v Acme (Village)*, 2023 ABKB 145).

Background

It was found at trial that the Village was aware their sewer lines were narrower in diameter than required by Provincial standards which made it more susceptible to blockage. Regardless, the Village relied heavily on 530 of the *Municipal Government Act*, RSA 2000, c M-26, which exempts municipalities from liability for damage attributable to its system of inspection and maintenance (or even a lack of a system). It is a broad statutory defence for municipalities.

At trial, the Village argued they performed visual inspections of the sewer lines once per year and were exempted from liability by virtue of section 530. While a more in-depth inspection may have prevented the sewage blockage, this was the system of inspection the Village had chosen and section 530 protects municipalities from liability for their system of maintenance and inspection it relies on.

However, section 530 often conflicts with section 532 of the *Municipal Government Act* which places a positive duty on municipalities to keep every road or public place in a reasonable state of repair. A municipality can avoid liability under section 532 of the *Municipal Government Act* if it did not know about the state of disrepair or demonstrates it took reasonable steps to prevent the disrepair from arising. Both sections 530 and 532 are broad in scope. Section 532 will apply to every road and "public place" but public place is not defined and could be applied to a number of areas.

Last year, in *Pyke v Calgary (City)*, 2022 ABQB 198, the Honourable Justice Colin C.J. Feasby made a definitive ruling for sections 530 and 532 finding section 530 will not provide a municipality immunity from section 532 as that would essentially render section 532 inoperative.

Here, the Provincial Court followed Justice Feasby's interpretation of sections 530 and 532 and determined section 530 would not shield the Village from liability under section 532. Given the Village was aware of the narrow sewer pipes, the only way it could avoid liability under section 532 was to show it took reasonable steps to prevent the disrepair from occurring. The Provincial Court did not find a yearly visual inspection to be a reasonable step. Rather, the Provincial Court found the Village would have had to go above the "norm" for their system of inspection and maintenance given the Village was aware of the undersized sewer lines.

Appeal

The Village appealed the Provincial Court's interpretation of sections 530 and 532 to the Alberta Court of King's Bench where Justice Feasby heard the Appeal. Unsurprisingly, Justice Feasby (who decided *Pyke*) found the Provincial Court's interpretation of sections 530 and 532 correct. Justice Feasby also added further guidance for municipalities by stating that once the Village was aware of the state of disrepair, it had a choice: it could either upgrade the sewer line to the required standard or it could implement a heightened regimen of inspection and maintenance.

Lastly, Justice Feasby upheld the Provincial Court's finding of stigma damages. For a claim of stigma damages to be successful, there must be "evidence that the value of the property was reduced notwithstanding repair." The Village argued on appeal there can be no stigma damages when a property is remediated to pristine condition.

However, Justice Feasby rejected this argument finding stigma damages are not about whether the property has been remedied and the focus is on the market's perception of that property which is reflected in its value. Here, Justice Feasby agreed with the Provincial Court's findings and reliance on the Plaintiffs' expert which was that the significant amount of sewage which infiltrated the property would create a stigma for the property in the market despite the remediation.

Justice Feasby also upheld the Provincial Court's quantification of the Plaintiffs' stigma damages finding the assessment relied on a qualified expert while acknowledging precision is not possible.

Conclusion

This decision continues to expand the applicability of section 532 and limit the scope of section 530. The issue is section 532 applies to all roads and public places. Public place is not defined and was found here to be a sewer system.

Further, determining what constitutes a state of disrepair will be another issue to consider. In this decision, the state of disrepair was that the sewer lines were narrower than provincial standards. However, are small divots on a field a state of disrepair? If a person walking on a grass field steps in a small divot and twists their ankle, is a municipality liable for failing to keep the public place (i.e. the field) in a reasonable state of repair? Or would divots on a grass field be considered to be a reasonable state for a field?

Lastly, stigma damages are confirmed here to be a viable head of damage. However, it should be noted that plaintiffs will require an expert to support this head of damage to prove the negative market perception of the property. Further, there was extensive sewage infiltrations into the subject property which the Court described as a "violent sewer back up" meaning minor damage is unlikely to cause a stigma for the property.