LITIGATION INVOLVING SASKATCHEWAN MUNICIPALITIES

These materials were prepared by Neil Robertson, QC, City Solicitor for the City of Regina, Regina, Saskatchewan for the Saskatchewan Legal Education Society Inc seminar, Six Key Primers You Should Know About Municipal Law: March 2004.
# TABLE OF CONTENTS

INTRODUCTION 1

GOVERNING LEGISLATION 1

LEGAL ACTIONS 2

NAMING THE RIGHT PARTY 2
  Municipalities 2
  Municipal Police 2
  Service on a Municipality 3

VICARIOUS LIABILITY 4
  Municipalities 4
  Municipal Police 4

NAMING OTHER PERSONS 4

LIMITATION PERIODS 5
  Municipalities 5
  Notice of Claim 5
  Municipal Officials and Police Officers 6

SPECIAL PROTECTIONS 7
  Municipalities 7
  Duty of Repair for Streets 7
  Flood Claims 9
  Public Utility Lines 9
  Municipal Police .......................................................... 10
  Public Complaints Against Police 11

ASSESSMENT APPEALS 11
  2005 Revaluation 11
  Limitation Period 12
  Annual Assessments 13
  Appeal Fees and Outcome 14

CONCLUSION 15
INTRODUCTION

The purpose of this paper is to discuss some aspects of municipal law and related practice which may be of assistance to practitioners in representing their clients in legal actions involving municipalities. The paper attempts to focus on matters which, in the experience of the author, are sometimes overlooked or misunderstood.

GOVERNING LEGISLATION

The municipality is a creature of statute. Generally speaking, municipal council can only do what the Legislature has authorized. All of its powers, duties and legal capacity are founded in legislation. This concept of statutory authority is fundamental to municipal government. There are many different statutes governing the operation and activities of municipalities. Most of these powers, duties and capacities are found in the Municipal Act applicable to that class of municipality. There are four Municipal Acts under which municipalities operate in Saskatchewan: The Cities Act, The Urban Municipality Act, 1984; The Rural Municipality Act, 1989; and The Northern Municipalities Act. Although these statutes have much in common, there are differences.

It is important to refer to the legislation governing that class of municipality: urban; rural; or northern. There are four categories of urban municipalities: cities, towns, villages and resort villages. The Cities Act allows cities to "opt-in" to that statutory regime. All cities except Humboldt opted into that statute as of January 1,2003.

8.8. 2002, c. C-11.1

2 8.8. 1984, c. U-11 Hereafter cited as "UMA". (The City of Lloydminster operates under The Lloydminster Charter, which is a provincial regulation and which applies only to that border city.)

3 8.8. 1989-90, c. R-26.1 Hereafter cited as "RMA".

4 8.8. 1983, c. N-5.1 Hereafter cited as "NMA".

s\workdoc\seminars\2004 municipallaw\loss prevention paper presented to sklesi.doc
When researching caselaw, it is important to keep in mind that the legislation applied in a case involving one class of municipality may be different from that applicable to another class. Also, these municipal Acts are usually amended at every session of the Legislature and are completely revised every decade or so. The changes in wording that occur can affect the application of caselaw precedent.

**LEGAL ACTIONS**

**NAMING THE RIGHT PARTY**

**Municipalities**

Although I have seen both private and municipal practitioners style the name of a municipality in various ways, I would suggest that the simplest form is the best. "The City of Regina" is sufficient, although it may be followed with words such as "being a municipal corporation operating pursuant to The Cities Act". Rural municipalities all have a name and a number (ie. the Rural Municipality of Eyehill No. 382). There are 494 urban municipalities, 297 rural municipalities and 24 northern municipalities in Saskatchewan (total number of 815). If you are suing a municipality for something that happened within its boundaries, make sure you have identified the correct one in your statement of claim.

**Municipal Police**

There are 13 municipal police services in Saskatchewan operating pursuant to The Police Act, 1990: the cities of Regina, Saskatoon, Prince Albert, Moose Jaw, Estevan, Weyburn; the towns of Cudworth, Dalmany, Luseland, and Stoughton; the village of Caronport; and the rural municipalities of Corman Park #344 and Vanscoy #345 (both as special constables). The size of these police services range from a single officer to over 300 sworn officers and numerous other civilian personnel. All other municipalities are policed by the RCMP, pursuant to agreements with the Province and municipalities.
There are special considerations in an action against municipal police. A municipal police service is not a department of the municipality. Rather it is a separate and independent service governed by *The Police Act, 1990*. Although the municipal council appoints the members of the Board of Police Commissioners and is responsible for funding and approving the budget, it has no further control over the police service. It is usually improper to name the municipality in an action arising from acts or omissions of the municipal police service. The two are considered independent entities. Indeed, the municipal police service is not a legal person capable of being sued. The Board of Police Commissioners is a body corporate, pursuant to section 27(3) of *The Police Act, 1990*, and is deemed the employer of members of the police service, however, it is not vicariously liable for the actions of the police officers. Actions naming the Board, the municipality or members of the Board or municipal Council are invariably struck.⁵

An action arising from an act or omission of a municipal police officer should, therefore, name the individual police officer. If unknown, Cst. "John/Jane Doe" may be substituted until the proper officer is identified.

**Service on a Municipality**

Rule 22(a) of the Queen's Bench Rules provides that the mayor, reeve, clerk or secretary of the municipality, or their deputy, is the proper person to accept service on behalf of a municipal corporation. Service on the Clerk (cities) or Secretary (town or village) is recommended. Process served or documents delivered elsewhere may not get the same attention and may be misplaced. It is advisable, therefore, to follow the rule. Counsel acting on a file can, of course, also accept

---

*Kvelo v. Miazga* 26 July 1994, J.e.s. a.B. No. 271/94 unreported (Sask. a.B.)  
*Bruton v. Regina City Policeman's Association* [1945] 2 W.W.A. 273 (Sask. e.A.)  
For an excellent discussion of the law, see: G.H. Rust-D’Eye "Municipalities As Parties To Legal Proceedings" [1992] 14 Advocate's Quarterly 91 at 102
service on behalf of their client.

VICARIOUS LIABILITY

Municipalities

An urban municipality is vicariously liable for loss or injury arising from any act or omission of a municipal employee or an agent of the urban municipality acting in the course of his duties.\(^6\) It is not usually necessary, therefore, to name an individual and, in some cases, it may be improper. Urban municipalities, other than cities, are required to obtain insurance to protect their employees.\(^7\) Both the urban and rural municipalities are required to pay the cost of defending an action brought against a municipal employee or satisfying any damage award.\(^8\)

Municipal Police

As discussed above, the concept of vicarious liability is generally inapplicable to municipal police. That does not mean, however, that you may have an impecunious defendant. Section 32 of The Police Act, 1990 provides that, where a claim or action is made against a member as the result of an act committed while in the scope of employment as a member, the Board must provide legal counsel to the member and pay any settlement or judgment and costs awarded against the member.

NAMING OTHER PERSONS

No action can be brought against any member of council or any board, association, commission or other organization established under the municipal act by council or against a municipal employee based upon non-repair of public highways. Such action can only name the

---

\(^6\) CA 318(1), UMA 57(4)

\(^7\) UMA 57(3)

\(^8\) CA 318(2), UMA 57(4) and RMA 54(2)
municipality. Similarly, an action arising from an illegal bylaw can only be brought against the municipality.

**LIMITATION PERIODS**

**Municipalities**

There is a general limitation period of one year for all legal actions against municipalities. The one year limitation period applies to both issuance and service of the statement of claim. This limitation period begins when the damages are sustained, even though the claimant may not be aware that the municipality is potentially at fault. The change in wording from previous municipal acts has, in the opinion of the author, rendered inapplicable the earlier cases which narrowly construed the scope of those limitation periods.

**Notice of Claim**

There is an additional requirement barring any action arising from non-repair of a public highway unless written notice is provided within the prescribed period (14 days for cities and other urban municipalities and 30 days for rural municipalities). The purpose of these notice requirements is to allow the municipality the opportunity to inspect the alleged non-repair around the time that the injury occurred and, not incidentally, take action to prevent other accidents. This provision applies beyond the actual road and includes most everything in the road allowance.

---

9 CA 307(2), UMA 314(3) and RMA 402(3).
10 CA 313, UMA 318 and RMA 398.
11 CA 307(1), UMA 314(1)(a) and RMA 402(1)(a); see: Tataryn v.Saskatoon (1997) 159 Sask. R. 262 at 269; 43 M.P.L.R. 216 at 223 (Sask. O.B.)
    Sawdenv. Maple Creek, Town of(1981) 12 Sask. R. 68 (Sask. a.B.)
14 CA 305(2), UMA 314(1)(b) and RMA402(1)(b).
signs, tree branches, ditches, sewer lines, etc). A Queen's Bench justice may, however, waive this requirement in certain circumstances (a. where the claimant has a reasonable excuse for failing to deliver the notice and the municipality is not prejudiced, or b. where the person injured died.)

There is also a one month limitation period and a requirement for one month's written notice before an action can be brought on the basis of anything done pursuant to an illegal bylaw or resolution which was quashed or repealed. Also, as noted above, no person can be personally sued for anything done under the authority of such a law. The apparent purpose of this limitation is to protect persons acting under ostensible authority and to allow the municipal council an opportunity to protect the public interest in continuity of law by replacing an invalid bylaw or resolution with a valid bylaw or resolution.

There is also a requirement for notice of claim of damages for injurious affection to land resulting from the construction of any public work. Such claims are dealt with under the same procedure as expropriations.

Section 404 of The Rural Municipality Act, 1989 requires notice of claims arising from flooding within sixty days of the happening of the injury.

Municipal Officials and Police Officers

Municipal officials and police officers are generally covered by The Public Officers Protection Act, which also provides a one year limitation period to commence the action. This time period may be extended by a judge.

---

15 CA 305(3), UMA 314(2) and RMA 402(2).

16 CA 313, UMA 318 and RMA 398.

SPECIAL PROTECTIONS

Municipalities
Municipalities have certain protections against actions arising from the use and operation of public works and utilities.

Duty of Repair for Streets

To succeed in an action based upon non-repair of a public highway, the plaintiff must prove that the municipality previously knew or should have known of the non-repair. The extent of the municipality's duty of repair will depend on a number of factors and does not make the municipality an insurer of those who use roads. This duty of repair is statutory in nature and is imposed by provincial law. Municipalities are not the owners of streets within the municipality. Title resides in the Crown in right of the Province, held for the general benefit of the public whose right of free passage is of ancient origin.

The classic statement of the responsibility of a municipal corporation for its streets arising from a claim for injury resulting from disrepair is found in the 1917 judgment of the Supreme Court of Canada in Fafard v. City of Quebec in which Chief Justice Fitzpatrick sagely observed:

"The claims seems to be based on the fallacious idea that someone must be to blame for every accident that occurs and that as it is shown in this case that the appellant was not herself in fault, the City or the driver of the automobile or both must be

---

18 CA 306(5), UMA 154(3) and RMA 192(3).
see: Gessel/v. Indian Head (R.M.) (1981) 10 Sask. R. 92 (Sask. O.B.)

note that the leading authority is Just v. British Columbia ([1989] 2 S.C.R. 1228
Bartokv. Tantallon (Village of) [1937] 2 W.W.A. 81 (Sask. C.A.)
liable for the injury she sustained.

"There is no standard of perfection set for the condition of highways even if such were attainable. There is no limit to what might be done for ensuring greater safety. … It is an extravagant and impossible idea….

"A municipal corporation is not an insurer of travellers using its streets; its duty is to use reasonable care to keep its streets in a reasonably safe condition for or during travel by persons exercising ordinary care for their own safety." 20

The duty of repair is codified in sections 306 of The Cities Act, 154 of The Urban Municipality Act, 1984 and 192 of The Rural Municipality Act, 1989. Municipalities have a duty to keep roadways "in a reasonable state of repair, having regard to the character of the [street] … and the locality in which it is situated… and, if the municipality fails to do so, it is civilly liable for all damages sustained by any person by reason of the default". These sections also provides that "Default … is not to be imputed to an urban municipality in any action without proof by the plaintiff that the urban municipality knew or should have known of the disrepair". This also applies to an action based upon "the presence of a nuisance on the street". These provisions create a duty of care on the part of the municipality to users of the streets.

These provisions reiterate that a municipality is not an insurer of streets, but rather that its statutory obligation is to act reasonably in the discharge of its duty to maintain the public's streets. The concept of reasonableness applies to both knowledge of the state of non-repair and to the municipality's obligation to repair it.

Though usually a special and dangerous condition triggers the issue of non-repair, such condition, in itself, does not establish liability. There must be evidence from which it can be inferred that the municipality knew about the existence of the condition or reasonably should have foreseen the conditions that existed at the time of the accident, and then failed within a reasonable time to take reasonable steps to remedy or reduce the danger after becoming aware of its existence.

20 Fafard v. City of Quebec (1917) 39 D.L.A. 717 at 719 (S.C.C.)
This case has been extensively applied, including Housen v. Nikolaisen [2002] 2 S.C.A. 235 at paragraph 115, reversing (2000) 4 W.W.A. 173 at 187, 189 Sask. R. 51 at 63 (Sask. C.A.)
Sections 308 of The Cities Act, 154(1.1) of The Urban Municipality Act, 1984 and s. 401 of The Rural Municipality Act, 1989 also bar claims for damages occasioned by the presence of some obstruction on the highway, but not within the travelled portion of the roadway. The Cities and Urban Acts also bars actions for damages caused by the absence or insufficiency of any guard rail.

Special protection is also provided against claims arising from injury resulting from falls on icy sidewalks, where gross negligence is required to establish liability.21

Flood Claims

Flooding occurred in a number of municipalities in 1985 following unusually heavy rainstorms. Numerous lawsuits followed as insurers attempted to recover their losses from municipalities based on alleged inadequacies of municipal sewer systems. In response, the Legislature enacted special protection against claims based on nuisance in section 313.1 of The Urban Municipality Act, 1984:

313.1 No urban municipality is liable in an action based on nuisance for loss or damage suffered by any person by reason of overflow of water in sewers, road drains, ditches or watercourses into which they flow, if the overflow is caused by an extraordinary event.

This protection is continued in The Cities Act in section 303(1).

Public Utility Lines

Municipalities are not liable for damages resulting from interruption of utility service during repair work or breaks of service pipes or lines.22 Service lines are those running off the main line to service individual properties. Breaks are not uncommon. Saskatchewan’s extreme

---

21 See s 305 of The Cities Act, s. 314(5) of The Urban Municipality Act, 1984; s. 402(4) of The Rural Municipality Act, 1989

22 The leading authority on liability in nuisance from damages resulting from operation of municipal utilities was Tock v. St. John’s [1989] 2 S.C.A. 1181, until the Supreme Court effectively restored the traditional law of nuisance in Ryan v. Victoria [1999] 1 SCR 201. Sections 303(2) of The Cities Act, 189(2) of The Urban Municipality Act, 1984 and s. 234(2) of The Rural Municipality Act, 1989
climate, where temperature and moisture can vary dramatically, combined in some localities with plastic clays that accentuate shifting soils which can exert tremendous pressure, known as "silent earthquakes", pose engineering challenges. The property owner is responsible for repair of service lines on their property, while the municipality is responsible for repair on the street side.23

Municipal Police

Even when their negligence results in damages, police officers may be protected by section 10 of The Police Act, 1990 against liability if they were acting in good faith.24 The apparent rationale behind this protection is that police officers act on behalf of the community to enforce the law and maintain public order. In doing so, they are required to continually interfere with the activities of citizens and their use of property. It is inevitable that they will sometimes make mistakes, however, the cost of compensating every claimant would be so high and the effect on law enforcement so adverse that damages suffered in the good faith exercise of their extraordinary powers will not always be compensable.

The Criminal Code of Canada also protects peace officers against claims of excessive force or false arrest when acting in good faith and on reasonable and probable grounds.25 There are other similar provisions in other legislation such as s. 39 of The Mental Health Services Act.

23 CA 22(1), RMA 232(3), UMA 188(3)

24 Note that the scope of section 10 was substantially expanded by amendments in 2001: 8.S. 2001, c. 29, s. 4.
The previous provision was applied in the following cases:

25 ss. 25-33 of the Criminal Code
Public Complaints Against Police

If your client is upset with the actions of municipal police, you may wish to advise them of the public complaints process introduced by *The Police Act, 1990*. Under this procedure, a member of the public may make a complaint by completing a form which should be available from the Saskatchewan Police Complaints Investigator's office, Saskatchewan Justice (Law Enforcement Services Division), the local Board of Police Commissioners office or the municipal police headquarters. The investigation of the complaint will be overseen by the Public Complaints Investigator, Elton Gritzfeld, Q.C. The complainant and any member who is the subject of such a complaint are kept advised of the progress of the investigation through periodic letters until the investigation is completed. At that time, the complainant is advised of the outcome. If formal discipline proceedings result, the complainant has a right to be present with counsel.

**ASSESSMENT APPEALS**

2005 Revaluation

2005 will bring about a province-wide general revaluation of property in Saskatchewan. The last general revaluation occurred in 2001. The assessed values established at that time generally remain in effect today, except where changed on appeal or to account for new construction or demolition of buildings and to account for limited changes such as zoning or subdivision of land. Those assessed values were based on 1998 replacement cost for improvements, with limited depreciation and application of a market adjustment factor to classes of comparable buildings, and land values based on average market values from the 1998 base year.

The 2005 revaluation will use both a common assessment manual and a 2002 base date, as established by the Saskatchewan Assessment Management Agency for all municipalities in Saskatchewan. The new manual will introduce "multiple regression analysis" for valuing residential property, making the determination and review of assessed values even more complex for the average property owner or lawyer.

---

26 s 22(1.1) of *The Assessment Management Agency Act* 8.8. 1986, c. A-28.1
You may be asked to appeal the new assessments to try to lower the local taxes levied against the property. Three things of which you should be aware in assessment appeals are the time period for appealing, the requirement for annual appeals, and the potential for both gain and loss on appeal.

Limitation Period

You will have thirty days from the date of mailing of the notice of assessment or the later of the publication or posting of notice of completion of the municipal assessment roll. Notice of assessment is usually mailed to the assessed owner only where there is a change in the assessment. Since all assessed values will change in 2005, notice of assessment should be mailed to all assessed owners at the mailing address entered on the assessment roll. You should not, however, depend upon receipt of the mailed notice. Inevitably, some mailed notices will be delayed or disappear. The onus is upon the owner to appeal within the thirty day period. There is no power to extend this statutory period for appeal.

While the revaluation will be well-advertised, the period to appeal will vary from municipality to municipality depending upon the date of mailing. Generally speaking, most

---

27 CA 198, R.MA 303 and U.MA 251

28 see, however, Newell Smelskiv. Regina (1996) 152 Sask. R. and 140 WAC. 44 (Sask. C.A.)

Such time limits have been similarly applied to assessment and development appeals in other jurisdictions:

Saunders Holdings Ltd. v. Provincial Municipal Assessor (Man.) (1991) 76 Man. R. (2d) and 10 W.A.C. 302 at 303 (Man. C.A.)


Stuart Olson Constructionv. Edmonton (1977) 3 M.P.L.R. 95 at 99 (Alta. C.A.)

Re Fraser and J. Stollar Construction Ltd. [1972] 2 O.R. 352 at 353 (ant. C.A.)

mailings will likely occur at the end of December or the start of January so most appeals will have to be filed in the month of January.

**Annual Assessments**

There are three levels for assessment appeals: the local board of revision as the trial division; the Saskatchewan Municipal Board's Assessment Appeal Committee for appeals on the record below; and the Court of Appeal, with leave, on questions of law or jurisdiction only. Although the board of revision is required to complete its hearings and render all decisions by June 15 in urban municipalities (other than Cities) and August 1 in rural municipalities, there is no such limitation on the Municipal Board. If you agree to represent an appellant, you will be on a fast track for presentation of your case at the trial level. Adjournments, if granted, will necessarily be short. Appeals from decisions of boards of revision to the Municipal Board may not be decided in time to be considered for the next annual assessment. If an appeal is made to the Municipal Board against the decision of a board of revision, the owner may either rely on that appeal, to the extent that it relates, to a subsequent year's assessment or may appeal again. While the original appeal is outstanding, the assessor will usually leave the original assessment unchanged for subsequent years. The decision of the board, however, is not stayed by an outstanding appeal nor is the tax enforcement process. It is a case of "pay now, argue later". No interest is paid on refunds. At the same time, no late payment penalties are added where a reduction in assessed value is later reversed.

---

29 UMA 257 (CA 210(4) sets no date, but requires all appeals be heard and decided within a 180 day window from the date of mailing of assessment notices).

30 RMA312.

31 s. 227 of The Cities Act, s. 263.3 of The Urban Municipality Act, 1984; s. 322.3 of The Rural Municipality Act, 1989

see: Regina (City) v. Prairie Advertising Distributors Ltd. 5MBAAC 220/99, 14 April 2000
Appeal Fees and Outcome

The Municipal Acts\textsuperscript{32} allow Council to set filing fees for assessment appeals to their local board of revision, in addition to the existing regime of fees for appeals to the Municipal Board. Appeals will be struck if these fees are not paid. Appeal fees to the board of revision are refunded if the appellant is successful.

Appellants may withdraw their appeal by notifying the secretary of the board of revision at least fifteen days before the hearing in cities and five days in other urban and rural municipalities.\textsuperscript{33} Tribunals elsewhere have taken the position that there is no "right" to withdraw an appeal once it is filed.

Perhaps more important to the owner, however, is the possibility the appellate tribunals may either reduce or raise the assessed value on appeal. In other words, it may not be a "no lose" situation. It may not be prudent, therefore, to file an appeal unless there is some realistic chance of success. If it turns out the property assessment is undervalued, the appeal tribunal at either level may order an increase in assessed value to correct the assessment\textsuperscript{34}. The rationale is that these tribunals are not there simply to adjudicate a dispute between two parties, but also to correct any errors in assessment to ensure the dominant principle of equity prevails. If some properties remain under-assessed, then other taxpayers end up subsidizing them. The system is designed, as far as possible, to ensure all taxpayers pay their fair share.

\textsuperscript{32} \textit{The Cities Act} 88 2002, c. C-11.1
\textit{The Northern Municipalities Amendment Act}, 1996.8. 1996, c. 54
\textit{The Urban Municipality Amendment Act}, 1996.8. 1996, c. 67

\textsuperscript{33} CA 197(7); UMA251(7.1); RMA303(7.1)
\textsuperscript{34} CA 210(1) and 226(2); UMA 255.5 and 263.2; RMA 308.5 and 322.2. Note that amendments have effectively negated the judgment of the Court of Appeal in \textit{City of Regina v. East Landing Plaza} C.A. file no. 3371 [2000 8J No. 763, (2000) 8K CA 141.
CONCLUSION

There are special considerations in litigation involving municipalities. This paper has attempted to review some of the special features of the law. A practical reality is that these are public bodies governed by local people elected every three years to form the municipal council. It is worth remembering that these Councils are accessible and provide an alternate, and sometimes better, forum for the airing of public grievances. The Supreme Court of Canada has noted this reality. Lawyers should also understand that the legal remedy is not the only, nor always the best, remedy.

Neil Robertson, Q.C.

35 *Spraytech v. Town of Hudson* 2001 SCC 40

The case arises in an era in which matters of governments were often examined through the lens of the principle of subsidiary. This is the proposition that law-making and implementation are often best achieved at a level of government that is not only effective, but also closest to the citizens affected and thus most responsive to their needs, to local distinctiveness, and to population diversity." (paragraph 3, L'Heureux-Dube, J.)

"Recent commentary suggests an emerging consensus that courts must respect the responsibility of elected municipal bodies to serve the people who elected them and exercise caution to avoid substituting their views of what is best for the citizens for those of municipal councils. Barring clear demonstration that a municipal decision was beyond its powers, courts should not so hold. In cases where powers are not expressly conferred but may be implied, courts must be prepared to adopt the "benevolent construction" which this Court referred to in *Greenbaum*, and confer the powers by reasonable implication. Whatever rules of construction are applied, they must not be used to usurp the legitimate role of municipal bodies as community representatives." (paragraph 23, L'Heureux-Dube, J.) [emphasis in original]

"A tradition of strong local government has become an important part of the Canadian democratic experience. This level of government usually appears more attuned to the immediate needs and concerns of the citizens." (paragraph 49, LeBel, J.)