

PART XII  
Legal Actions

DIVISION 1  
Liability of Municipalities

**Interpretation of Division**

**338.1** For the purposes of this Division, “municipality” includes a controlled corporation.

2007, c.32, s.14.

**Non-liability if acting in accordance with statutory authority**

**339** Subject to this and any other Act, 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 Act unless the cause of action is negligence or any other tort.

2005, c.M-36.1, s.339.

**Immunity against certain nuisance actions**

**340(1)** 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, for any loss or damage arising, directly or indirectly, from any public works, including streets, or from the operation or non-operation of a public utility.

(2) A municipality is not liable for damages resulting from:

- (a) any interference with the supply of a public utility service if:
  - (i) the interference is necessary for the repair and proper maintenance of the public utility service; and
  - (ii) a reasonable attempt is made to notify the owners or occupants of land or buildings affected by the intended interference; or
- (b) the breaking or severing of a service pipe, service line or attachment.

2005, c.M-36.1, s.340; 2007, c.32, s.15.

**Non-liability for discretion**

**341** A municipality that has the discretion to do something is not liable for, in good faith, deciding not to do the thing.

2005, c.M-36.1, s.341.

**Snow on sidewalks**

**342(1)** A municipality is only liable for personal injury caused by snow, ice or slush on sidewalks or extensions of sidewalks used as street or road crossings if the municipality is grossly negligent.

(2) A person who brings an action described in subsection (1) shall notify the municipality of the event that gives rise to the action within 30 days after the occurrence of the event.

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- (3) Failure to notify the municipality as required by subsection (2) bars the action unless:
- (a) there is a reasonable excuse for the lack of notice, and the municipality is not prejudiced by the lack of notice; or
  - (b) the municipality waives in writing the requirement for notice.
- (4) An action is not barred for failure to give notice pursuant to subsection (2) in case of the death of the person injured.

2005, c.M-36.1, s.342.

**Repair of streets, roads, public places and public works**

343(1) A municipality shall keep every street, road or other public place that is subject to the direction, control and management of the municipality, including all public works in, on or above the street, road or public place put there by the municipality or by any other person with the permission of the municipality, in a reasonable state of repair, having regard to:

- (a) the character of the street, road, public place or public work; and
- (b) the area of the municipality in which it is located.

(1.1) For the purposes of this section, a street, road or other public place is to be considered in a reasonable state of repair if those who use the street, road or other public place can, exercising ordinary care, do so with safety.

(2) Every municipality that receives or is entitled to receive tax loss compensation from the Rural Municipal Tax Loss Compensation Fund established pursuant to the terms of the Framework Agreement shall maintain, at the ordinary standard established for similar streets and roads within the municipality, all streets and roads within the municipality that are within, adjacent to or provide access to an Indian reserve:

- (a) that has been set apart pursuant to the terms of the Framework Agreement; and
- (b) for which tax loss compensation has been paid by Her Majesty in right of Canada and Her Majesty in right of Saskatchewan.

(3) For the purposes of subsection (2), “**Framework Agreement**” means:

- (a) the Saskatchewan Treaty Land Entitlement Framework Agreement dated September 22, 1992 and entered into by Her Majesty in right of Canada, Her Majesty in right of Saskatchewan and certain Indian bands with respect to the settlement of the outstanding treaty land entitlement claims of the Indian bands; and
- (b) the Nekaneet Treaty Land Entitlement Settlement Agreement dated September 23, 1992 and entered into by Her Majesty in right of Canada, Her Majesty in right of Saskatchewan and the Nekaneet Indian Band with respect to the settlement of the outstanding treaty land entitlement claim of the Nekaneet Indian Band.

- (4) The municipality is liable for damage caused by failing to perform its duty pursuant to subsection (1) or (2).
- (5) This section does not apply to any street or road made or laid out by a private person or any work made or done on a street, road or place by a private person until the street, road or work has been established as a public work or has otherwise been assumed for public use by the municipality.
- (6) A municipality is not liable pursuant to this section:
- (a) unless the claimant has suffered by reason of the default of the municipality a particular loss or damage beyond what is suffered by the claimant in common with all other persons affected by the state of repair;
  - (b) with respect to acts done or omitted to be done by persons exercising powers or authorities conferred on them by law, and over which the municipality has no control, if the municipality is not a party to those acts or omissions; or
  - (c) if the municipality proves that it took reasonable steps to prevent the disrepair from arising.
- (7) A municipality is liable pursuant to this section only if the municipality knew or should have known of the state of repair or disrepair.
- (8) A person who brings an action pursuant to this section must notify the municipality of the event that gives rise to the action within 30 days after the occurrence of the event.
- (9) Failure to notify the municipality as required by subsection (8) bars the action unless:
- (a) there is a reasonable excuse for the lack of notice and the municipality is not prejudiced by the lack of notice; or
  - (b) the municipality waives in writing the requirement for notice.
- (10) An action is not barred for failure to give notice pursuant to subsection (8) in case of the death of the person injured.
- (11) Notwithstanding any other provision of this section, the municipality is not responsible for any damages sustained by any person by reason of the disrepair or non-repair of any of the following:
- (a) a provincial highway;
  - (b) a public highway closed pursuant to *The Highways and Transportation Act, 1997*;
  - (c) a street or road while closed pursuant to section 13, 14 or 15, if the municipality has posted and maintained a conspicuous notice at each end of the closed street or road to the effect that the street or road is closed;
  - (d) a road established pursuant to section 56 of *The Forest Resources Management Act*;
  - (e) a road allowance that is not developed.

**Limitation of actions against municipalities**

344(1) Notwithstanding *The Limitations Act*, no action is to be brought against a municipality for the recovery of damages after the expiration of one year from the time when the damages were sustained, and no such action is to be continued unless service of the statement of claim is made within that one-year period.

(2) If a defendant in a legal action institutes a third party claim against a municipality for contribution or indemnity arising out of that legal action, the day on which the defendant was served with the claim for the legal action is deemed to be the day on which the act or omission on which that defendant's third party claim is based took place.

(3) Subsection (2) applies whether the right to contribution and indemnity arises with respect to a tort or otherwise.

2005, c.M-36.1, s.344; 2010, c.24, s.27.

**Things on or adjacent to streets or roads**

345 A municipality is not liable for damage caused:

(a) by the presence, absence or type of any wall, fence, guardrail, railing, curb, pavement markings, traffic control device or barrier; or

(b) by or on account of any construction, obstruction or erection or any situation, arrangement or disposition of any earth, rock, tree or other material or thing adjacent to or in, along or on a street or road that is not on the travelled portion of the street or road.

2005, c.M-36.1, s.345; 2007, c.32, s.17.

**Civil liability for damage to land or improvements**

346(1) A municipality is civilly liable for damages if any land or improvements are injuriously affected by the exercise of any of the powers conferred on it in this or any other Act with respect to the construction of any municipal public work.

(2) The amount of damages for which a municipality is liable pursuant to subsection (1) is the extent of the amount of the injury done, less any increased value to other land or improvements of the claimant resulting from the exercise of such powers.

(2.1) Notwithstanding subsections (1) and (2), every person is deemed not to suffer any damages, and, without restricting the generality of the foregoing, property is deemed not to be injuriously affected or suffer any diminution of value by reason of denial or removal of access to a street, if other access exists or is provided.

(3) Subject to subsection (5), if the amount of compensation for damages is not agreed on, the amount is to be determined by a judge of the court, on application by either party.

(4) Subsections 7(2) and (3) of *The Municipal Expropriation Act* apply, with any necessary modification, to an application made pursuant to subsection (3).

- (5) By agreement of all parties concerned, the amount of compensation may be determined by the award of three arbitrators appointed in the manner provided by subsection 8(1) of *The Municipal Expropriation Act*.
- (6) Subsections 8(2), (3) and (4) of *The Municipal Expropriation Act* apply, with any necessary modification, to an arbitration conducted pursuant to subsection (5).
- (7) Notwithstanding *The Limitations Act* but subject to subsection (8), a claim by any person with respect to damages mentioned in this section is to be made in writing, with particulars of the claim, within one year after:
- (a) the injury is sustained; or
  - (b) the injury becomes known to that person.
- (8) In the case of a minor, a mentally incompetent person or a person of unsound mind, the claim is to be made within:
- (a) the longer of:
    - (i) one year; and
    - (ii) one year after the person ceases to be under the disability; or
  - (b) in case of the person's death while under disability, one year after the person's death.
- (9) If a claim is not made in the manner and within the time limits mentioned in subsection (7) or (8), the right to the compensation for damages is forever barred.

2005, c.M-36.1, s.346; 2007, c.32, s.18.

#### Existing prohibited businesses

347(1) If a bylaw passed pursuant to clause 8(3)(d) prohibits the continued maintenance of a business already in existence in the municipality, the municipality shall compensate the owner of the business for any loss that the owner may suffer in consequence of the prohibition.

(2) A claim for compensation pursuant to subsection (1) must be filed with the administrator within 90 days after the day on which the bylaw becomes effective, and, if not agreed on, is to be determined by arbitration pursuant to *The Municipal Expropriation Act*, and the provisions of that Act with respect to the ascertaining of damages for lands and buildings injuriously affected by the exercise by the municipality of any of its powers apply to the claim and arbitration with respect to the owner's business, insofar as those provisions are applicable and not inconsistent with the express terms of this section.

2005, c.M-36.1, s.347.

#### Joint liability

348(1) If a municipality and any other municipality are jointly liable for keeping a street, road or bridge in repair, contribution is required between them as to the damages sustained by any person by reason of their default in so doing.

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(2) An action by any person mentioned in subsection (1) is to be brought against the municipality and the other municipality jointly and either of them may require that the proportions in which damages and costs recovered in the action are to be borne by them is to be determined in the action.

(3) In settling the proportions, either in the action or otherwise, regard is to be had to the extent to which the municipality and the other municipality were responsible, primarily or otherwise, for the act or omission for which the damages have become payable or are recovered, and the damages and costs are to be apportioned between them accordingly.

2005, c.M-36.1, s.348.

**Third parties**

349(1) In this section:

(a) “**action**” means an action brought to recover damages sustained by reason of:

(i) an obstruction, excavation or opening in or near a highway, street, road, bridge, alley, square or other public place, that is placed, made, left or maintained by a person other than an employee or agent of a municipality; or

(ii) a negligent or wrongful act or omission of a person other than an employee or agent of a municipality;

(b) “**other person**” means the person mentioned in clause (a) who is neither an employee nor an agent of a municipality.

(2) If an action is brought, the municipality has a remedy over against the other person for, and may enforce payment of any damages and costs that the plaintiff in the action may recover against the municipality, if:

(a) the other person is a party to the action; and

(b) it is established in the action as against the other party that the damages were sustained by reason of an obstruction, excavation or opening placed, made, left or maintained by that person.

(3) If the other person is not a party defendant or is not added as a party defendant or third party, or if the municipality has paid the damages before recovery in an action against the municipality, the municipality has a remedy over by action against that other person.

(4) The other person is deemed to admit the validity of a judgment obtained against the municipality only if:

(a) a notice has been served on the person pursuant to *The Queen's Bench Act, 1998* or *The Queen's Bench Rules*; or

(b) the other person has admitted or is estopped from denying the validity of the judgment.

(5) The liability of the municipality for the damages, and the fact that the damages were sustained under circumstances that entitle the municipality to the remedy over, must be established in the action against the other person in order to entitle the municipality to recover in the action if:

- (a) the notice mentioned in subsection (4) is served, there is no admission or estoppel, and the other person is not made a party defendant or third party to the action against the municipality; or
- (b) damages have been paid without action or without recovery of judgment against the municipality.

2005, c.M-36.1, s.349.

**Rights of action by municipalities**

350(1) In this section, “duties” means duties, obligations or liabilities that are:

- (a) imposed by law on a person in favour of a municipality or in favour of all or some of the residents of the municipality; or
- (b) imposed pursuant to a contract or agreement entered into with a municipality.

(2) Without limiting any other remedy provided by this Act, a municipality has the right by action to enforce any duties and to obtain the same relief and remedy that:

- (a) the Minister of Justice could obtain as plaintiff or as plaintiff on behalf of any interested person; or
- (b) one or more of the residents of the municipality could obtain in an action on their own behalf or on behalf of themselves and other residents.

2005, c.M-36.1, s.350.

**Action re illegal bylaw or resolution**

351(1) Notwithstanding *The Limitations Act*, no action is to be brought for anything done pursuant to a bylaw or resolution that is illegal in whole or in part until:

- (a) one month after the bylaw or resolution or the illegal part of the bylaw or resolution is quashed or repealed; and
- (b) one month's notice in writing of the intention to bring the action has been given to the municipality.

(2) Every action mentioned in subsection (1) is to be brought against the municipality alone and not against a person acting pursuant to the bylaw or resolution.

2005, c.M-36.1, s.351.

**Limitation of actions**

**352** Notwithstanding *The Limitations Act*, there is no limitation on the time within which a municipality may commence an action or take proceedings for the recovery of taxes or any other debt due to the municipality pursuant to this Act.

2005, c.M-36.1, s.352.

**Judgment enforcement against municipalities**

**353(1)** A judgment against a municipality may be endorsed with a direction to the sheriff at the judicial centre at which, or nearest to which, the municipality is situated to levy the amount of the judgment in accordance with the other provisions of this section.

(2) The sheriff shall deliver a copy of the judgment and endorsement to the administrator with a statement in writing of the amount required to satisfy the judgment, including sheriff's fees and interest, calculated to a date as near as is convenient to the date of service.

(3) If the amount required to satisfy the judgment, with interest from the date mentioned in the statement, is not paid to the sheriff within 30 days after delivery of the judgment to the administrator, the sheriff shall:

- (a) examine the assessment roll of the municipality; and
- (b) in a manner similar to that by which rates are struck for general municipal purposes, strike a rate sufficient to cover the amount claimed together with the amount that the sheriff considers sufficient to cover the interest, the sheriff's own fees and the collector's percentage up to the time when the rate will probably be available.

(4) The sheriff shall:

- (a) issue a precept under his or her hand and seal of office directed to the administrator and shall annex to the precept the roll of the rate struck pursuant to subsection (3); and
- (b) by the precept, command the administrator to levy the rate at the time and in the manner by law required with respect to the general annual rates after:
  - (i) reciting the judgment and stating that the municipality has neglected to satisfy it; and
  - (ii) referring to the roll annexed to the precept.

(5) At the first time for levying the general annual rates after the receipt of the precept, the administrator shall:

- (a) add a column to the tax roll;
- (b) insert in the column mentioned in clause (a) the amount by the precept to be levied on each person respectively;
- (c) levy the amount of the judgment rate; and
- (d) within the time that the administrator is required to make the returns of the general annual rate, return to the sheriff the precept with the amount levied on the precept after deducting the sheriff's percentage.

(6) After satisfying the judgment and all fees and costs related to it, the sheriff shall return any surplus within 10 days after receiving it to the administrator for the general purposes of the municipality.

(7) For the purpose of carrying into effect or permitting or assisting the sheriff to carry into effect the provisions of this Act with respect to a judgment enforcement, the administrator and the assessor:

- (a) are deemed to be officers of the court from which the judgment issued; and
- (b) as officers of the court, may be proceeded against by attachment, *mandamus* or otherwise to compel them to perform the duties imposed on them by this section.

2005, c.M-36.1, s.353; 2010, c.E-9.22, s.208.

## DIVISION 2

### Liability of Members of Council and Municipal Officers

#### Interpretation of Division

**354** In this Division:

- (a) “**firefighter**” means a fire chief and any person employed by, appointed by or performing duties for a municipality, whether for wages or otherwise, as a firefighter or to provide fire protection services;
- (b) “**municipal officer**” means all employees of the municipality, of any committee or other body established by council pursuant to clause 81(a), of a public utility board established by council pursuant to subsection 33(2), and of a controlled corporation of a municipality;
- (c) “**volunteer worker**” means a volunteer member of an emergency measures organization established by a municipality, or any other volunteer performing duties under the direction of a municipality.

2005, c.M-36.1, s.354; 2007, c.32, s.19.

#### Immunity re acts of members of council and council committees

**355(1)** No action or proceeding lies or shall be instituted against a member of council, a member of a committee or other body established pursuant to clause 81(a), a member of a public utility board established pursuant to subsection 33(2), a member of a controlled corporation of a municipality or any municipal officer, volunteer worker or agent of the municipality for any loss or damage suffered by a person by reason of anything in good faith done, caused, permitted or authorized to be done, attempted to be done or omitted to be done by any of them pursuant to or in the exercise or supposed exercise of any power conferred by this Act or the regulations or in the carrying out or supposed carrying out of any duty imposed by this Act or the regulations.

(2) Subsection (1) does not affect the liability of a mere contractor with the municipality, nor of any official or employee of any contractor, by reason of whose act or neglect the damage was caused.

2007, c.32, s.20.

