

A Tale of Two Cities and Beyond

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ABMUNIS' 2026 PUBLIC

RISK CONFERENCE

PRESENTED BY DDC LAWYERS

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ABOUT US

Monelle & Nicole

- Municipal Insurance Defence
- Insurance Defence
- Wrongful Dismissal
- Fatalities

Refresher on Sources of Law

1. Common Law

- I. Judge Made Law

1. Statutes

- I. Legislation (Municipal Government Act)

Two Forms of Attack on Municipalities

- Example: car accident, sewer line back up, slip & fall, etc.
- Common Law
 - Negligence
 - Duty of Care
 - Municipality must owe a duty of care
 - Failure to Meet Standard of Care
 - Municipalities' behaviour falls below the requisite standard
 - Causation
 - The negligence caused the loss
 - Damages
 - The Plaintiff suffered damages
- Legislative
 - Breached a provision of the MGA (e.g. s. 532)
 - Duty and Control
 - Municipality has control of the public work
 - Public work in state of disrepair
 - The public work is not in a reasonable state of repair given the character of the area
 - Knowledge
 - The municipality knew, or reasonably should have known
 - Causation
 - The state of disrepair caused the Plaintiff's damages

A Tale of Two Cities: Calgary and Nelson

- Common Law: Nelson v. Marchi
 - Establishes common law liability for non-core policy decisions and operational decisions and clarifies the test to determine when a municipality owes a duty of care.
- Statutory: Pyke v. Calgary (City)
 - Confirms statutory duty under s. 532 of MGA to keep roads in reasonable state of repair

Nelson v. Marchi: Core Policy Decisions

- Issue was whether the specific snow clearing that the municipality undertook made it immune from liability because it was a core policy decision.
- The test to determine whether the decision was a ‘core policy’ decision is four factors:
 1. The level and responsibilities of the decision-maker
 2. The process by which the decision was made
 3. The nature and extent of the budgetary considerations; and
 4. The extent to which the decision was based on objective criteria

Nelson v. Marchi: the Municipalities' Evidence

- In terms of whether the decision about snow clearing was a “core policy” or not, consider the evidence put forward by the City:

“the City’s decision bore none of the hallmarks of core policy. Although the extent to which the supervisor was closely connected to a democratically-elected official is unclear from the record, **she disclosed that she did not have the authority to make a different decision with respect to the clearing of parking stalls** (the first factor). In addition, there is no suggestion that the method of plowing the parking stalls on Baker Street resulted from a deliberative decision involving any prospective balancing of competing objections and policy goals by the supervisor or her superiors. Indeed, there was no evidence suggesting an assessment was ever made about the feasibility of clearing pathways in the snowbanks; **the City’s evidence is that this was a matter of custom** (the second factor). Although it is clear that budgetary considerations were involved, **these were not high-level budgetary considerations** but rather the day-to-day budgetary considerations of individual employees (the third factor)”

Nelson v. Marchi: Practical Considerations

- Work with operations teams to ensure they understand:
 - Prioritizing public safety repairs and works
 - When to limit the use of a road or other public space to minimize risk of injury
- Document:
 - Discussion of budgetary constraints when dealing with prioritizing repairs and public works
 - Discussions of objective criteria when making decisions about prioritizing repairs and maintenance of public works

Pyke v. Calgary (City): Duty to Repair

- Issue was battle between two sections of the MGA:

Inspections and maintenance

530 (1) A municipality is not liable for damage caused by

(a) A system of inspection/ maintenance, or the manner in which inspections are to be performed, or the frequency, infrequency or absence of inspections

Repair of roads, public places and public works

532(1) Every road or other place ... must be kept in a reasonable state of repair by the municipality, having regard to

(a) The character of the road, public place or public work

Pyke v. Calgary (City): MGA Fight

- The Alberta Court of Appeal agreed with the lower Court, s. 532 takes priority over s. 530:

“In our view, s. 530 is justly interpreted as protecting municipalities from liability for their discretionary planning or design choices in relation to the inspection and maintenance of roads and public spaces. It does not otherwise absolve the City from liability for a breach of its statutory duty to keep “[e]very road or other public place that is subject to the direction, control and management of the municipality

- Some fun commentary: this sounds a lot like immunity for ‘core policy’ decisions from Marchi, even though we are in the statutory context, not the common law context

Pyke v. Calgary (City): Practical Considerations

- Ensure your municipality has:
 - Updated policies about monitoring and inspecting public spaces to ensure it knows about required repairs
 - Quick turn arounds for repairing and maintaining public works, if not, ensure proper signage is put up to ward off the public

Newer Cases

- Legare v. Acme (Village)
 - The owners of a home sued the village after a sewer pipe back up.
 - There was evidence that the Village knew that the sewer line was too small and not in accordance with Provincial standards.
 - The appeal Court agreed with the lower Court in that once the Village knew that the sewer line was too small:

“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”
- Practical Considerations: seems to suggest increased maintenance for public works of concern. Better to be on safe side and repair.

Newer Cases

- Weiler v. London, 2026 ONSC 2011

- Pedestrian sustained serious injury after tripping and falling on raised edge between two city sidewalk slabs during the pandemic.
- The City called four employees to testify about their sidewalk inspection program and the impacts on the same from the pandemic.
- The Court found that:

“I conclude that the evidence overwhelmingly demonstrates the decision not to inspect the sidewalk was based on public policy considerations for which the City should not be second-guessed by the Court. Any liability arising from failure to inspect the sidewalk is subject to core policy immunity”

Newer Cases

- 3311876 Nova Scotia Limited v. Trenton (Town), 2023 NSSC 60
 - An owner's rental property flooded after a significant rain event
 - The Town knew the culverts adjacent to the property were in a state of disrepair
 - However, Town adduced evidence that:
 - The Town Council made the decision to set aside the culvert repairs.
 - The decision-making process was fulsome in that it contemplated short and long-term infrastructure project.
 - The Town had significant budgetary constraints
 - The Town had a long list of infrastructure projects, but had to prioritize
 - The Court found no duty of care, but the decision was sent back to an Adjudicator for another reason.

Summary of Practical Considerations

- Work with operations teams to ensure they understand:
 - Prioritizing public safety repairs and works
 - When to limit the use of a road or other public space to minimize risk of injury
- Document:
 - Discussion of budgetary constraints when dealing with prioritizing repairs and public works
 - Discussions of objective criteria when making decisions about prioritizing repairs and maintenance of public works
- Ensure your municipality has:
 - Updated policies about monitoring and inspecting public spaces to ensure it knows about required repairs
 - Quick turn arounds for repairing and maintaining public works, if not, ensure proper signage is put up to ward off the public

Thank You!

Please Contact Us
With Any Questions!

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