

AGING MUNICIPAL INFRASTRUCTURE: WHAT GIVES?



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Overview

1. Relevant types of infrastructure
2. Common ways to manage disrepair
3. *Legare v Acme (Village)*
4. *Pulkinen v Crowsnest Pass (Municipality)*
5. *Condo Corporation No. 0410106 v Medicine Hat (City)*
6. Successful Defences/Best Practices
7. Questions



What types of infrastructure?



- **Roads, bridges, sidewalks, culverts, and traffic control systems**
- **Water and wastewater systems**
- **Recreation areas**
- **Emergency services buildings and public amenities**
- **Waste disposal facilities**
- **Shared utility infrastructure**



- **Privately owned infrastructure servicing only a single parcel of land**
- **Private utility and telecommunication networks**
- **Provincial highways**



Managing disrepair and aging



- Strategic planning
- Phased replacement plans
- Life-cycle costing
- Risk-based infrastructure management
- Proactive inspection, maintenance, renewal, and decommissioning
- Regional collaboration



Legare v Acme (Village): 2023 ABKB 145

- Village was aware that its sewer lines were narrower than required by provincial standards, making them more susceptible to blockage
- A severe sewage backup occurred in the home of the Plaintiffs
- Village relied on visual inspections of the sewer lines performed once per year



Municipal Government Act

Section 530: Inspections and Maintenance

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

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

(b) a system of maintenance, or the manner in which maintenance is to be performed, or the frequency, infrequency, or absence of maintenance.



Legare v Acme (Village): 2023 ABKB 145

- A design defect is a state of disrepair
- Since the Village knew about the inadequacy...
 - Replace the pipes; or
 - Impose a heightened inspection/maintenance regime
- The Court awarded stigma damages to compensate for diminished property value even after remediation to pristine condition



Legare v Acme (Village): Case takeaways

DO:

- Repair known deficiencies as soon as possible
- Impose vigilant, documented, proactive maintenance regimes on infrastructure
- Be proactive in implementing infrastructure which conforms with existing regulations

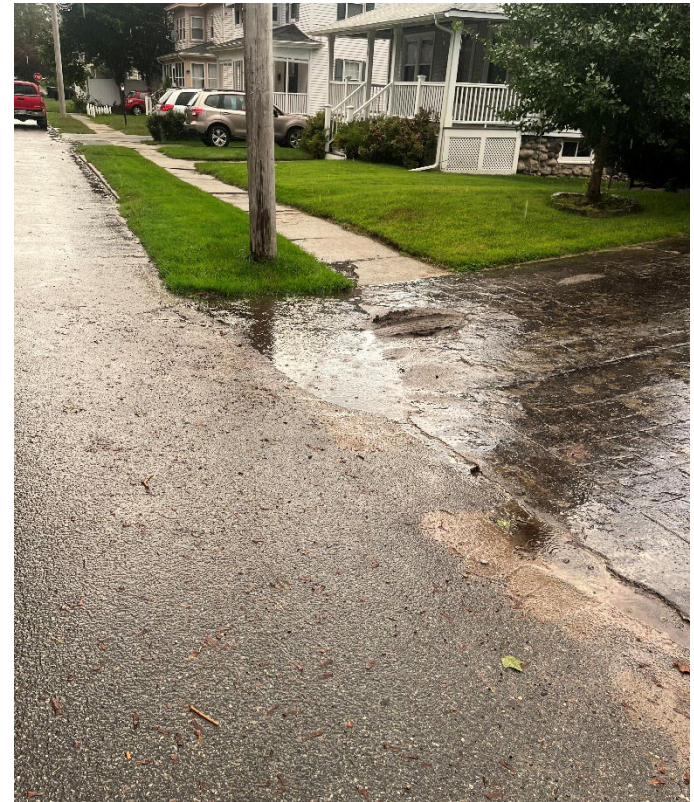
DON'T:

- Rely on cursory visual inspections of infrastructure, particularly when the infrastructure is known to be defective
- Delay planning/management of aging infrastructure



Pulkinen v Crowsnest Pass (Municipality): **2020 ABPC 53**

- Rainwater flowed over a “slumped” curb and onto the Plaintiff’s property, causing damage
- The municipality had been notified twice of the curb’s deficiency prior to the event in question
- The municipality inspected the curb, but elected not to repair it



Municipal Government Act

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 - (b) a system of maintenance, or the manner in which maintenance is to be performed, or the frequency, infrequency, or absence of maintenance.***



Municipal Government Act

Section 533: Things on or adjacent to roads

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, illumination device or barrier adjacent to or in, along or on a road, 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 road that is not on the travelled portion of the road.*



Pulkinen v Crowsnest Pass (Municipality):

Case takeaways

DO:

- Document decision making
- Prioritize based on available resources
- Use discretion to decide against immediate repair, if that decision can be made in good faith

DON'T:

- Ignore repairs just because curbs do not automatically attract liability
- Ignore known issues/deficiencies, or act in bad faith



Condo Corporation No. 0410106 v Medicine Hat (City): 2019 ABCA 294

- A development company agreed to be responsible for the internal water, sewer, and lift station infrastructure within their development
- The subsequent landowners argued that the City was responsible for that infrastructure



Municipal Government Act

Section 34: Duty to supply utility service

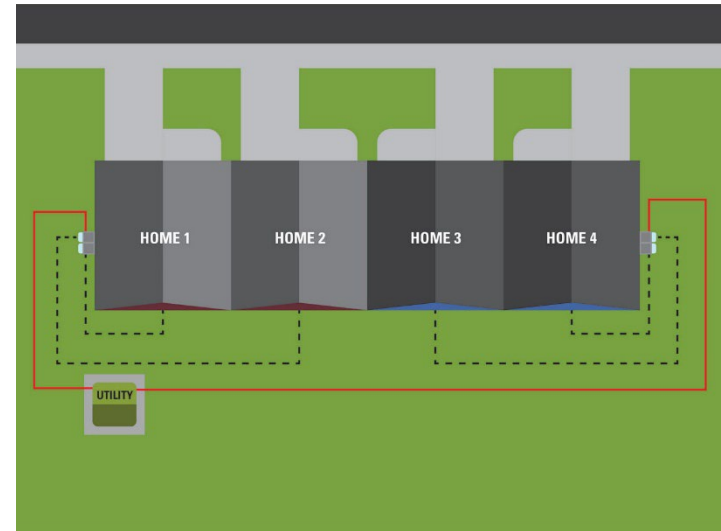
(1) If the system or works of a municipal public utility that provide a municipal utility service are adjacent to a parcel of land, the municipality must, when it is able to do so and subject to any terms, costs or charges established by council, provide the municipal utility service to the parcel on the request of the owner of the parcel.

(2) If the system or works of a municipal public utility that provide a municipal utility service are adjacent to a parcel of land, the municipality may, when it is able to do so and subject to any terms, costs or charges established by council, provide the municipal utility service to the parcel of land on the request of the occupant of the parcel who is not the owner.



Condo Corporation No. 0410106 v Medicine Hat (City): 2019 ABCA 294

- A municipality has a duty to maintain services on private land if they service multiple parcels of land

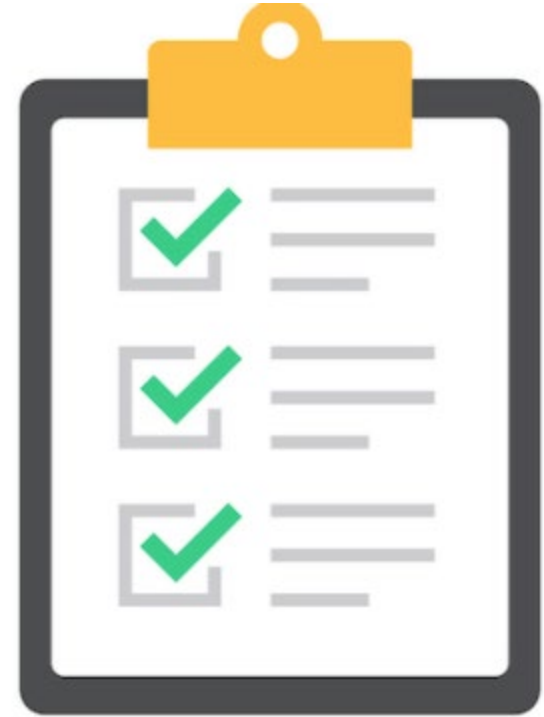


- The duty does not extend to any part of the service which is used solely for the purpose of supplying utility services to that parcel



Successful Defences

- Be vigilant in maintenance and inspection practices
- Implement systems which include steps to prevent disrepair from coming about
- Put in place phased replacement/repair plans
- Ensure Council is involved in decision-making and financial planning
- Take steps to address disrepair once it has been discovered



QUESTIONS?



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