

Public Safety Committee Report Questions & Considerations

Questions

1. 6A. Liability and responsibility to protect vacant buildings
2. 6B. Liability and access to vacant land and unsightly properties
3. 6C. Requirements of owners to address vacant buildings, land and unsightly properties
4. 6D. Enforcement of bylaws related to addressing vacant buildings, land, and unsightly properties

Summary of Considerations

Policy decisions that are followed by municipal officials are usually indemnified by the courts

- Mandatory enforcement regimes (e.g. building codes) do not usually give risk of liability for municipalities when enforcing such regimes
- Where municipal officials exercise enforcement discretion, officials should ensure that all actions taken are reasonable under the law
 - Courts usually dismiss cases against municipalities where risks are not created by municipalities
 - For discretionary enforcement, courts give broad latitude to municipalities to implement if the reasonableness component is maintained during enforcement
- Unreasonable discretionary enforcement can give rise to liability for municipalities as determined by courts
 - Ineffective or inconsistent enforcement of legislation or other mandates (e.g. bylaws) can give rise to liability for municipalities even though the purpose of legislation is not to protect private financial interests (e.g. taxi licenses)
 - Close collaboration between municipalities and other persons or groups, where those groups come to rely on municipalities' actions, can increase the likelihood for liability for municipalities
- Improving a situation or circumstance the City controls after an issue has occurred is not necessarily a cause for liability to arise if the conditions in place before the incident were already reasonable.
 - Plaintiffs may pursue claims based on post incident improvements regardless
 - Municipalities are subject to risks of liability under **Occupiers Liability Act** for premises and defenses rely on reasonableness of municipality actions in limiting risks to others

Opinion Articles

Discretionary enforcement / Negligent enforcement, Charles M. Hoopstra / (Municipal Liability Risk Management)

- Private law tort of negligent enforcement is well established in case law
- Enforcement decisions by statutory officers such as Chief Building Official (or their designates) require reasonable exercise of authority in all circumstances
- **Building Act** (BC) / **Building Code Act** (ON) has a mandatory inspection scheme where official discretion is constrained. So, the issue of an official's discretion does not apply to these parts of the inspection or approval work.
- The well-known caselaw used for judicial decisions is **Kamloops v Nielsen**. This case establishes *prima facie* duty of care in enforcement for municipal officials.
 - These duties can only be negated by a policy decision made by municipalities through bylaws, policies, procedures, etc. that are established by the highest municipal leadership levels with the establishment processes recorded
 - For non-mandatory schemes (e.g. not building code) courts give more latitude to officials in determining how enforcement occurs.
 - Courts typically dismiss cases where government officials were not responsible for creating risks for others
 - Courts are not generally concerned with “direct” or “vicarious” liability questions, OR “agency” of particular people
- **Metro Taxi v Ottawa** was a suit brought by a taxi operators coalition against the City of Ottawa for new law (Taxi bylaw) and related to the City allowing Uber to operate illegally in violation of the existing bylaw. The City was determined by the court to be negligent for this non-enforcement and this left the City open to being liable for taxi coalition damages. Some key points of that case are:
 - The City argued the bylaw wasn't intended to protect private financial interests, but rather consumer protection, and the court agreed.
 - But the court found that close collaboration of the City with taxi operators created a City “duty of care” to the operators.
 - The City was determined by the court to have failed to go after Uber corporation for license violations, by only fining drivers who worked for Uber in violation of the taxi bylaw
 - The court indicated what the City “could have done”, e.g. cease and desist letter to Uber. Some legal commentators find this action by the court as problematic as it goes beyond interpreting the law and offering suggestions of a solution
 - The court determined “inadequate enforcement” on the part of the City, but this was not determined to be negligence on the City's part
- Supreme Court determination on this case was analyzed by Conway Litigation as follows:
 - The City was negligent in not effectively enforcing its own bylaw on taxis. The subsequent economic damage was determined by the court to be foreseeable by the City
 - The City's negligent enforcement did not infringe on taxi plate holders rights under the **Human Rights Code**
 - Specifically, the fees collected by the City under bylaw are not an illegal tax

- The court left the issue of damages open but determined any damages must be closely linked to City enforcement actions or omissions

Post Accident Remedial Actions by Owner/Occupier as Determinative of Liability?

- The leading case addressing this is **Sapia v Invermere**, where an elderly person fell outside senior's hall. Afterwards, the building owner added a yellow line to show elevation change in the parking lot where the accident occurred
- This case speaks to the issue of "fixing" something after an incident and whether doing this is evidence of liability for the incident or an admission of liability through such remedial actions.
- The basis for court decisions in this case includes:
 - The court found that there were already other indicators or warnings of the elevation change in the parking lot that were in place at the time of the accident. There was no need to add a yellow line for safety to demarcate as determined by the court
 - Such remedial action by the Owner in this case was not determinative of liability as a result
- The case of **Cahoon v Wendy's Restaurant** determined that steps taken after an accident can change a reasonably safe area to one that is more than reasonably safe.
 - But it can also change from unsafe to reasonably safe. So, action after the fact is "merely a factor to be considered in answering the question of whether the areas ...was reasonably safe...". Other key points from Hoogbruin & Company commentary:
 1. Municipalities are subject to a duty of care for premises under the **Occupiers Liability Act**
 2. The duty of care for a City is one of reasonableness (e.g. what would a reasonable person do?)
 3. Seniors should receive a higher standard of care in considering reasonableness.
 4. Negligence arises from creating through action or inaction an "objectively unreasonable risk of harm"
 5. Regulatory compliance by a party does not automatically preclude civil liability for negligence
 6. Remedial after actions are not necessarily determinative of liability
 7. Previous safe use of a site or location is considered in court cases but is not determinative on its own
 8. The burden of proof for negligence and liability remains on plaintiff for these situations.

References

Bylaws

1. Zoning Bylaw, No. 7850 (Bylaw)
 - a. All changes to development must comply with bylaw and be in accordance with the Official Community Plan.
 - i. OCP outlines development principles and policies.
 - ii. OCP seeks to adapt to changes and desired improvements in planning, including strengthening downtown and neighborhood centers
 - iii. OCP land use suitability has several factors
 - iv. OCP makes the downtown more attractive to biz and individual
2. Adoption of OCP, No. 8383 (Bylaw)
 - a. Mandates adoption of OCP: includes land use planning, restrictions, developments,
3. Nuisance Abatement and Cost Recovery Bylaw No. 8940 (Bylaw)
 - a. Nuisance details must be known and shared via report to Bylaws Mgr.
 - b. Mgr. recommends abatement actions and maybe requests Council order
 - c. Owner failure to comply may result in cost recovery per this bylaw and ***Community Charter or the Offence Act***
4. Building Bylaw No. 9482
 - a. Intends to cover the design, construction, occupancy, alternation, reconstruction, demolition, removal, relocation and occupancy for the general public interest
 - b. The owner must obtain permits for all the above or stop work when an order is issued. Do not occupy orders must be complied with as well
 - c. Compels repair of muni assets if damaged during private construction
 - d. Building official is provided reasonable entry
 - e. Permits can be revoked if violation of permit conditions exist
 - f. Enforcement under this bylaw is made pursuant to ***Offence Act***, and ***LGBNE Act***
5. Business Regulation and Licensing Bylaw No. 9040
 - a. All businesses require licenses to operate in the City
 - b. Issuance and revocation are in the scope of the City
 - c. Businesses subject to any regulations or restrictions must meet all those requirements prior to applying for a license
 - d. Council can revoke a business license
6. Bylaw Notice Enforcement Bylaw No. 8813
 - a. 30 days compliance following notice
 - b. Notices must be issued as described in the bylaw
7. Public Notice Bylaw No. 9329
 - a. Outlines City responsibilities to make public notification, locations, timing, etc.
8. Comprehensive Fees and Charges Bylaw No. 7557
 - a. Schedule of fees, licenses, and charges possible by the City
9. Election and Political Signs Bylaw No. 8867
 - a. Applies “only” to election signs, their placement and removal practices
10. Fire Protection and Emergency Response Bylaw No. 8272
 - a. Applies to prevention and suppression of fires and regulating related things
 - b. Fire Chief can take any measures for fire protection of City and citizens, including enforcement measures, orders, etc.
 - c. Rights of intervention and entry exist for incidents and cannot be interfered with

- d. Limits presence of fire hazards, waste, or other fire risks
 - e. Must have up to date plans and contacts
 - f. Violations can result in fines, which appear in a schedule
11. Garbage Collection Regulation Bylaw No. 7661
 - a. Regulates garbage handling and applies to all occupiers
 - b. Garbage must be placed in containers described in this document
 - c. City can remove unapproved garbage at occupier's expense, collected as all other taxes
 12. Noise Control Bylaw No. 3848
 - a. No property is permitted to cause noise that disturbs the quiet. Applies to owners and occupiers.
 - b. Owners cannot permit any nuisance to exist on their property
 - c. Property repairs are contemplated as are other remediations
 - d. City rights of entry and removal exist, fines possible
 13. Nuisance Abatement and Cost Recovery Bylaw No. 8940
 - a. The City has authority to direct and intervene for noncompliance. Nuisance interferes with use of any area or causes injury to health, comfort or convenience
 - b. Includes many objectionable circumstances, e.g. unsanitary, liquids, odour, littering, trespassing, etc.
 - c. No person shall permit nuisances to exist, but Council may issue orders to abate
 - d. City may abate and charge owner and recover costs, or fine
 14. Property Maintenance Bylaw No. 8425
 - a. Owners or occupiers are responsible for implementing these provisions.
 - b. Prevents garbage, unsightliness, unsanitariness, graffiti, noxious weeds, hazardous bushes/trees, derelict vehicles, unsafe walks, unsafe equipment, pests, demolition materials,
 - c. Must secure vacant buildings, prevent dilapidated structures, maintain exteriors
 15. Safe Streets Bylaw No. 9209
 - a. Obstructive street solicitation not permitted, after dark, drug use in public, drug paraphernalia, open burning, graffiti,
 - b. Violations can be fined, property seized
 16. Sign Bylaw No. 7202
 - a. Govern size, placement, permitting of signs
 17. Parking and Traffic Bylaw No. 6056
 - a. Governs parking in City areas, roads, and covers locations, parameters, limits, regulation actions, penalties, removal,
 18. Responsible Animal Ownership Bylaw No. 8898
 - a. Dogs licensed and not at large, not dangerous, not defecating, on a leash, unattended, not a nuisance,
 - b. Offences and penalties are described
 19. Garbage Collection Regulation Bylaw No. 7661
 - a. Governs collection of garbage and owner placement, containers, etc.

Policies & Procedures

1. Tow Procedure for On & Off-Street Bylaw Offences (Administrative Procedure)
 - a. Towing for life safety or traffic hazard & abandoned/uninsured. Officer determines
 - b. [Tow Procedure 2014.pdf](#)
2. Clean up of Biohazards on Public Property (Administrative Procedure)
 - a. Crime/emergency/investigation may create biohazards that exist on City property and clean up required to protect public. Acme cleaning called
3. Community Standard for the Exterior Maintenance of Buildings and Other Structures (Policy)
 - a. Protects from unsightly, hazardous and blighting conditions, and provides abatement
 - b. Requires exteriors maintained in “workmanlike manner”
4. Crime Prevention through Social Development (CPSD) (Policy)
 - a. CPSD strategies reduce the availability and attractiveness of opportunities for criminal activity