

MGA DEFENCES: Trending Cases



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Overview

1. Brief overview of the *MGA* defences
2. *Pyke v Calgary (City)*, 2022 ABQB 198 (aff'd 2023 ABCA 304)
3. *Bravi v Rocky View County, et al.*
4. Best Practices
5. Questions



The MGA

- Municipalities are treated differently in certain circumstances when compared to other litigants
- The *MGA* provides numerous defences to municipalities
- These sections of the *MGA* that provide defences have not been overly litigated leaving room for judicial interpretation and application



Common Defences

533: Things on or adjacent to roads

(1) A Municipality is not liable for damage caused by:
(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



Common Defences

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.



Statutory Duty (s. 532)

532: Repair of roads, public places and public works

(1) Every 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 roads or public place put there by the municipality or by any other person with the permission of the municipality, **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, and*

a) *The area of the municipality in which it is located.*

(2) The municipality is liable for damage caused by the municipality failing to perform its duty under subsection (1).



Statutory Defences (s. 532)

532: Repair of roads, public places and public works

(5) A municipality is not liable under this section in respect of 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.

(6) A municipality is liable under this section only if the municipality knew or should have known of the state of repair.

(7) A municipality is not liable under this section if the municipality proves that it took reasonable steps to prevent the disrepair from arising

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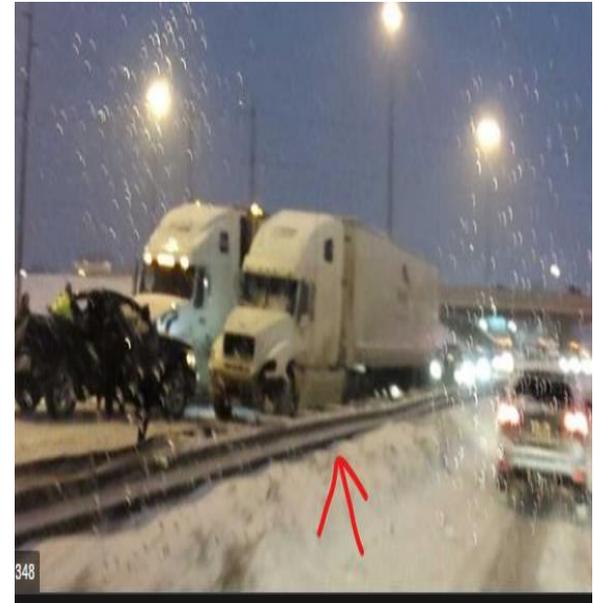
(9)-(10) Must notify municipality within 30 days after occurrence of incident. Failure to notify will bar the action unless the claimant provides a reasonable excuse and the municipality is not prejudiced.



Pyke v Calgary (City): 2022 Trial Decision

Facts:

- The Plaintiff lost control of the vehicle and struck the barrier causing it to launch over and into an oncoming vehicle
- The Plaintiff argued the City bore some liability for the barrier for failing to keep the barrier in a reasonable state of repair, in breach of s. 532 of the Municipal Government Act
- Barrier in question was designed and built in 1987: median beam barrier placed in the middle of a protective curb
- The parties applied for a judicial determination of whether the City bore any liability for the Accident

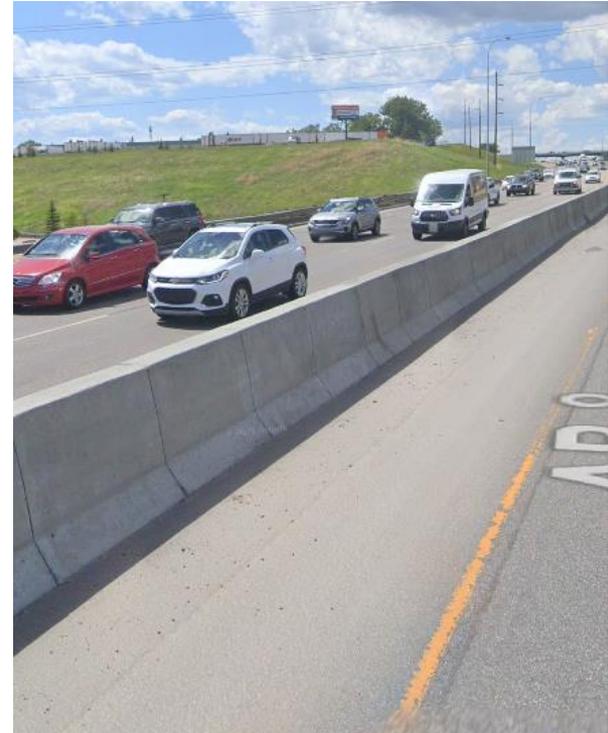


Pyke (2022)

The Barrier



Before



After



Pyke (2022)

Breach of section 532?

- The Lower Court found the City breached s. 532 as it failed to keep the highway in a reasonable state of repair by permitting (1) gravel and dirt to build up along the barrier for 27 years, and (2) snow buildup
- Lower Court broadening the definition of “disrepair” to include the buildup of gravel, snow and ice on a highway
- Lower Court determined that s. 530 was inapplicable to s. 532 claims, which applies to all roadways and public places.
- Lower Court: Municipalities have to look to s. 532 for any potential defences...



Pyke (2022)

Section 532(6):

- City tried to rely on section 532(6) as a defence, because a municipality is liable only if it knew (or ought to have known) of the state of repair of the highway
- Lower Court rejected this argument, finding the buildup of gravel and snow along the barrier was obvious
- City should have known of the buildup from a notorious accident on the highway in nearly the same manner, two months earlier
- City had internal policies that required it to maintain its medians for safety reasons, but had not addressed the gravel build-up for 27 years



Pyke (2023): Appeal Decision

- S. 530 and 532 can function alongside another but 530 must still take a narrow interpretation
- S. 530 applies to the planning and design of a system of inspection or maintenance, not the implementation of that system
- Municipalities cannot rely on a deficient system if it is “armed with knowledge of a state of disrepair”
- Once a municipality knows about the state of disrepair, it must take reasonable steps to address that disrepair.
- The Court of Appeal wants to avoid situations where municipalities adopt a no-maintenance or inspection policy to avoid liability



Pyke (2023)

- City's own Spring Clean-Up policy required it to address the build-up of gravel along road medians each spring—this had not been done in years
- City claimed it was unaware there was a build-up of gravel and snow along this specific area of the median where the Accident occurred
- Court disagreed finding that the City “should have known” about this area given its own Spring Clean-Up policy and the history of prior accidents along this area of roadway
- Lower Court found this was an “operational omission”
- City still liable (partially) but Court of Appeal walked back Lower Court's reasoning



Pyke (2023): Section 533

- **Section 533**
- *533 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,*
- Court of Appeal determined this section does not apply to the matter but also commented it does not provide a blanket immunity in any case implicating barriers, medians and curbs



Pyke (2023): Section 533

- **Scope of s. 533 not entirely clear:**
- Section 533(a) operates to shield Alberta municipalities from liability for good faith decisions in relation to certain types of roadway infrastructure, including decisions about what to install and when, where, and how to install it.
- However, where the presence, absence or type of infrastructure described in s. 533(a) is shown to be the result of a municipality acting in bad faith or for an ulterior purpose there remains a question about whether the exemption applies



Bravi v Rocky View County, et al. (2024)

Background

- Fatal motor vehicle accident – driver killed, passenger paralyzed
- Operating the vehicle on a County-owned road, which curves into private driveway
- Vehicle did not maneuver curve, left road, and crashed
- Claim brought against County and driver's estate by passenger



Bravi (2024)

Issues/Law

- Sections 530, 532, and 533(a) of the MGA implicated
 - State of repair of the road?
 - System of inspection or maintenance for the road?
 - Signage and maintenance of signage for the road?



Bravi (2024)

The Road

- County road, terminates in dead-end
- Vehicle left the road at the beginning of privately owned land



Bravi (2024)

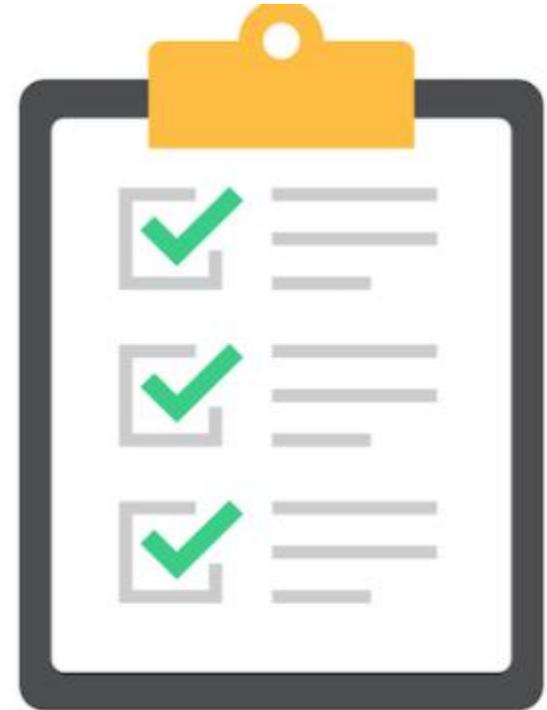
Decision

- Claim summarily dismissed against the County
 - County not under duty to maintain privately owned portion of road (curve)
 - County implemented, and followed, maintenance policy
 - No obligation to install traffic control device – just maintain
 - Post-accident changes not relevant
- Decision stands – no appeal



Best Practices

- MGA statutory defences should not be considered blanket immunities
- Expect to see an increase in s. 532 claims
- Be aware of your policies, follow them and avoid “operational omissions”
 - In *Pyke*, City had an internal policy that required it to address gravel buildup along roadside medians in the spring, but City was not addressing this area where the Accident occurred— “Operational Omission”



Best Practices

- Once a municipality knows about a “disrepair” (e.g. gravel building-up along medians), the analysis then turns to whether the municipality took reasonable steps to address the disrepair
 - What constitutes a reasonable step is not always clear and will depend on the context and disrepair
- Court may look to commercial standards for guidance in certain situations (e.g. daily inspections during the winter months for exterior property traversed by pedestrians)
- Caveat: s. 531 states municipalities are only liable for damages caused by snow or ice on roads or sidewalks if the municipality is grossly negligent – not considered in *Pyke* and Court of Appeal



QUESTIONS?

