

TALES FROM THE TRENCHES™

BY BARRY C. MCGUIRE

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“THIRD PREVENTABLE FLOOD AT ALBERTA HOME; WHO IS LIABLE?”

Recently, some Alberta homeowners finally ran out of patience when their property was flooded—again. They lived on the lower end of a sloped street, and water flowed down the block from the higher end when it rained. The curb had slumped in front of their home, allowing water to run over it, across the neighbour's driveway, and onto the homeowner's property, causing damage. After the third occurrence (yes, that's right, three floods!), the homeowners decided to sue the municipality. This Tale discusses the ensuing court case and why people usually lose against City Hall.

Suing the City for Flood Damage

The homeowners claimed damages of \$7,160.97. In court, they were able to establish that rainwater did, at least partially, flow along the curb and then up and over the curb and across the neighbour's driveway onto the homeowner's property, and that they suffered some erosion to their property with resulting damage. They also established that the municipality knew of the slumping curb but decided not to repair it. Further, they were able to show that they tried to resolve the problem the first two times flooding occurred. They also proved that, before launching their lawsuit, they had gone directly to the municipality to talk to them about the problem, trying to get the municipality to fix the curb.

So, what's your guess? Do the homeowners win their lawsuit? They do not! In a nutshell, here's what the court said: the homeowners failed to prove how much water came from the rainwater that flowed up over the curb versus how much water came directly from their neighbour's property. Moreover, they also couldn't prove the City had acted negligently or in bad faith.

You see, Section 530 of Alberta's [Municipal Government Act](#) gives immunity to municipalities in relation to how they maintain their property or don't maintain it. That immunity protects the municipality unless the homeowners can prove that systems/inspections were implemented negligently or not in good faith. The plaintiffs failed to prove either.

Losers in court cases usually have to pay the winner's court costs, which can be substantial. The Court threw the homeowners a bone and said that the municipality had to pay their own costs and could not collect from the homeowner. Cold comfort when to any objective eye, it looked like the homeowners did everything right and were very patient.

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LESSONS LEARNED:

- **In court, even what's 'obvious' must still be proved.**
In this case, the amounts of water attributable to the municipality were not clearly or quantifiably separated from that of the neighbour.
- **Municipalities are a big, fat target—but they are protected.**
Big Albertan cities like Calgary and Edmonton, as well as smaller towns and regional service commissions, have huge infrastructure responsibilities. That's why Alberta's Municipal Government Act protects them unless, generally, they do things negligently or in bad faith. Without that protection, municipalities would spend all their time fighting lawsuits, so this sort of law is common in other jurisdictions, too.
- **You can't fight City Hall.**
Realistically, it's tough to sue and win against any level of government. They make the rules!

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