

Who might bring a claim against a municipality?

Long list of people who might bring a claim against a municipality as a result of inspections:

- original property owners,
- builders,
- subsequent owners and occupiers,
- neighbours,
- parties financing building construction or development.

What can a municipality be liable for?

If found liable, a municipality can be responsible for paying for costs such as:

- repairing the building defect,
- repair of damage to property,
- Ioss of income,
- loss of equity, could include damages related to collapse of a project,
- personal injury damages if someone is physically injured as a result of a defect.

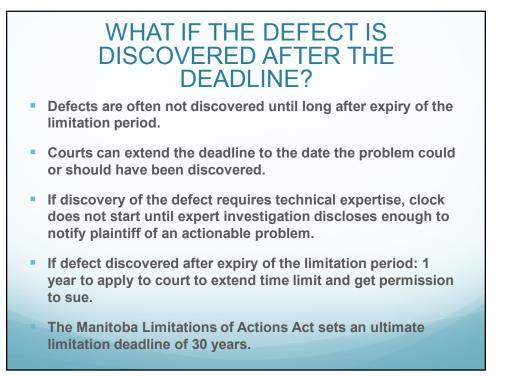
When can a claim be brought?

In Manitoba, a claim must be brought within 2 years under the

- Limitations of Actions Act (negligence), and
- Public Officers Act

The limitation period starts running from the date the cause of action arose.

For the negligent issuance of a building permit, this means 2 years from the date the permit was issued.





What will the standard be?

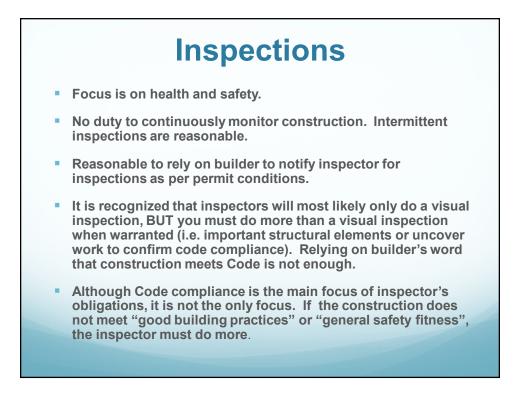
Determination of the standard to apply to a specific situation may consider the:

- nature of the development;
- size and complexity of the building;
- likelihood of harm resulting;
- gravity of potential harm;
- cost of preventing or remedying the harm.

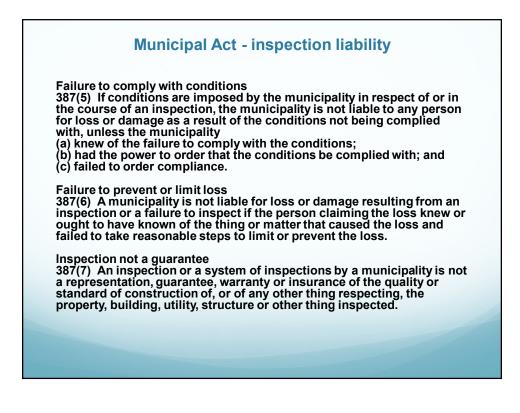


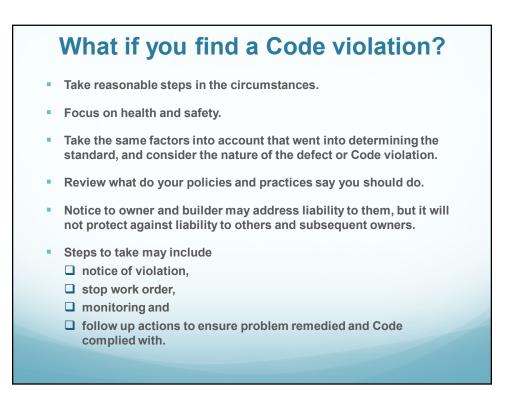


- Plans do not have to show every detail re: code compliance.
- Plans may be insufficient but if they do not point to a problem may be no liability if a defect is discovered.
- Plans that are inadequate on their face and show a departure from the Code or an issue with safety will attract liability.
- Inspectors should be able to rely on sealed engineered plans as sufficient to support the issuance of a permit and avoid liability.



Municipal Act - inspection liability Requests for inspections 387(1) A municipality is not liable for a loss related to (a) the manner or extent of an inspection; or (b) the frequency, infrequency or absence of inspection; unless the inspection was requested at the appropriate stage of construction and with reasonable advance notice before the inspection was required, and the municipality failed to conduct the inspection or conducted it in a negligent manner. Negligent inspections 387(2) An inspection is conducted in a negligent manner only if it fails to disclose a defect or deficiency that (a) could be reasonably expected to be detected; and (b) falls within the scope of the inspection being conducted. Certification by professionals 387(3) For the purpose of an inspection, a municipality may rely on a certification or representation by an engineer, architect, surveyor or other person with expertise respecting the thing being certified or represented, and a municipality that relies on such a certification or representation is not liable for any loss or damage caused by the negligence of the engineer, architect, surveyor or other person in making the certification or representation. Matters outside scope of inspection 387(4) An inspection by a municipality to enforce a building standard does not create or impose a duty on the municipality with respect to any matter not being inspected.

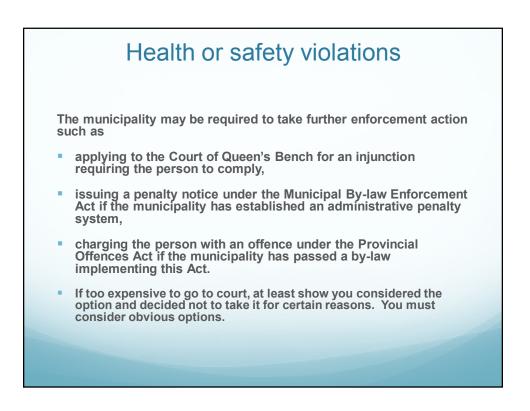




What if owner/builder refuses to remedy the violation?

To avoid liability, you need to demonstrate that you have done everything you reasonably can to remedy the problem in these circumstances.

Courts do recognize that municipalities do not have unlimited financial or human resources.



What if there was negligence in the issuance of the permit or in the inspections?

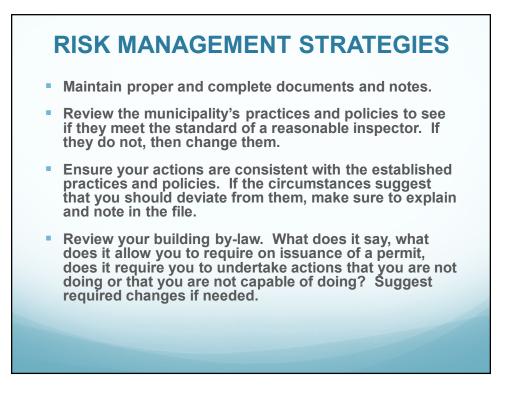
- The municipality is a good target: insurance available to pay for the damages, always around and easy to find, not bankrupt.
- The Tortfeasors and Contributory Negligence Act: as long as the municipality has any liability, it can be required to pay all of the damages and be left chasing the other responsible parties.
- The property owner may share some responsibility for the damages, but their actions are not a bar to recovery unless their actions made it impossible for the inspector to discover the problem.

Municipal liability does not make the inspector liable

Even if negligent, an inspector is not liable for damages if they result from the inspector's actions carried out in good faith in the performance or intended performance of the inspector's powers, duties or functions.

Protection from liability

403(1) A member of a council or council committee, or a municipal officer or volunteer worker is not liable for any loss or damage suffered by a person by reason of anything said or done or omitted to be done by the member, officer or volunteer worker in good faith in the performance or intended performance of powers, duties or functions under this or any other Act.



MORE

RISK MANAGEMENT STRATEGIES

- Review the form of permits, forms, and handouts. Do they adequately address the way you do or want to do your job (i.e. timing of and calling for inspections).
- Review the by-law appointing you or creating the inspector position. What does it say? Is it clear enough to ensure that the inspector has all the needed administrative and enforcement powers under the Municipal and Planning Acts?
- Educate the public: make them understand what you do and don't do. Use handouts and make information available on the municipal website.

