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Managing Obstructions in a Watercourse

Although sections 103 to 110 of the *Municipal Powers Act* (MPA) declare that watercourse management is an exclusive power of RCMs, local municipalities still have a role to play. For example, they may be parties to an agreement to manage work arising from obstructions or called upon to collect debts and taxes.

For that reason, both administrative bodies need to fully understand the relevant powers and obligations arising from the MPA. *Orsoni v. Ville de Sainte-Thérèse*¹ is an example where the municipality was implicated along with the RCM, both having failed to meet their obligations under section 105 of the MPA. This dispute can be summarized as follows. The applicants bought their home in 2008. From that moment on, they experienced major overflows of water and mud from the street upstream from their property. In 2020, a sinkhole measuring 3.5 m in diameter by 1.5 m in depth opened up in their yard. All agreed that it was caused by a major blockage in the storm sewer pipe on their property, which had been installed when the street was extended in the 1960s. Previously, the Ruisseau Charron flowed at surface level.

In their case against the City and the RCM, the plaintiffs sought replacement of the pipe and restoration of their property, citing the City's and the RCM's obligations under section 105 of the MPA. The defendants claimed that while they recognized that the pipe was part of the City's storm network and that the criteria of section 105 had been met, it was the plaintiffs who were responsible for the maintenance and repair of the pipe as its owners or guardians.

However, the Court found that the defendants were, in fact, required to act. Firstly, the Ruisseau Charron is a watercourse under the jurisdiction of the RCM, even though part of its course had been channelled. Secondly, there was an obstacle in that watercourse as described in section 105 of the MPA; the defendants were aware of it and it threatened the safety of persons or property. Furthermore, section 107 of the MPA grants access to private property for the purposes of carrying out work and sets the requirement to restore the premises to their original state. Finally, the Court noted that an agreement between the RCM and the City under section 108 of the MPA made the City responsible for managing work resulting from obstructions and assigned it civil liability for third-party claims.

The Court agreed with the plaintiffs that the defendants had no discretion and were required to remove the obstruction and restore the normal flow of water in the watercourse, regardless of the ownership of the culvert. It also pointed out that the City remained the guardian of its stormwater collection and drainage system. It therefore ordered both defendants to replace the pipe and restore the site at their own expense.

Lastly, the Court specified that the defendants could not call on paragraph 2 of section 105 of the MPA to recover the costs of intervention from the plaintiffs. That provision allows for municipalities to "recover the costs relating to [obstructions'] withdrawal from any person responsible for their presence." Case law² has shown that to conclude that a person is "responsible" for an obstruction, they must have produced the obstruction due to an action or inaction personally attributable to them. Owners who inherit a situation that was created or tolerated by its perpetrator are not responsible for the costs of intervention. The evidence in this case did not establish that the plaintiffs contributed to the obstruction of the pipe.

The ADMQ is also preparing a training course on watercourse management to better equip municipal managers in this process.

¹ 2023 QCCS 2350.

² See *Municipality of East Broughton v. Sables Olimag Inc.*, 2019 QCCS 2096.

