



Mrs. Shannon Soulé
Lawyer

What are the Options for Municipalities to Intervene on Private Land Without Obtaining a Court Judgment?

Municipalities generally need to obtain a court judgment before intervening or carrying out work on private property. The law does, however, grant them specific powers that allow them to intervene without prior court approval in certain circumstances. This is an overview of some of these powers, with a focus on how to use them.

Generally, a municipality cannot intervene on private property without the consent of the owner and any other interested party who may hold rights to the immovable. When that consent cannot be obtained, prior authorization from the court becomes necessary. For example, if the owner of a property or building refuses to allow a municipal inspector access to verify compliance with municipal by-laws, in principle, the municipality must take the issue to the court.

However, there are situations where the law allows municipalities to intervene directly, without having to obtain court authorization. This article looks at some of these exceptions.

Municipal Powers Act

Under Section 95 of the *Municipal Powers Act*¹ (hereinafter the “MPA”), municipalities have the power to install any equipment or device on an immovable or do any work on it that is necessary for them to exercise their powers.

In practice, to be able to intervene on private property under this section, a municipality must give the owner or person in charge of the premises at least 48 hours’ notice, indicating the purposes for which its employees or any other authorized persons will enter or move about the immovable. This advance notice is not required in emergencies.

After receiving a notice, the owner or occupant must allow representatives of the municipality to enter or move about the immovable for the municipal purposes in question and must allow access for the machinery and equipment needed to carry out the necessary work.

If the municipality’s intervention results in deterioration of the property (for example, if the passage of the required machinery damages the property), the municipality is obliged to restore the premises and compensate the owner for any damage.

It is also worth mentioning that section 95 of the MPA applies to interventions by municipalities under section 25.1 of that law, which states that a municipality may install and maintain any wastewater treatment system for an isolated dwelling within the meaning of the *Regulation respecting waste water disposal systems for isolated dwellings*,² or bring it into compliance with the regulation, at the owner’s expense. The section also states that the municipality may clean the septic tanks of any immovable.

Therefore, if an owner fails to cooperate and install a compliant wastewater treatment system, the municipality can act directly on the property and carry out the required work. It is best to use caution in such cases; a municipality that wants to exercise this power should seek legal counsel to ensure that the proper procedure is followed.

Finally, it is worth mentioning that the costs the municipality incurs by exercising the aforementioned power, which are payable by the owner under section 25.1 of the MPA, are considered a property tax related to the immovable under section 96 of the MPA. As such, the costs can be recovered from the owner in the same way as that type of tax.

Fire Safety Act

Section 40 of the *Fire Safety Act*³ (hereinafter the “FSA”) gives firefighters a number of exceptional powers to allow them to work effectively in the event of a fire, disaster, or other emergency.

In particular, the section permits them to authorize the demolition of a structure, without a court order, to prevent the spread of a fire or the effects of a disaster.

The Court of Appeal of Québec was called upon to rule on the scope of these powers in *9175-7468 Québec Inc. v. Ville de Montréal*.⁴

¹ CQLR, c. C-47.1.

² CQLR, c. Q-2, r. 22.

³ CQLR, c. S-3.4.

⁴ 2015 QCCA 811.

In the case, the Court distinguished between the distinct power set out in section 40 of the FSA and that of section 231 of the *Act respecting land use planning and development* (hereinafter the "ALPD"). The Court pointed out that, while section 231 of the ALPD obliges municipalities to apply to the Superior Court for an order to demolish an immovable, section 40 of the FSA allows them to carry out work through their firefighters without having to seek court authorization, in particular and specific situations.

Section 40 of the FSA should therefore be interpreted strictly, as it only applies in exceptional circumstances.

Conclusion

In short, the aforementioned special powers give municipalities the leeway they need to respond to certain highly specific situations. However, these powers must be used with caution within a strict framework. Any misuse of them or failure to comply with the applicable legal framework is likely to expose the municipality to liability. Municipalities are therefore advised to thoroughly document their case before using one of these powers and ensure that the criteria for using them are met. In case of doubt, they should not hesitate to seek legal counsel.



TREMBLAY BOIS
AVOCATS

REND LE DROIT MUNICIPAL ACCESSIBLE



Mes Pierre Laurin, Claude Jean, Yves Boudreault, Caroline Pelchat, Mireille Lemay, Lahbib Chetaibi, Valérie Savard,
Patrick Bérubé, Michelle Audet-Turmel, Benjamin Bolduc, Benoît St-Onge, Olivier Arseneau, Shannon Soulé, Marc-André Beaudoin

COMPÉTENCE | COLLABORATION | RESPECT

