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Snow Removal on Private Roads: How Can We Support Citizens?

With the first snowfall approaching, council members are almost certain to be approached by citizens asking about snow removal on their private road. The same questions arise every year: Why are some roads maintained by the municipality while others are not? Why did the municipality stop snow removal on a street? And most importantly, what can citizens do to ensure that snow removal on their road is taken care of by the municipality?

In order to respond clearly and effectively to citizens' requests, council members need to have a firm grasp of the municipality's obligations with regard to road maintenance and snow removal.

Public versus private roads

Under section 66 of the *Municipal Powers Act*¹ (MPA), the municipality has jurisdiction over the management of *public roads* on its territory:

"66. A local municipality has jurisdiction over public roads that are not under the authority of the Government of Québec or the Government of Canada or one of their departments or bodies.

[...]

In this Act, a public road includes any highway, road, street, lane, square, bridge, footpath or bicycle path, sidewalk or other road that is not in the private domain, and all the works or installations, including a ditch, needed for its improvement, operation or management."

Public roads are listed on the assessment roll, are accessible to emergency services, and meet development and safety standards. In principle, the municipality is responsible for maintenance and snow removal for the public roads that it owns and operates within its territory.²

Private roads, on the other hand, are owned by individuals or groups of owners. They are not recognized as part of the public domain, so the municipality has no legal obligation to clear or maintain them. This is confirmed by section 70 of the MPA, which states:

"70. A local municipality may maintain a private road open to the public by permission of the owner or occupant, on a request by a majority of the owners or occupants of the abutting property."

The government's use of the term "may" is particularly important; it means that the municipality has the power to act, but is not obliged to do so. The choice is up to the municipal council, as it can assess each situation based on its resources and priorities, as well as the needs expressed by citizens. This legal framework offers a degree of flexibility, enabling the municipality to act when the request aligns with the desires of both elected officials and the occupants of abutting properties.

The distinction between public and private roads is often misunderstood, particularly in cases where municipal services were previously provided on a private road. It should be remembered that the previous maintenance of such a road does not constitute an acquired right or an implicit acceptance by the municipality to become the owner of the road through dedication.

Labbé v Chertsey (Municipalité de), 2006 QCCS 4922, confirms that the mere clearing or levelling of a private road, even if repeated, is not sufficient to demonstrate the municipality's acceptance of a dedication. For a private road to become public through dedication, the owner must clearly and unequivocally intend to abandon the road for the benefit of the public, and this must be accepted by the municipality, either explicitly or implicitly.

If these conditions are not met, the courts will not recognize a dedication. Therefore, the fact that the municipality had cleared snow on a private road in the past does not create a permanent maintenance obligation, nor does it make the road public.

What can be done for citizens?

Should citizens approach you regarding snow removal on their private roads, you should be aware of the two legal mechanisms available to you for managing such requests:

1. Request for municipalization of the road

The municipalization of a road is the formal process by which a municipality adds a private road to its public road network. It involves:

¹ CQLR, c. C-47.1.

² Under section 68 of the MPA, a local municipality may, by by-law, restrict access to or exclude winter maintenance from a public road for reasons of safety, accessibility, or feasibility. This discretion has been recognized by the courts, notably in the case of *Carrier v Newport (Municipalité de)*, 2010 QCCS 6376, where the Superior Court confirmed that a municipality does not have an absolute obligation to ensure snow removal on all public roads within its territory and that it may exercise administrative discretion when carrying out its responsibilities.

- A technical assessment of the road (width, condition, accessibility for emergency services, etc.)
- Upgrade work, often required to bring the road into compliance with urban planning by-laws
- A formal transfer of the road right of way to the municipality
- Financing the work:
 - The municipality may finance the work from its general funds or through a loan by-law.
 - A special tax is usually levied on owners of abutting properties to cover the cost of the necessary upgrades.

This option is governed by by-laws and is done at the citizens' request. It is often preferred for roads that serve multiple permanent residences.

The process might look like this: A group of residents of a private road that serves a dozen houses decides to submit a request to municipalize that road. Following an evaluation, the municipality requires the road to be widened and culverts to be installed. A loan by-law is adopted, and citizens pay a special tax spread over several years.

2. Maintenance request under MPA section 70

Section 70 of the MPA allows a local municipality to maintain a private road that's open to the public by tolerance of the owner, without becoming the owner itself. This differs from municipalization in that it does not transform the road into a public one. However, it does allow the municipality to provide certain services on the road—including snow removal.

This more flexible option may be preferable if:

- The road is open to the public by tolerance of the owner
- The owner gives their written consent
- The majority of the owners of abutting properties request this
- The road is passable for snow removal vehicles

As with the previous option, the municipality is under no obligation to finance this service itself. Therefore, it is up to abutting residents to understand and accept that the snow removal will be funded through taxation, in accordance with sections 244.1 et seq. of the *Act respecting municipal taxation*.³

Conclusion

The arrival of the first snowfall inevitably raises questions about snow removal on private roads. It's important to remember that the municipality is not automatically responsible for this task.

However, there are fair and locally appropriate ways of providing snow removal services, such as full municipalization or maintenance financed by abutting owners under section 70 of the MPA. Municipalities have the necessary powers to support these processes. Our team can help you implement them, facilitating exchanges with citizens and ensuring efficient management suitable for Québec winters.

³ CQLR, c. F-2.1.

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