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Torts—Municipal Tort Liability—Kossak v. Stalling, 277 N.W.2d 30 (Minn. 1979)

extreme care in the presentation of factual issues in declaratory judgment proceedings in which coverage cannot be determined solely upon the allegations of the complaint.

Torts—MUNICIPAL TORT LIABILITY—*Kossak v. Stalling*, 277 N.W.2d 30 (Minn. 1979).

The Minnesota Municipal Tort Liability Act[1] imposes significant restrictions on the ability of victims of municipal[2] negligence to seek redress for injuries. The most important of these restrictions are the requirements that the plaintiff serve timely notice of a possible tort claim upon the municipality, and that the action be commenced, in most cases, within one year of the notice.[3] In an effort partially to alleviate the inequities inherent in these requirements, the Minnesota Supreme Court has recently abandoned the rule of strict compliance with the notice of claim

1. MINN. STAT. §§ 466.01-.15 (1978 & Supp. 1979).

2. MINN. STAT. § 466.01(1) (1978) defines "municipality" as "any city, whether organized under home rule charter or otherwise, any county, town, public authority, public corporation, special district, school district, however organized, county agricultural society organized pursuant to chapter 38, or other political subdivision." *Id.*

3. *See* Act of May 22, 1963, ch. 798, § 5, 1963 Minn. Laws 1396, 1398, which was in effect on the date of the accident in *Kossak*. It provided:

> Every person who claims damages from any municipality for or on account of any loss or injury within the scope of Section 2 shall cause to be presented to the governing body of the municipality within 30 days after the alleged loss or injury a written notice stating the time, place and circumstances thereof, and the amount of compensation or other relief demanded. Failure to state the amount of compensation or other relief demanded does not invalidate the notice; but in such case, the claimant shall furnish full information regarding the nature and extent of the injuries and damages within 15 days after demand by the municipality. No action therefor shall be maintained unless such notice has been given and unless the action is commenced within one year after such notice. The time for giving such notice does not include the time, not exceeding 90 days, during which the person injured is incapacitated by the injury from giving the notice.

Id. MINN. STAT. § 466.05(1) (1978) presently provides:

> Except as provided in subdivisions 2 and 3, every person who claims damages from any municipality for or on account of any loss or injury within the scope of section 466.02 shall cause to be presented to the governing body of the municipality within 180 days after the alleged loss or injury is discovered a notice stating the time, place and circumstances thereof, and the amount of compensation or other relief demanded. Actual notice of sufficient facts to reasonably put the governing body of the municipality or its insurer on notice of a possible claim shall be construed to comply with the notice requirements of this section. Failure to state the amount of compensation or other relief demanded does not invalidate the notice; but in such case, the claimant shall furnish full information regarding the nature and extent of the injuries and damages within 15 days after demand by the municipality. No action therefore shall be maintained unless such notice has been given and unless the action is commenced within one year after such notice. The time for giving such notice does not include the time, not exceeding 90 days, during which the person injured is incapacitated by the injury from giving the notice.

Id. No notice is required for injuries from intentional torts or the use of motor vehicles owned by a municipality or operated by its employees. *Id.* § 466.05.

requirement and has adopted the doctrine of substantial compliance.[4] In *Kossak v. Stalling*,[5] the court went a step further in reducing restrictions on tort actions against municipalities by declaring the commencement of suit requirement unconstitutional.[6]

In *Kossak* plaintiff brought suit against the City of Duluth and Stalling, a Duluth employee, for injuries plaintiff suffered in an automobile accident allegedly caused by Stalling's negligence.[7] Plaintiff never filed a notice of claim with the city,[8] and did not bring suit until four years after the accident.[9] Defendant Stalling had, however, submitted a "vehicle collision report," noting that the plaintiff was apparently injured, to the city attorney's office two weeks after the accident.[10] The trial court granted the City of Duluth's motion for dismissal and entered judgment on the ground that plaintiff failed to comply with the notice of claim and commencement of suit provisions of the Municipal Tort Liability Act.[11] The Minnesota Supreme Court reversed the order and held, in accordance with its prior decision in *Kelly v. City of Rochester*,[12] that actual notice

4. *See, e.g.*, Kelly v. City of Rochester, 304 Minn. 328, 333, 231 N.W.2d 275, 278 (1975) (substantial compliance is accomplished by actual notice on the part of the municipality even if such notice is acquired through its own personnel or procedures); Jenkins v. Board of Educ., 303 Minn. 437, 440, 228 N.W.2d 265, 268 (1975) (substantial compliance with the requirement of timeliness of the service or notice is all that is required when school district has actual notice within the statutory period); Seifert v. City of Minneapolis, 298 Minn. 35, 42-43, 213 N.W.2d 605, 609 (1973) (doctrine of substantial compliance extended to manner of service by holding that service of notice on city alderman after business hours was sufficient to satisfy the notice requirement); Olander v. Sperry & Hutchinson Co., 293 Minn. 162, 169-70, 197 N.W.2d 438, 442 (1972) (except for elements of timeliness and manner of service, substantial compliance with notice requirements is all that is required). The substantial compliance doctrine evolved at least partly due to the frequently-announced doctrine that notice requirements are to be liberally construed. *See, e.g.*, Grams v. Independent School Dist. No. 742, 286 Minn. 481, 489, 176 N.W.2d 536, 541 (1970); Brown v. City of Chattanooga, 180 Tenn. 284, 288, 174 S.W.2d 466, 468 (1943); Frankfort Gen. Ins. Co. v. City of Milwaukee, 164 Wis. 77, 80, 159 N.W. 581, 582 (1916). In addition, because one purpose of the notice of claim requirement is to expedite municipal investigations, Hirth v. Village of Long Prairie, 274 Minn. 76, 79, 143 N.W.2d 205, 207 (1966), defects in the giving of notice that do not substantially hinder municipal defendants in investigating claims have been allowed. *See, e.g.*, Russell v. City of Minneapolis, 259 Minn. 355, 356-57, 107 N.W.2d 711, 713 (1961) (6 to 15 foot error in description of place of injury is permissible).

5. 277 N.W.2d 30 (Minn. 1979).

6. *Id.* at 35.

7. *Id.* at 31-32.

8. *Id.* at 32.

9. *Id.*

10. *Id.* at 33.

11. *Id.* at 32; *see* Brief for Appellant at 2.

12. 304 Minn. 328, 231 N.W.2d 275 (1975). In *Kelly* plaintiff suffered a severe injury at a municipal swimming pool. The accident took place in the presence of a lifeguard who assisted plaintiff and filed a written report with the city a few days later. Plaintiff did not give formal written notice to the city until after the statutory period had expired. *Id.* at

to the municipality of a possible claim satisfied the notice of claim requirement.[13] More important, however, was the court's holding that the one-year commencement of suit requirement violated the equal protection clause of the fourteenth amendment.[14] Plaintiff's claim was thus subject to the usual six-year limitation period for negligence actions.[15]

Despite recent attacks by courts and commentators on the constitutionality of the notice of claim requirement,[16] the *Kossak* court refrained from finding the provision constitutionally infirm. Because the City of Duluth had received actual notice, the case fell squarely within the substantial compliance doctrine.[17] The court, therefore, did not find it necessary to address the constitutional issue.[18] Moreover, the court took into

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330, 231 N.W.2d at 276. The court held that in the absence of a showing of prejudice, actual notice to the municipality of facts sufficient to put it on notice of a possible claim is all that the notice provision requires. *Id.* at 333, 231 N.W.2d at 278. The court noted that MINN. STAT. § 466.05 provides only that one claiming damages must see that notice is presented to the governing body of the municipality, but does not expressly impose that duty on the injured party. "To decide otherwise would make the notice requirement nothing more than a formal, procedural impediment to suit, of little purpose other than to void an otherwise valid claim." *Id.* at 333, 231 N.W.2d at 277-78. The *Kossak* court cited the *Kelly* holding and apparently felt assured that the vehicle accident report constituted actual notice sufficient to satisfy the notice of claim requirement. *See* 277 N.W.2d at 33.

13. *See* 277 N.W.2d at 33.

14. *Id.* at 35. U.S. CONST. amend. XIV, § 1 provides in part: "[N]o state shall . . . deny to any person within its jurisdiction the equal protection of the laws."

15. 277 N.W.2d at 35 n.7. MINN. STAT. § 541.05(1) (1978) provides that "[e]xcept where the uniform commercial code otherwise prescribes, the following actions shall be commenced within six years: . . . for any other injury to the person or rights of another, not arising on contract, and not hereinafter enumerated."

16. *See, e.g.*, Salavea v. City of Honolulu, 517 P.2d 51 (Hawaii 1973); Lorton v. Brown County Community Unit School Dist. No. 1, 35 Ill. 2d 362, 220 N.E.2d 161 (1966); Note, *Notice of Claim Provisions: An Equal Protection Perspective*, 60 CORNELL L. REV. 417, 418-19 (1975); Note, *Notice of Claim Under the Municipal Tort Claims Act—The Watchdog With Plenty of Teeth*, 23 DRAKE L. REV. 670, 682-86 (1974); Note, *Notice of Claim Requirement Under the Minnesota Municipal Tort Liability Act*, 4 WM. MITCHELL L. REV. 93, 113 (1978).

17. *See* note 4 *supra*.

18. 277 N.W.2d at 33; *see* Housing & Redev. Auth. v. Greenman, 255 Minn. 396, 96 N.W.2d 673 (1959). In *Greenman* the court stated:

> since an act [of the legislature] is presumed to be constitutional, it will not be declared unconstitutional unless its invalidity appears clearly or unless it is shown beyond a reasonable doubt that it violates some constitutional provision. The power of the court to declare a law unconstitutional is to be exercised only when absolutely necessary in the particular case and then with great caution.

Id. at 403, 96 N.W.2d at 679 (quoting Minneapolis Gas Co. v. Zimmerman, 253 Minn. 164, 173, 91 N.W.2d 642, 650 (1958)). Other courts have not been so reluctant to reach the constitutional issue. *See, e.g.*, Reich v. State Highway Dep't, 386 Mich. 617, 194 N.W.2d 700 (1972) (60-day notice of claim statute held not reasonably related to a legitimate governmental objective and therefore in violation of state and federal constitutions); Turner v. Staggs, 89 Nev. 230, 510 P.2d 879 (notice of claim requirement denies equal protection), *cert. denied*, 414 U.S. 1079 (1973); Hunter v. North Mason High School, 85 Wash. 2d 810, 539 P.2d 845 (1975) (same); O'Neil v. City of Parkersburg, — W. Va. —,

account the Minnesota Legislature's recent amendment of the notice of claim requirement, which made notice of possible claims arising from motor vehicle accidents unnecessary.[19] Declaring the notice of claim requirements unconstitutional would have benefitted only those claimants whose causes of action had accrued before the effective date of the amendment and who could not meet the actual notice requirement. In addition, the *Kossak* court expressed the opinion that "in automobile accident situations it is reasonable to assume that a municipality will receive actual notice of the incident."[20] The facts of *Kossak*, therefore, presented compelling reasons for not addressing the constitutionality of the notice of claim requirement as applied to automobile accident victims.

The pivotal issue in *Kossak* was whether the one-year commencement of suit requirement was unconstitutional under the equal protection clause of the United States Constitution. The *Kossak* court found that the commencement of suit requirement created two distinct classes of tortfeasors.[21] The court noted that the requirement subjects private tortfeasors to the general six-year statute of limitations,[22] but subjects municipal tortfeasors to an abbreviated one-year statute of limitations,[23] thereby exposing the former to a greater risk of liability than the latter. In addition, the commencement of suit requirement draws a distinction between the victims of municipal and private tortfeasors by imposing a much shorter limitation period on the former. This unequal treatment makes recovery more difficult for the victim of a municipal tort than for the victim of a private tort. Such legislative classifications are subject to judicial scrutiny under the equal protection clause.[24]

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237 S.E.2d 504 (1977) (state law requiring notice of claim within 30 days after cause of action accrued held to be unconstitutional on equal protection grounds).

19. 277 N.W.2d at 33. MINN. STAT. § 466.05(2) (1978) provides:
> Notice shall not be required to maintain an action for damages for or on account of any loss or injury within the scope of section 466.02 if such injury or loss . . . involves a motor vehicle or other equipment owned by the municipality or operated by an officer, employee or agent of the municipality.

20. 277 N.W.2d at 33.

21. *See id.* at 34.

22. *See id.*; MINN. STAT. § 541.05(5) (1978).

23. *See* 277 N.W.2d at 34; MINN. STAT. § 466.05(1) (1978).

24. *See* notes 56-58 *infra* and accompanying text. In determining whether state legislation violates the equal protection clause of the fourteenth amendment, several tests have evolved. If neither a suspect criterion nor a fundamental right is involved, the traditional standard of review is applied. Under this test of minimal scrutiny, a legislative classification is sustained unless it bears no rational relationship to a legitimate governmental objective. *See* Frontiero v. Richardson, 411 U.S. 677, 683 (1970). When a statutory classification is based on a suspect criterion or unduly affects or interferes with a fundamental right, equal protection is denied unless the classification is necessary to serve a compelling governmental interest. *See* McLaughlin v. Florida, 379 U.S. 184, 196 (1964). An intermediate standard of review, using a fair and substantial relation test, has been

The *Kossak* court applied the rational basis standard of review[25] set forth in *Schwartz v. Talmo*[26] in determining that the commencement of suit requirement denied equal protection. Under the *Schwartz* standard of review, a legislative classification operates as a denial of equal protection if the classification does not apply uniformly to all persons similarly situated.[27] The differences between those persons included and those persons excluded from the classification must not be arbitrary, but genuine and substantial.[28] In addition, the classification must be germane to a lawful objective.[29]

Equal protection arguments have been successful in several recent cases in which similar statutes[30] have been declared unconstitutional.[31] The *Kossak* court found this recent trend persuasive.[32] An examination

applied to cases involving near-suspect classifications or near-fundamental rights. *See* Reed v. Reed, 404 US. 71, 76 (1971); Hunter v. North Mason High School, 85 Wash. 2d 810, 539 P.2d 845 (1975). For a discussion of equal protection standards as applied to notice of claim requirements, see Note, *Notice of Claim Requirement Under the Minnesota Municipal Tort Liability Act*, *supra* note 16, at 109-16.

25. *See* Davis v. Davis, 297 Minn. 187, 189-90, 210 N.W.2d 221, 223-24 (1973).

26. 295 Minn. 356, 205 N.W.2d 318, *appeal dismissed*, 414 U.S. 803 (1973).

27. *Id.* at 362, 205 N.W.2d at 322.

28. *Id.*

29. *Id.*

30. *See, e.g.*, Reich v. State Highway Dep't, 386 Mich. 617, 620, 194 N.W.2d 700, 701 (1972); Turner v. Staggs, 89 Nev. 230, 232, 510 P.2d 879, 881, *cert. denied*, 414 U.S. 1079 (1973); Hunter v. North Mason High School, 85 Wash. 2d 810, 811, 539 P.2d 845, 847 (1975); O'Neil v. City of Parkersburg, — W. Va. —, —, 237 S.E.2d 504, 506 (1977). The *Kossak* court felt that the notice of claim statutes involved in these cases were sufficiently similar in nature to the commencement of suit requirement involved in *Kossak v. Stalling* so as to provide a precedential basis for decision. *See* 277 N.W.2d at 33.

31. *See, e.g.*, Reich v. State Highway Dep't, 386 Mich. 617, 623-24, 194 N.W.2d 700, 702 (1972); Turner v. Staggs, 89 Nev. 230, 235, 510 P.2d 879, 883, *cert. denied*, 414 U.S. 1079 (1973); Zipser v. Pound, 69 Misc. 2d 152, 152-53, 329 N.Y.S.2d 494, 496 (White Plains City Ct.), *rev'd per curiam*, 75 Misc. 2d 489, 348 N.Y.S.2d 18 (Sup. Ct. 1972).

32. *See* 277 N.W.2d at 33. The Minnesota Supreme Court has not, however, completely abandoned the idea that governmental entities may be accorded special protection. The court recently held in Cracraft v. City of St. Louis Park, 279 N.W.2d 801 (Minn. 1979), that a municipality could not be held liable for an allegedly negligent building inspection that failed to disclose building code violations, unless special circumstances existed creating a special duty towards individual members of the public. *Id.* at 806. At least one dissenting justice felt that the *Cracraft* holding was inconsistent with *Kossak*. *Kossak* represented "a significant stride forward in striking down such artificial barriers which serve no purpose other than to foster the abolished doctrine of sovereign immunity." *Id.* at 812 (Scott, J., dissenting).

The sovereign immunity doctrine was an inheritance of English law. *See* Russell v. Men of Devon, 100 Eng. Rep. 359 (K.B. 1788) (county not liable for injury sustained in consequence of bridge being out of repair). In 1962 the Minnesota Supreme Court prospectively abolished sovereign immunity for municipalities, school boards, and other governmental subdivisions with respect to all tort claims arising after the 1963 legislative session in Spanel v. Mounds View School Dist. No. 621, 264 Minn. 279, 118 N.W.2d 795 (1962). The Minnesota Municipal Tort Liability Act was passed in response to *Spanel*. *See*

of these cases and of cases upholding the constitutionality of such statutes sheds further light on the *Kossak* decision. Each of the cases discussed involved notice of claim statutes and none were concerned with commencement of suit requirements.[33] The *Kossak* court felt, however, that these cases involved "legislation similar in scope"[34] to the commencement of suit requirement and thus provided a basis for determining the constitutionality of that requirement.

The earliest successful equal protection attacks upon municipal notice statutes occurred in *Reich v. State Highway Department*[35] and *Turner v. Staggs*.[36] In *Reich* each of the plaintiffs in three consolidated claims against the state challenged the sixty-day notice provision of Michigan's State Tort Claim Act[37] on equal protection grounds.[38] In striking down the notice provision as violating equal protection, the majority of the Michigan court reasoned that since the purpose of the State Tort Claim Act was to waive state immunity, putting victims of governmental tortfeasors on anything but an equal footing with victims of nongovernmental tortfeasors was inconsistent with this purpose.[39] The court stated that the notice requirement was contrary to this purpose since "[it] acts as a special statute of limitations which arbitrarily bars the actions of the victims of governmental negligence after only 60 days."[40] The *Reich* court did not consider the numerous justifications courts traditionally

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Minnesota Municipal Tort Liability Act, ch. 798, 1963 Minn. Laws 1396 (current version at MINN. STAT. §§ 466.01-.15 (1978 & Supp. 1979)). Similarly, state tort immunity was prospectively abolished in Neiting v. Blondell, 306 Minn. 122, 235 N.W.2d 597 (1975). The Minnesota Legislature responded by passing the State Tort Claims Act. *See* Act of Apr. 20, 1976, ch. 331, § 33, 1976 Minn. Laws 1282, 1293-97 (current version at MINN. STAT. § 3.736 (1978)). It is significant that the Legislature chose to establish the same statute of limitations period for claims made against the state as is applicable to tort claims against private persons. *See* MINN. STAT. § 3.736(11) (1978).

33. *See* cases cited in notes 30-31 *supra*.

34. 277 N.W.2d at 33.

35. 386 Mich. 617, 194 N.W.2d 700 (1972).

36. 89 Nev. 230, 510 P.2d 879, *cert. denied*, 414 U.S. 1079 (1973). *But see* Zipser v. Pound, 69 Misc. 2d 152, 329 N.Y.S.2d 494 (White Plains City Ct.), *rev'd per curiam*, 75 Misc. 2d 489, 348 N.Y.S.2d 18 (Sup. Ct. 1972).

37. MICH. COMP. LAWS ANN. § 691.1404 (Supp. 1979).

38. *See* 386 Mich. at 622, 194 N.W.2d at 702 (1974). In addition to raising an equal protection claim, the plaintiff, a minor, contended that the 60-day notice of claim requirement violated his due process rights. The court agreed, relying on its own precedent in Grubaugh v. City of St. Johns, 384 Mich. 165, 180 N.W.2d 778 (1970), in which the notice requirement was found to be unconstitutional with respect to a plaintiff whose injuries prevented him from complying with the requirement. 384 Mich. at 176-77, 180 N.W.2d at 784. The *Reich* court acknowledged the similar disability of minors, and held that the notice requirement was unconstitutional with respect to them as well. 386 Mich. at 622, 194 N.W.2d at 701-02.

39. *Id.* at 623, 194 N.W.2d at 702.

40. *Id.*

rely upon in support of notice provisions.[41] It chose to rely instead on the legislative waiver of sovereign immunity as the basis for its finding that equal protection had been denied.[42]

The *Kossak* court also relied on *Turner* in striking down the commencement of suit requirement.[43] The Nevada notice of claim statute in *Turner* required notice of a claim to be presented to the county within six months as a precondition to suing the county.[44] The *Turner* court, in holding that the notice of claim statute violated equal protection,[45] based its decision on the *Reich* rationale that by waiving governmental immunity,[46] the Legislature showed its intent to put all tortfeasors and their victims on an equal footing.[47] Because the notice requirement was contrary to that intent, it violated equal protection by setting up different classes of tortfeasors and tort victims.[48]

Similarly, in *O'Neil v. City of Parkersburg,*[49] the West Virginia Court of Appeals followed the *Reich-Turner* line of reasoning in holding that because the purpose of the municipal tort liability law was to place municipal and private tortfeasors and their victims on an equal basis, the notice requirement violated equal protection by acting as an arbitrary bar to suits by those injured through municipal negligence.[50]

The "legislative intent" theory used by the *Reich*, *Turner*, and *O'Neil* courts is troublesome. The right to equal protection under the laws is a principle of constitutional magnitude[51] that cannot be created or destroyed by state legislation. Those courts nevertheless reasoned that their respective state legislatures created the right to equality among governmental and private tortfeasors and their victims by abrogating sovereign immunity, thereby intending to put these parties on an equal footing.[52] The three courts should have focused, as did the *Kossak* court,[53] directly

41. *See* note 60 *infra* and accompanying text.
42. *See* 386 Mich. at 623, 194 N.W.2d at 702.
43. *See* 277 N.W.2d at 33.
44. NEV. REV. STAT. §§ 244.245, .250 (1975).
45. 89 Nev. at 235, 510 P.2d at 882.
46. *See* NEV. REV. STAT. § 41.031 (1977).
47. *See* 89 Nev. at 235, 510 P.2d at 882-83.
48. *Id.*
49. — W. Va. —, 237 S.E.2d 504 (1977).
50. *See id.* at —, 237 S.E.2d at 508-09.
51. *See* note 14 *supra*.
52. This reasoning would be especially dubious in Minnesota since the Minnesota Supreme Court has intimated that the Municipal Tort Liability Act, MINN. STAT. §§ 466.01-.15 (1978 & Supp. 1979), is not intended to place municipal defendants on an equal footing with private defendants. *See* McCarty v. Village of Nashwauk, 286 Minn. 240, 243-44, 175 N.W.2d 144, 147 (1970) ("The argument that in abrogating immunity the legislature intended that governmental units should be liable in the same manner as a private individual under like circumstances ignores the reality that there are many governmental activities which have no private counterpart . . . .").
53. *See* 277 N.W.2d at 33-35.

upon the constitutional issue—whether a rational basis existed for the classifications created by the statutory requirements.

The *Kossak* court also relied on *Hunter v. North Mason High School*,[54] in which the Washington Supreme Court struck down the state's notice statute[55] on equal protection grounds. The court held that the classifications the notice requirement created between municipal and private tortfeasors and their victims did not bear a fair and substantial relationship[56] to the objectives the statute sought to serve.[57] The *Hunter* court analyzed each of the purported objectives of the notice requirement—investigation of claims, correction of defective municipal facilities, settlement of claims, protection against stale claims and budget planning—and concluded that "the only function the special treatment given governmental bodies seems to perform is the simple protection of the govern-

54. 85 Wash. 2d 810, 539 P.2d 845 (1975).

55. WASH. REV. CODE ANN. § 4.96.020 (Supp. 1978).

56. The *Hunter* court is not the only one to have applied this intermediate level of equal protection scrutiny to a notice of claim statute. In DeHusson v. City of Anchorage, 583 P.2d 791 (Alaska 1978), the court noted that:

> [T]he distinctions drawn by the . . . notice of claim provision between governmental and private tort-feasors are arbitrary and . . . the resultant categories are suspect. Consequently, the City of Anchorage must meet a significant burden in demonstrating that the distinctions and classifications created by the [notice of claim] provision have a fair and substantial relation to legitimate governmental objectives.

Id. at 796 (Rabinowitz, J., concurring). It seems that the *Hunter* and *DeHusson* courts were following the most recent trend in subjecting the notice requirements to heightened equal protection scrutiny. One commentator, for example, has reasoned that "[w]hile the right of access to the courts for redress of a wrong is not presently considered a fundamental right, it is sufficiently important within our system of justice to merit being subjected to the intermediate, fair and substantial relation test." Note, *Notice of Claim Requirement Under the Minnesota Municipal Tort Liability Act*, *supra* note 16, at 113. One justice has even argued that the right to seek redress in court for the wrongful act of another is of such a fundamental nature that strict scrutiny should be invoked in determining whether such statutes violate the equal protection clause. *See* Lunday v. Vogelmann, 213 N.W.2d 904, 909 (Iowa 1973) (Reynoldson, J., dissenting).

Since the *Kossak* court found that the commencement of suit requirement did not even meet the rational basis test, it did not address the question of whether the intermediate or strict standard of review could ever be appropriate. 277 N.W.2d at 34 n.4. There is, however, a compelling argument that the Minnesota court should apply a more rigorous standard of equal protection review to the notice or commencement of suit provisions should the issue come before it again. MINN. CONST. art. I, § 8 states that "[e]very person is entitled to a certain remedy in the laws for all injuries or wrongs which he may receive in his person, property or character, and to obtain justice freely and without purchase, completely and without denial, promptly and without delay, conformable to the laws." *Id.* Since the right to a remedy for every civil wrong is of constitutional stature in Minnesota, *see* Carlson v. Smogard, 298 Minn. 362, 366, 215 N.W.2d 615, 618 (1974), legislative classifications that impinge on that right should be subject to stricter judicial scrutiny than rational basis review. *See also* Vlandis v. Kline, 412 U.S. 441 (1973); Reed v. Reed, 404 U.S. 71 (1971); McLaughlin v. Florida, 379 U.S. 184 (1964).

57. *See* 85 Wash. 2d 810, 816-18 & n.8, 539 P.2d 845, 849-50 & n.8.

ment from liability for its own wrongdoing."[58] The notice statute therefore did not survive the equal protection standard of review the court applied.

Focusing on a constitutional analysis rather than on one based upon legislative intent, the *Kossak* court held that the commencement of suit requirement denies equal protection when the municipality has notice of a claim arising out of an automobile accident with a municipal vehicle.[59] The court referred to the five justifications traditionally used in support of the notice of claim and commencement of suit requirements,[60] and observed that no rational governmental purpose could be served by the additional requirement that suit be brought within one year of the notice of claim.[61] On that basis, the court struck down the commencement of suit provision.[62] By so holding, the Minnesota Supreme Court has relieved victims of a municipality's negligence of a significant restriction on their ability to gain redress for injuries. The court's language seems to indicate that it would not hesitate to extend its holding to claimants other than automobile accident victims.[63]

The Minnesota court has left open the question of whether the notice of claim requirement is rationally related to the governmental purpose it seeks to serve. The continued use of a constitutional analysis as opposed to a legislative analysis places the constitutionality of the notice of claim

58. *Id.* at 817-18, 539 P.2d at 850.

59. 277 N.W.2d at 35.

60. *Id.* at 34. The justifications frequently used in support of special notice requirements for municipalities are, first, that the notice requirement gives the municipality an opportunity to investigate claims while facts are fresh and witnesses readily available. *See, e.g.*, Dias v. Eden Township Hosp. Dist., 57 Cal. 2d 502, 503, 370 P.2d 334, 335, 20 Cal. Rptr. 630, 631 (1962); Lutsch v. City of Chicago, 318 Ill. App. 156, 159, 47 N.E.2d 545, 546 (1943); Hirth v. Village of Long Prairie, 274 Minn. 76, 79, 143 N.W.2d 205, 207 (1966); Zack v. Borough of Saxonburg, 386 Pa. 463, 465, 126 A.2d 753, 754 (1956). Second, notice serves to encourage negotiation and settlement without litigation. *See, e.g.*, City of Anniston v. Rosser, 275 Ala. 659, 662, 158 So. 2d 99, 101 (1963); Taylor v. King, 104 Ga. App. 589, 591, 122 S.E.2d 265, 267 (1961); Hirth v. Village of Long Prairie, 274 Minn. 76, 79, 143 N.W.2d 205, 207 (1966); Frasch v. City of New Ulm, 130 Minn. 41, 43, 153 N.W. 121, 122 (1915). Third, early notice allows the municipality to correct deficient facilities and functions before more people suffer injury. *See, e.g.*, Hirth v. Village of Long Prairie, 274 Minn. 76, 79, 143 N.W.2d 205, 207-08 (1966); Gallegos v. Midvale City, 27 Utah 2d 27, 30, 492 P.2d 1335, 1337 (1972). Fourth, notice protects the municipality from stale or fraudulent claims. *See* Hirth v. Village of Long Prairie, 274 Minn. 76, 79, 143 N.W.2d 205, 208 (1966). Finally, courts argue that special notice of future claims facilitates budget planning. *See, e.g.*, King v. Johnson, 47 Ill. 2d 247, 251, 265 N.E.2d 874, 876 (1970); Lunday v. Vogelmann, 213 N.W.2d 904, 907-08 (Iowa 1973). The emphasis of these justifications is clearly on the protection of the public fisc, with an ancillary concern for public safety. *See* Note, *Notice of Claim Provisions: An Equal Protection Perspective*, *supra* note 16, at 422-23.

61. 277 N.W.2d at 34.

62. *Id.* at 35.

63. *See id.* at 33-34.

requirement in doubt. Some courts, however, have found notice of claim statutes constitutional on the ground that such provisions create classifications that do not violate equal protection.[64] In *Lunday v. Vogelmann*,[65] the Iowa Supreme Court held that because the notice requirement was reasonably related to the traditional purposes such statutes serve, it did not violate equal protection.[66] Despite its finding that the commencement of suit statute was unconstitutional, the Minnesota Supreme Court did not actually reject the *Lunday* reasoning in *Kossak*. The court simply held that, first, the notice requirement was satisfied by actual notice to the city,[67] and second, that the notice requirement, if satisfied, renders the commencement of suit requirement superfluous and therefore unnecessary to the furtherance of any governmental objective.[68]

The court may therefore find the *Lunday* approach more appropriate for determining the constitutionality of the notice of claim statute, despite the precedents provided by *Reich*, *Turner*, and *O'Neil*. Nevertheless, nothing in the notice of claim requirement compels a finding of legitimate governmental purposes or objectives. Instead, the purposes the notice requirement ostensibly serve appear to have more basis in conjecture than in actuality.[69] The primary justification for questioning the validity of the notice of claim statute is the same as that used by the court in striking down the commencement of suit requirement: that the provision creates an unreasonable classification that serves no legitimate governmental purpose. If presented with a case in which a municipality has not received the required notice of claim, the Minnesota court should expand its holding in *Kossak* by declaring the notice of claim statute unconstitutional as a violation of equal protection.

64. *See* Dias v. Eden Township Hosp. Dist., 57 Cal. 2d 502, 370 P.2d 334, 20 Cal. Rptr. 630 (1962) (public agencies afford a proper subject for legislative classification); Ocampo v. City of Racine, 28 Wis. 2d 506, 137 N.W.2d 477 (1965) (notice statute is constitutional as applied to minors).

65. 213 N.W.2d 904 (Iowa 1973). Plaintiff sought damages against a school district and a municipality for negligence, but had failed to give written notice of the claim to the municipality or school district within 60 days as required by statute. *Id.* at 905-06; *see* IOWA CODE ANN. § 613A.5 (Cum. Supp. 1978).

66. 213 N.W.2d at 907-08.

67. 277 N.W.2d at 33.

68. *See id.* at 34.

69. *See* Gunther, *The Supreme Court, 1971 Term-Forward: In Search of Evolving Doctrine on a Changing Court: A Model for a Newer Equal Protection*, 86 HARV. L. REV. 1, 20-21 (1972).