Claim Case Studies & Legislation Slip and Fall Outside of a Community Centre

Background

On a fairly cold winter evening at around 5 p.m., a woman was exiting a community centre arena after watching a hockey game. After exiting the building, she walked down the concrete steps that led to the parking lot. When she stepped onto the asphalt parking lot surface she suddenly slipped on ice and struck her head on the ground. She sustained a concussion, according to the notice letter provided by her legal counsel a couple of weeks after the incident took place.

The claimant's lawyer has pursued a claim against the municipality and is intending on commencing a court action on her client's behalf. A Statement of Claim has not been served against the municipality as of yet.

Issues

1. Was the premises kept reasonably safe?
2. Was the municipality liable for the claimant's damages?

Analysis of the Claim

The community centre and its surrounding grounds, including the parking lot, are owned by the municipality. The municipality is responsible for maintaining the inside premises and the outside entrance, walkways and the stairs. The municipality hired a snow contractor to maintain the parking lot during the winter months. The contractor had been maintaining this parking lot for many years under a long-standing verbal agreement. The contractor was responsible for plowing, sanding and salting the parking lot. They were monitoring the weather and would attend the premises without being called by the municipality. In this verbal agreement, they would bill for their services.

The snow contractor will not likely be considered an occupier, because they did not enter into a written agreement with the municipality.

The municipality will be considered the occupier of this community centre and surrounding premises as per the *Occupiers' Liability Act*, R.S.O. 1990, c. O.2, at the time of this incident.

The applicable sections of this Act read as follows:

3. (1) An occupier of premises owes a duty to take such care as in all the circumstances of the case is reasonable to

see that persons entering on the premises, and the property brought on the premises by those persons are reasonably safe while on the premises.

(2) The duty of care provided for in subsection (1) applies whether the danger is caused by the condition of the premises or by an activity carried on the premises.

Our investigation determined that the area had about 10 cm of snowfall by the morning of the date of this incident. That snow was expected to melt by the evening because of temperatures were supposed to get above zero Celsius. The municipality did not receive any complaints about the parking lot before this fall took place.

A municipal staff worker had inspected the outside premises just before this incident took place. The walkway and the stairs were considered slippery because the temperature was dropping. He then put salt down on the walkway and the stairs. Soon after he did this, another staff worker advised that the slip and fall took place.

The municipal workers at the community centre are responsible to inspect the premises, but we have found out that the inspections don't include the parking lot. The inspection forms received by our claims examiner confirmed that. They rely on the contractor for this service.

The snow contractor told our independent adjuster that they did not attend the parking lot that night because they were anticipating the temperature to rise during the evening. They did provide records showing that they plowed the parking lot between 7 and 8 p.m. and salted the parking lot at 9 p.m. on the morning of the loss date.

Outcome

If this matter went to trial, the court will likely determine that the municipality did not keep its parking lot in a reasonable state of repair at the time of this slip and fall incident. It will be difficult for the municipality to escape liability because they left the inspection and maintenance duties of their parking lot to an outside party, without the protection of a properly drafted written agreement. That agreement should have detailed the winter maintenance operations in the parking lot.

The agreement should also include an indemnification and hold harmless clause in favour of the municipality. In addition, there should be a clause in it stating that the contractor's liability insurer need to add the municipality as an additional insured on their policy. We confirmed in the Contractor Insurer's Certificate of Insurance that they did not name the municipality as an additional insured on their policy.

Therefore the municipality will be held responsible for the damages claimed by the injured person.

In Conclusion

It is important when contracting out services that the organization has a properly drafted agreement with the service contractor. This will enable the transferring of liability to the contractor. This is explained in our article: Risk Management Considerations – Know What You Are Signing that is found in our Risk Management Centre of Excellence on-line portal:

"A contractual transfer of liability is an agreement under which one party (the Transferor) shifts to another (the Transferee) the loss exposures associated with an asset or activity. Organizations are quite often involved on both sides of such a transfer quite often, such as lease or rental agreements, building construction projects and contracted services. Regardless of which side of the transfer your organization is on, the contractual requirements should be reasonable under the circumstances.

Every contractual transfer of liability should:

1. Clearly state the responsibilities of each party.
2. Ensure the transfer recipient is willing and able to handle the transfer and have control over the extent of the potential losses.
3. Be cost effective.
4. Be legally enforceable.
5. Be reviewed by legal counsel.

The method of transferring liability can be accomplished through the use of hold harmless or indemnification clauses, as well as through the use of waivers, releases and disclaimers within the contract. An indemnity clause is only as good as the guarantee, which is why whenever possible, such a clause should be followed by a request for insurance.

The transferor should be satisfied that the transferee has the following:

1. Financial strength
2. Sufficient limits of coverage
3. Added the transferor as an additional insured
4. Current coverage
5. No coverage restrictions that would affect the scope of their agreement The article concludes by stating:

“Always transfer liability to the responsible party when possible to avoid being involved in a claim over which your organization has little or no control of the circumstances. It is very important to carefully review all agreements, paying particular attention to who is assuming the risk and liabilities. It is always a good idea to obtain a legal opinion before you sign. Any legal fees incurred prior to signing a contract will likely be far less than the cost of resolving disputes following a claim.”

There is no guarantee that a properly written agreement will prevent claims being made against the organization, but it will help in passing them on to the responsible party involved.

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