



City Found Not Liable in Skating Injury *Leslie v. Mississauga (City)*, 2003 (ONSC) & 2006 (ONSCDC)

Leslie v. Mississauga (City), 2003 (ONSC) & 2006 (ONSCDC)

This claim involved an action for damages arising from a collision on the ice at a municipal arena. It happened when the plaintiff, William Leslie, was either knocked down to the ice by a patroller or fell during a public skating event. The Judge noted that there was a conflict in the evidence at this trial as to how the accident occurred and whether the plaintiff assumed the risk of injury by skating with others of different skills.

Facts

On Sunday, January 28, 2001 at around 2:30 PM, 79-year-old William Leslie attended the Cawthra Arena with his wife. Mr. Leslie was there to skate with his son Richard and his grandchildren. Mrs. Leslie was going to take some video with her new camera. The rink had about 170 skaters ranging from small children to adults and of all different skill levels.

The City had assigned four patrollers to supervise this fun skate. All four were students between 16 and 18 years old. They were selected because they were good skaters and had the right personalities to interact with the other skaters.

They all received a day of training in August, 2000, which focused on the public skating rules that were posted at the arena entrance as well as their skate patrol responsibilities.

The rules at this arena required all skaters to skate in the same direction (counter clock-wise) around the rink. Skating fast, backwards or practicing skating manoeuvres were all considered against the rules.

Prior to this incident, there were three patrollers on the ice and the fourth one was taking tickets. All the patrollers were each wearing a blue jacket with "Patrol" on the back. They also testified that they were wearing fluorescent vests with a yellow "x" on them. Each patroller was instructed to spread out and patrol a section of ice and to rotate their patrol zone periodically. They were also not allowed to socialize with one another while on the ice.

Mr. Leslie had skated with his son and granddaughter for a few minutes and then left to skate on his own. He testified that, as he was skating, he saw three or four patrollers together near the southwest face-off circle. While he was passing the group one of the patrollers, Michael Kovacs, suddenly skated backwards towards him and he tried to

avoid him by skating to his right. The patroller's right shoulder made contact with Mr. Leslie's left shoulder, causing him to fall to the ice.

All of the patrollers denied that they were standing in a group and Mr. Kovacs testified that he was skating with the flow when he heard a child's voice behind him. That caused him to stop suddenly and that was when the plaintiff made contact with his shoulder. None of the other patrollers saw the incident and there were no independent witnesses.

The plaintiff landed on his left elbow fracturing it. He was provided ice by the staff and was later driven to the hospital by his son. The plaintiff's elbow fracture required open reduction and internal fixation surgery with two pins and a wire to stabilize it.

Issues

1. Were the City and/or its patroller liable for the plaintiffs' damages?
2. If so, was the plaintiff, William Leslie, contributorily negligent?

Law

The City and the patroller, Mr. Kovacs, acknowledged that they were occupiers under the *Occupiers' Liability Act*, R.S.O. 1990, c. O.2. Under Section 3 it reads as follows:

"(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."

The Judge also cited the following:

"Section 9 (3) of the Act confirms that the *Negligence Act* applies with respect to causes of action to which the Act applies."

Findings

The Judge assessed the evidence provided to him. He considered whether each version has a greater chance of

probability. He reviewed the accident report filled out by Mr. Kovacs as well as the notice letter filled out by the plaintiff.

The Judge stated in his decision that this incident likely occurred "...when Mr. Kovacs stopped quickly without warning when Mr. Leslie was skating behind him, causing Mr. Leslie to strike him and fall to the ice."

The Court's Ruling

The Court apportioned liability equally (50/50) between the plaintiff and the patroller. No liability was found on the City in the selection, training or supervision of its patrollers. Mr. Kovacs was found partially responsible for Mr. Leslie by stopping suddenly because such an action was not considered necessary.

Mr. Leslie was also found partially negligent because he had prior issues with his knees and "...accepted certain inherent risks in participating in the family fun skate."

The plaintiffs' total damages were assessed at \$34,664.87 plus costs subject to the 50 per cent reduction for contributory negligence.

Later in 2003, a motion was brought forward by the City because they believed the Judge erred by judging on a theory (the sudden stop by the patroller) that was not pleaded in the Action by the plaintiffs. The Judge decided that his original ruling was "unfairly prejudicial to the defendants" and therefore issued an order dismissing the plaintiffs' claims.

In 2006, the plaintiffs appealed the motion decision. The appeal court determined that there was "no unfair prejudice to the respondents, because the issue was joined in the pleadings, in the evidence at trial and was the subject of cross examination." As a result, the order dismissing the appellants' action was set aside and the original trial judgment was restored.

Therefore, the original Court decision stands.

Lessons Learned

This matter involved an unfortunate accident between a patroller and a skater. However the Court was satisfied that the City properly selected, trained and supervised their patrollers at this facility. Therefore, it is important for

municipal facilities' management and staff to follow their guidelines and best practices.

The Ontario Recreation Facilities Association (ORFA) published an article in October 2013 named "Public Skating: Guidelines and Best Practices." The recommended guidelines include:

- The following on ice supervision is recommended:
On-Ice Patrol to Skater Ratio
 - 1 Skate Patrol – 1 to 59 persons
 - 2 Skate Patrol – 60 to 119 persons
 - 3 Skate Patrol – 120 to 160 persons
 - Public skating supervisors should be competent skaters and wear CSA-approved skates and headgear while on the ice
 - All on-ice supervisors should wear a highly visible safety vest and carry a whistle for control purposes
 - All on-ice supervisors should be given clear direction as to their expected supervisory responsibilities
- No person under the age of 16 should be given the responsibility to solely supervise public skating sessions. However, properly trained individuals under the age of 16 (but over the age of 13) may be permitted to assist in the patrol duties, but only under the direct supervision of a competent person over the age of 16
 - Post a skater code of conduct at the arena in areas that are highly visible to staff and the public
 - Staff should have access to a phone for emergency purposes