



Claim Case Studies & Legislation: Building Inspection

Mortimer v. Cameron, 1993 (ON CA)

Facts

On July 17th, 1987, Stephen Mortimer of London was in an apartment of a college classmate when he and a friend engaged in some friendly roughhousing. They stumbled against a plywood barrier on an outside staircase and fell approximately ten feet to the ground. His friend received minor injuries but Stephen Mortimer's spine was severed rendering him a quadriplegic.

The trial Judge awarded five million dollars to Mortimer and found that the City of London was eighty percent liable and the owner of the rented building, twenty percent liable. No liability was found against the tenant who hosted the gathering or by either of the participants in the friendly horseplay.

The allegations against the City related to building inspection and enforcement of the Building Code.

Issue

Why was the City eighty percent liable for something that happened on private property?

Legislation

The principles governing the liability of a municipality in tort come from case law, which holds that a municipality's decision to exercise statutory power, through, for instance, the passage of a by-law, is discretionary and thus not subject to civil suit. However, once this power has been exercised, there is a duty at the operational level to use due care in giving effect to it. (see *City of Kamloops v. Nielsen, 1984 (SCC)*).

In 1971, the City enacted a by-law to "...safeguard life and limb, health, property and public welfare with respect to the design, construction and alteration of buildings by the provision of appropriate minimum standards". This policy involved inspecting building plans and construction in accordance with the provisions of the by-law. Having made a policy decision to inspect building plans and construction, the City owed a duty of care to those it could reasonably foresee might be injured should it negligently perform the inspection duties it had assumed under the bylaw. The City had a duty to exercise reasonable care both in inspecting the plans which were submitted for the proposed enclosure of the stairway and in inspecting the construction authorized by the building permit.

Findings

Of significance in this case was the passage of time and the inspections that the City had done. In 1963 a building permit was obtained by the owner to build a wooden staircase outside of the exterior brick wall. In 1971 another building permit was obtained to cover the staircase with a roof, although that was never done. A year later in 1972 a third permit was obtained to enclose the staircase.

This work was carried out and inspected by the City. The building inspector approved the work. This succession of events formed the basis of the claim against the City.

In February 1994 the Ontario Court of Appeal ruled on the case and changed the finding of liability of the City of London to forty percent, and that of the building owner to sixty percent. This reapportionment still carries an impact on the provision of building services by municipalities. A municipality in effect remains at risk indefinitely of being held liable for defects even where they are obvious to the owners of the buildings and even though the municipality has a responsibility to inspect a building only at the time a permit is issued. Contrary to this, owners have an ongoing common law duty to inspect and maintain their building.

The insurers therefore sought leave to appeal to the Supreme Court of Canada (SCC) on the grounds that this was a matter of public importance.

The Court's Ruling

The SCC refused to hear the appeal on this very important case and the judgment, as amended, became final.

Lessons Learned

Although it may not always be fair, municipalities are often seen as the 'deep pockets' in cases where judges are apportioning out liability. This makes it critical for municipalities to conduct proper inspections and enforce the Building Code. Documentation and accurate record keeping must always be practiced.