



Claim Case Studies & Legislation: Inline Skating on City Street

Winter v. City of London, 2002 (ON SC)

Facts

The plaintiff was with friends trying out his new inline skates. They were skating on the sidewalk along a busy city road. They approached an area on the sidewalk that was covered in sand and gravel and decided to cross the street to avoid the debris. The man decided to cross the busy street where he was, rather than proceeding to a crosswalk or traffic light. He skated down the incline of a driveway and stopped on the road just over the lip of the curb along the street. Traffic was coming in both directions. He intended to let the traffic pass and then cross the street, but he fell before he could cross the road. The man claimed he fell because of a pothole in the roadway. He said that as he went to cross the street, his skate slipped into a hole causing him to fall. As a result, he sustained serious injury, including a broken ankle. He brought an action against the City for damages arising from his injuries asserting that the City failed to properly maintain the sidewalk and roadway.

Issue

What is the duty of care owned by a municipality to an inline skater?

Legislation

Inline Skating

The Ontario Ministry of Transportation commissioned a study of issues relating to inline skating and a report was published by that Ministry in 1994 entitled “Current and Emerging Issues Relating to the Increasing Use of Inline Skates”. The report noted that the demand for inline skating appeared to be increasing and it was a contentious issue whether skaters should use a roadway or a sidewalk or both. The report noted that at that time the *Highway Traffic Act*, RSO, 1990, made no reference to inline skating and the Ministry was reviewing the issue. The report referred to the fact that only a small number of Ontario municipalities had passed a bylaw regulating the use of inline skates. The provincial study was followed by a federal study sponsored by the Transportation Association of Canada in 1997. The report recommended that surface conditions for inline skating exceed what would be considered adequate for bicycles and that the surface should be free of gravel and other contaminants, including snow and ice. The authors of the report conducted a survey of Canadian cities and recommended that inline skaters be allowed on sidewalks, except in areas where there is increased pedestrian activity and that inline skaters be allowed on roads meeting certain

criteria, including the requirement that the posted speed not exceed 50 kilometers per hour. They recommended that the provincial *Highway Traffic Acts* be amended and municipalities develop bylaws concerning inline skating. Since the reports were published, the *Highway Traffic Act* has not been amended and other relevant provincial statutes make no reference to inline skates. In this case, the City where the incident occurred had not enacted any bylaws dealing with inline skating.

Duty of Care

The City acknowledges that its statutory duty is as set out in section 284(1) of the *Municipal Act*, RSO 1990, which requires a municipality to keep sidewalks and roadways in a state of repair that is reasonable in light of all the circumstances including the character and location of the sidewalk and roadway. Section 284 (1.2) and (1.3) provide that a municipality is not liable for failing to keep a sidewalk or roadway in a reasonable state of repair if it did not know and could not reasonably be expected to know about the state of non-repair or if it took reasonable steps to prevent the default from arising.

Findings

The Sidewalk

The man's position was that the sidewalk he was attempting to skate on was impassable because of the sand and gravel. He pointed to the report of the Transportation Association of Canada that stated that "debris, even small foreign objects or stone/gravel, in the path of inline skaters is potentially dangerous". He stated that he was forced to cross the roadway. The City was of the opinion that the sand and gravel on the sidewalk was likely from an accumulation of salt and sand from the winter maintenance activities. The City produced records from their sidewalk winter maintenance program showing that the area in question had recently been sanded after an early spring snowfall. It is reasonable for a City to treat their sidewalks with a salt/sand mixture during the winter months to keep the sidewalks free of ice. The sidewalk was suitable for a pedestrian. But was it suitable for an inline skater?

The City's supervisor of winter maintenance acknowledged that the City plowers and sanders do not pay attention to the buildup of debris on sidewalks. He further noted that the City did some sidewalk sweeping after the winter season, but did not maintain records with respect to the sweeping nor was there a procedural manual for sweeping of the sidewalks.

A certified inline skating instructor testified that an inline skater could skate over the sand debris provided they took caution and a shorter stride. Alternatively, a skater could walk on the grass around the debris or skate through the adjacent parking lot. The man was attempting to cross a busy arterial road where there was no traffic light or crosswalk. The Court found that the condition of the sidewalk was not such that it forced the man to skate in the roadway. There were clearly other reasonable options available.

The Road

After the incident was reported, the City sent out an employee to inspect the roadway. The employee couldn't find any pothole that required repair. The employee followed the guideline that a pothole is an absence of asphalt that results in a large circumference with a depth something larger than a crack or break in the asphalt. Pictures taken of the accident scene did show evidence of a pear shaped hole, about 3 inches in width, and 6 inches in length. There was no evidence as to the depth of the hole.

The City was aware that the roadway needed some repairs. They had an independent consultant conduct a pavement management assessment a couple of years prior to the incident. The road in question exceeded the quality threshold, but just barely. At the time of the accident, rehabilitation work had commenced, but had not reached the portion of the road where the man fell. The City admitted that the curb lane where the incident occurred was under some distress and was not a smooth surface. Curb lanes tend to handle the heaviest traffic and therefore usually require the most repairs.

The City's Engineering Department had a document that outlined the major objectives for maintaining bituminous surfaces and noted that the level of service for these surfaces would be in accordance with guidelines which included a provision that "broken pavement edges, potholes, breaks or unraveled areas larger than 3 inches in diameter shall be repaired". Potholes are formed when water seeps through cracks in asphalt. When the water freezes, it expands and loosens the asphalt to the point where ultimately a piece of the asphalt falls out. A picture taken of the road in question shows that it had been subject to the detrimental effects of frost. The man contended that the City was negligent in failing to repair the road in accordance with its quality standards

In the spring, the City assigned a road patch crew to inspect the streets. The crews inspected and completed surface patching on a number of main roads in the City, including the one in question. The crew visually inspected the roads looking for imperfections that would prevent vehicles from travelling safely. Specifically, they looked for potholes obvious to the eye or that could be felt when driving over them. There were no procedural manuals in place for the road crews with respect to patching, but their supervisor instructed them to repair potholes that were 1 to 2 inches deep and 3 to 4 inches in diameter. Potholes that were not as deep were not repaired because the repair material – the cold mix – would not stay in. These smaller potholes would have to be repaired in the summer months with a hot mix. No records were maintained regarding the potholes they repaired.

The issue was whether the existence of a pothole leads to the conclusion that the road was not in a reasonable state of repair. It has been held that if a road is in a state of non-repair which results in damage, a prima facie case is established against a municipality which requires it to produce evidence that it took all reasonable precautions to keep the road in a safe condition and had an adequate system of inspection. The courts look at whether the street was in a reasonable state of repair in light of all the circumstances. In this case, the Court found that there was no evidence that the road's condition posed a hazard to vehicular traffic, specifically cars, buses, trucks, bikes and motor bikes. The man in this case advanced the position that he was a reasonable user of the road as an inline skater and that the City ought to have contemplated the road's use by inline skaters.

The man was attempting to cross the street where there wasn't traffic lights or a cross walk. If there had been, the circumstances would be different because municipalities have been held to a greater standard of care with respect to crosswalks than other portions of roads normally used by vehicular traffic. The City should not be expected to anticipate that the road in question be used by inline skaters. It was a busy arterial road and there were alternative routes to cross the street.

The Court's Ruling

The Court concluded that the City should not have been expected to anticipate that the busy roadway was going to be used by inline skaters. Sidewalks were available. There were traffic lights at a nearby intersection. Even though the Transportation Association of Canada indicated in its report that inline skating in Canada should be recognized as a viable mode of transportation, the evidence given by the inline skating experts contend that it would certainly not be viable on major arterial roads, and perhaps not on any roads. The Court found that despite the evidence of a pothole which caused the man's fall, the area where the accident occurred was reasonably safe for vehicles. The existence of a pothole did not constitute a failure to properly maintain the roadway in a state of repair that was reasonable. The City was not held liable for the man's injuries.

Lessons learned

The City in this claim did an excellent job producing policies for most of their inspections, maintenance and repairs. The Court made a point to note where the City was not able to provide documentation. It is evident that establishing policies and procedures, and documenting all inspection, maintenance and repair programs is an essential part of managing a municipality's risk of being exposed to liability claims.