



# Claim Case Studies & Legislation: Outdoor Skating Rinks

## Facts

A woman was at a municipally owned and operated outdoor skating rink. The rink was maintained throughout the winter months and included wooden boards around the perimeter and a gate to get on and off the ice. There was an outdoor mat that led from the gate to a bench where skaters could take their skates on and off. The woman put her skates on and was walking on the mat to the rink when she fell, fracturing her ankle. The outdoor mat had become wrinkled and folded during the course of the day and had become a trip hazard.

## Issue

Did the municipality fail to meet the standard of care owed to a skater on their property and are they thus liable for her injury?

## Legislation and Case Law

The duty of a municipality to take care of those using their premises in Ontario comes from the *Occupiers' Liability Act* (OLA), RSO 1990. One would expect that outdoor skaters, as in this case, would also take some care while participating in such an activity. Section 4(1) of the OLA gives a defence to municipalities. It states that an occupier doesn't have a

duty of care to a person in respect to risks that are willingly assumed by that person, other than a duty not to create a danger with the intent to harm, or to act with a reckless disregard to the safety of people using their facility.

This statement sounds like it would offer a solid defence to municipalities facing claims from accidents on the rink. However, case law has found that the dominant duty of care must rest with the occupier. The occupier must ensure that their premises are reasonably safe because the premises are under the occupier's control and within the occupier's power to make reasonably safe. The courts take issue with the fact that if the dominant duty rests with the person using the premises, then an occupier could simply let nature take its course and not do anything proactively to ensure safety. (see *Potozny v. City of Burnaby*, 2001 BCSC 837; and *Woelbern v. Liberty Leasing of Canada No.3 Ltd.*, 1978, 8 BCLR 352)

## Findings

The municipality, as the occupier, has a duty to ensure that the premises are reasonably safe. If they do not, they can be held liable for injuries caused to people using the rink. Even though people should realize that there is some risk involved in skating on an outdoor rink, they do not 'bargain

away' the right to bring a claim against the municipality. Even if the type of incident had never happened before, the courts have pointed out that an occupier cannot be relieved of responsibility for failure to keep the premise reasonably safe by saying that no one had ever been hurt and no one had warned the occupier of the danger. If the unsafe condition was there to be seen by someone who had a mind towards relevant risks, then it is the duty of the occupier to take reasonable steps to remedy that risk. (see *Niblock v. Pacific National Exhibition and City of Vancouver* 1981 30 BCLR 20)

### **Outcome of the Claim**

The claim was settled out of court. The municipality paid a settlement to the woman for her injury.

### **Lessons Learned**

Outdoor skating is an activity that involves some risk of injury. Although some of these risks are voluntarily assumed by those who use the rink, the municipality needs to take steps to reasonably minimize such risks. For further information on keeping your outdoor rink safe see our Risk Management Considerations for Outdoor Rinks.