



# Claim Case Studies & Legislation: Public Skating

## ***Potozny v. City of Burnaby, 2001 (BCSC)***

### **Facts**

It was a winter wonderland inside a local arena. Trees were set up along the ice rink, Christmas lights were hung, and sleighs and elves decorated the arena. A woman was on the ice when her left skate suddenly came to an abrupt stop. She fell and broke her ankle. The woman claimed that her skate came into contact with a pine needle or small branch from one of the Christmas trees and it caused her skate to stop. She held the City liable for her injuries for failing to properly maintain the skating rink.

### **Issue**

Was the arena liable for the plaintiff's injuries?

### **Legislation**

The standard of care that is imposed on a municipality is governed by Section 3 of the *Occupiers Liability Act*, RSBC, 1996, which requires a city to see that a person will be reasonably safe in using the premises. It is important to remember however, that perfection is not the standard.

### **Findings**

#### **Ice Surface Maintenance**

The City stated they had a system of inspection and maintenance in place. On the day of the fall, there was

no ice-resurfacer used between the two skating sessions that were going on that morning. The arena maintenance guidelines called for cleaning to be done every hour and a half, depending on the conditions of the ice. Skating causes snow to build up on the ice and that snow can hide dangerous debris or deteriorating ice conditions.

Although these guidelines were in place, there was no log system kept of how often the ice was actually cleaned. An expert from the Ontario Recreation Facilities Association (ORFA) gave some opinions regarding ice maintenance and cleanliness standards. They stated that although there are no written industry standards in effect, there are common practices. The common practice is for the arena to provide a smooth surface and the ability to skate on the ice without obstacles. The common standard regarding the frequency of cleaning is between one or two hour intervals, with exceptions of the ice becoming too snowy (more than one-eighth of an inch thick), the ice becoming too rutted or if there was too much debris on the ice. On the day of the incident, it appears that the normal maintenance standards in place for the arena were not used.

#### **Decor**

Placing trees near the ice may be considered an unnecessary risk that created a significant safety hazard. Although

people have been skating for thousands of years on outdoor rinks that have trees surrounding them, outdoor rinks do not pose the same risks as there is not the same concentration of skaters. Also, the debris on the ice would not necessarily be a hazard for an experienced outdoor skater, but would be a danger for those who had not skated outdoors and wouldn't recognize the hazard. The trees were in reach of children who would hit the branches on their way skating past them, causing needles and debris to drop onto the ice. It appears that none of the arena staff made any attempts to stop the children from this activity.

The lighting in the arena was dimmer than usual. The banks of arena lights had been turned off and only the Christmas lights illuminated the ice surface. These conditions made it more difficult for the woman and the arena staff to see and avoid the debris on the ice surface.

## Conclusion of Findings

The lighting in the arena made it difficult for staff and skaters to see debris. The failure to clean in accordance with industry standards and in accordance with the usual procedures that were in effect for the arena, resulted in a situation where water, ruts, snow and debris accumulated. It was reasonably foreseeable that the accumulation of snow and debris and the failure to resurface the ice might result in a skater tripping. These were dangers that the City ought to have known about. It was reasonably foreseeable that an accident might be caused by the combination of subdued lighting and the failure to follow industry and arena procedures relating to the cleaning and resurfacing of the ice.

## But what about the Inherent Risk?

Inherent risk is a concept that is separate from 'voluntary assumption of risk' or 'contributory negligence'. It is a recognition by the courts that what constitutes reasonable care will depend on the dangers which a person engaged in an activity might reasonably be expected to encounter. Recreational ice skating is not an inherently dangerous sport. Arena operators are under the obligation to make arenas reasonably safe, although they are not required to

eliminate the risks inherent to the type of activity on the ice at any particular time. In this case the Court notes that while the woman was a willing participant in a skating setting which had some inherent risk for the potential for falls and consequential injuries, she was not a willing participant in a skating session where the usual maintenance precautions were absent, the danger of the display trees was present, and the failure to control the action of the children regarding those displays was allowed.

## The Court's Ruling

A claimant only has to prove that on a balance of probabilities their injury was caused by the negligence of the occupier. In these circumstances, the Court found that on the balance of probabilities, the fall was caused by a piece of debris. That debris should not have been on the ice surface. It was there because the City did not exercise the appropriate standard of maintenance and supervision. The Court is careful to note that not all falls would be the City's fault. Some falls could be because of inexperienced skaters or skates catching an edge. The woman succeeded in her claim against the City and was awarded damages of \$50,000, plus costs.

## Lessons Learned

Most municipalities take great time and care in developing standards for their arenas. They have guidelines for inspection, maintenance and repair. What the case above demonstrates is that diligence cannot stop there. There has to be proper documentation and retention of records. Staff should be required to maintain accurate logs of inspection and maintenance orders. These documents could be instrumental in defending against a negligence claim.

When developing strategies for managing the risks of public skating in your arena, see our Risk Management Considerations for Public Skating.