

Claim Case Study

Special Events

Maria Copeland v. The City of Hamilton et al, 2009, ONSC

Facts

On May 28th, 2000 the plaintiff filled out and signed a registration form and also paid a ten dollar fee to inline skate in a fundraiser put on by The Canadian Cancer Society in Hamilton. The course covered about 22 kilometers and had about 1000 people participating. These people jogged, walked, cycled or inline skated. After almost completing the course the plaintiff hit a stone, tripped and hurt herself.

The plaintiff took the position that the road ought to have been cleared for the event and the stone created an unreasonable risk. She brought a claim against the City and the Cancer Society for damages.

Issue

1. Is The Canadian Cancer Society liable for the plaintiff's damages? Did they fail in their duty to keep participants reasonably safe?
2. Is the City liable for the plaintiff's damages? Did they fail in their duty to maintain the roadway?

Legislation

The court found that The Canadian Cancer Society was the 'occupier' for the event and subject to the affirmative duty to take reasonable care for the safety of the participants on the premises. The *Occupiers Liability Act*, RSO 1990 section 3(1) states that:

"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".

Since the City was not the occupier, the *Occupier's Liability Act* did not apply. The relevant legislation was the *Municipal Act*, 2001, SO 2001, c.25 which sets out the standards of maintenance for the road.

Section 44 reads:

"44(1) Maintenance

The municipality that has jurisdiction over a highway or bridge shall keep it in a state of repair that is reasonable in the circumstances, including the character and location of the highway or bridge.

44(2) Liability

A municipality that defaults in complying with subsection (1) is, subject to the *Negligence Act*, liable for all damages any person sustains because of the default.

44(3) Defence

Despite subsection (2), a municipality is not liable for failing to keep a highway or bridge in a reasonable state of repair if,

- (a) it did not know and could not reasonably have been expected to have known about the state of repair of the highway or bridge;
- (b) it took reasonable steps to prevent the default from arising; or
- (c) at the time the cause of action arose, minimum standards established under subsection (4) applied to the highway or bridge and to the alleged default and those standards have been met."

Findings

With respect to The Canadian Cancer society, it was the 'occupier', and thus subject to the *Occupiers Liability Act*. The court found that the Society had addressed any safety concerns with respect to the participants before and during the event. There were police officers and volunteers continually patrolling for any hazards.

In addition, the Cancer Society had the plaintiff sign a waiver of liability prior to participating in the event. The court reviewed the waiver and found that it was a valid release. The plaintiff knew what she was signing and the scope of the release was worded broadly enough to cover the conduct of the defendants.

As for the City, the court could not find any evidence that the road was in a state of disrepair. The road was a high speed arterial road designed primarily for vehicular traffic. There was evidence of regular maintenance and inspections of the road, as well as cleanings. The road was inspected by a police officer experienced in traffic control and safety concerns before the event. He found that the road was in excellent condition and stated that if it had not been in good condition the event would not have been allowed to proceed until any hazards had been cleared.

The Court's Ruling

The court found that The Cancer Society took positive action to take reasonable care under section 3(1) of the *Occupier's Liability Act* to see that the participants were reasonably safe during the event on the roadway. The court also ruled that the waiver signed by the defendant should be enforced as it was a valid waiver.

The standard maintenance provisions of the *Municipal Act* require the city to keep the road in a state of repair that is reasonable in the light of all the circumstances. The judge found that there was no evidence whereby a legitimate inference could be drawn that the persons entering onto the premises were not reasonably safe or that the highway was in a state of non-repair. The judge stated "a stone on a public highway does not disrepair make". The plaintiff was not exposed to an unreasonable risk. The road was not required to be in a perfect state of repair.

The plaintiff's action against the The Canadian Cancer Society and the City was dismissed.

Lessons Learned

When planning a special event, it is important that the organizations and municipalities involved have good communication and contracts between them. It is important to have outlined the responsibilities of each party. Inspection and maintenance are always imperative in mitigating the risk of liability claims.

For more information see our Risk Management Consideration for Special Events.

For more information on waivers of liability, see our Waivers of Liability article.