



Claim Case Studies & Legislation: Tobogganing

A 13 year old boy was out tobogganing with his brother and some friends at a hill near their home. The hill was in a City park that they often used year round. They were unsupervised and no one was wearing a helmet. The boy collided with a pole and was temporarily knocked unconscious. The pole had been a part of a set that surrounded an old tennis court. The fencing around the court had been removed.

At the hospital, they found out that the boy had fractured his skull and bruised his brain. After the accident, he suffered from ongoing issues such as headaches and fatigue, uncontrollable emotions and difficulty concentrating.

Legislation

The boy and his family claimed that the City was negligent in their maintenance of the park. Relying on the *Occupiers' Liability Act* (OLA), RSO 1990, they claimed that the City had a duty to maintain the area in a safe condition for the enjoyment of the public and that they failed to lessen or alleviate the danger and failed to keep the park in proper repair. They didn't take reasonable steps to prevent injury to persons on the premises. They claimed that the injuries from the accident contributed to the boy's ongoing academic difficulties. The family was looking for \$5 million in damages.

Findings

The City had no policies or procedures in place concerning the inspection or maintenance of parks, nor did they maintain any records for their inspection or maintenance of the hills. Although there was no organized program allowing individuals to specifically use the area for tobogganing, the City staff admitted that they were well aware that

tobogganing did occur on the hill and that they were expected to observe potential hazards or dangers and identify them.

There was no tape or fencing around the posts. There was no signage in the park warning of tobogganing or other sliding activities or signs recommending safe practices such as mandatory supervision by an adult and wearing helmets. Although there had been no previous complaints or issues with people using the hill for tobogganing, that does not release the municipality from their duty to keep the area safe for those who use it.

Outcome of the Claim

The City believed that there was contributory negligence in that the child was a frequent visitor to the park and knew that the pole was there. The City also claimed that there was no proof of the child's ongoing medical issues. However, as doctors in this claim indicated, the problem with head injuries in cases like this is that even minor head injuries can have troublesome side effects months or years after the event. The claim ended in a settlement for \$50,000 (not including OHIP costs, lawyer fees and interest).

Lessons Learned

Under the OLA, a municipality has a duty of care as the occupier of a premise. Section 3(1) states that an occupier "...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". Municipalities need to take care and mitigate the risk of exposure to liability claims. Proper inspection, maintenance and record keeping can help minimize liability.

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