



Claim Case Study: Building Permits

Building permits, and especially older building permits granted by municipalities have additional unknown liability risks. Municipalities need to ensure that they are staffing qualified, fully trained professionals and building officials when reviewing approval of building permits and when making the policy decision to inspect construction projects.

The Courts seem to sympathize with homeowners who discover they have purchased a defective home, and therefore municipalities seem to be held to a high standard of care in this case.

Background

In this case, the Plaintiffs sued the Township for discovery of Building Code violations when they began renovations to the cottage in 2012, which they purchased in 1999. The cottage was custom-built by the previous owners, with a building permit issued in 1989.

In 1989, a building permit was issued by the Corporation for the Township of Lake of Bays to the previous owner for the construction of the cottage between 1989-1991. The permit was accepted in less than one day.

Between 1990-1991, the Chief Building Officer of the Township department conducted three separate inspections at the cottage for foundation and drainage, upper level washroom, plumbing and insulation, and lower level insulation and vapor barriers. For all three separate inspections, the Chief Building Officer did not note any deficiencies with respect to the construction.

In 1992, the Township wrote a letter to the previous owner advising that their records indicated that there had not been a request for any inspections for the project in over six months. The letter also included instructions on how to extend the permit. The Township advised the previous owner that if they did not hear back, they would assume the project was completed and the file could be closed on the construction project.

In 1993, the Township sent a letter to the previous owner confirming it was assumed that the building project was complete and any future construction activity on the cottage would require new permits. There was no evidence that the Township ever inspected the cottage after the three inspections that occurred between 1990-1991.

The Plaintiffs purchased the cottage in 1999. At the time of the purchase, the Plaintiffs were aware of damage to the cottage by obtaining a home inspection report. The Plaintiffs were also advised by their real estate lawyer that a notice was sent to the previous owner indicating that a final inspection of the cottage was outstanding. Since then, the building department lost its records in a fire, and it could not be confirmed if the cottage passed final inspection.

Regardless, no final inspections were requested by the Plaintiffs or performed by the Township.

In 2011-2012, the Plaintiffs performed renovations on the cottage. During the construction process, the Plaintiffs architect and engineer discovered several structural issues, opining that the cottage was structurally unsafe and that there were several building code violations. In summary,

the engineering report concluded that the repair costs may exceed the re-construction costs of the building and that occupancy of the building should be limited until the structural adequacy of the building can be verified.

The Plaintiffs stopped occupying the cottage in 2013 and retained services of further experts in 2014. As a result, the Plaintiffs commenced an action against the Township for negligent building inspections and breaches of the Township's legal duty to enforce the provisions of the *Building Code Act* and the *1986 Building Code*.

Issues

- (a) Does the Township owe a duty of care to the Plaintiffs?
- (b) If the Township owes a duty of care, what is the standard of care owed?
- (c) Has the Township breached the duty of care owed?
- (d) If the Township has breached the duty of care, did such breach(es) cause the Plaintiff to suffer damages for which the Township is responsible?
- (e) If the Plaintiffs have suffered damages that the Township is responsible for, what is the amount of those damages?
- (f) Should the amount of damages be reduced?

Analysis

There are two questions to be considered when determining whether the Township owed a duty of care to the Plaintiffs. Those questions are:

1. Is there a sufficiently close relationship between the parties so that in the reasonable contemplation of the Township, carelessness on part of the Township might cause damages to the plaintiffs? If so,
2. Are there any considerations which ought to negate or limit (a) the scope of the duty **and** (b) the class of persons to whom a duty is owed, **or** (c) the damages to which a breach of it may give rise?

The Courts have found that the first question holds a relatively low threshold. In this case, the relationship between the Township and the Plaintiffs was that of a rate payer who subsequently purchased the cottage in which the Township granted a building permit. The Township also conducted building inspections on the cottage.

It was found that a *prima facie* duty of care exists.

For the second question, the Court examines legislation. Here we look at whether there is a policy reason to limit the *prima facie* duty of care.

The *Building Code* imposes a duty on all municipalities to ensure all construction of new buildings comply with the standards as described in the *Act* and *Code*. The Courts have found that both the granting of the building permit and subsequent inspection of construction is the same: to protect the health and safety of the public.

In this case, the Township granted a building permit and inspected the building construction as it was ongoing. The Plaintiffs are subsequent owners of that building. The Courts therefore found it reasonable that the Township would owe a duty of care to the Plaintiffs.

The Standard of Care owed is not to the level of perfection and is not for every deficiency of negligent action in the construction of a building. The Standard of Care owed involves two stages: 1) The granting or rejecting of the building permit, and 2) The inspection of the construction based on the building permit granted.

The Courts found that the Township fell well below the Standard of Care when granting the building permit, under the first stage. The Township could not produce the plans or specifications required for approval of a building permit under the *Code*. The Courts found that regardless of the building office fire destroying paperwork, the fact that the permit was granted in less than one day indicates that there was no review of any plan or specification by the Township.

The second stage deals with the inspection of the cottage during construction by the Township and the deficiencies noted by the Plaintiff's experts. The test under this stage is whether these deficiencies should have been discovered by a reasonable and prudent municipal building inspector.

The Judge provided a thorough review of the deficiencies with the cottage and finds negligence, noting the provisions of the *Act* and *Code*. The Judge accepted expert evidence that the three inspections conducted by the Townships Chief Building Officer should have uncovered the defects.

Decision

The Judge found that the Township fell below the standard of care by not identifying the *Building Code* violations.

The Plaintiffs, on a balance of probabilities, proved that the Township was responsible for the deficiencies and awarded damages.

The Plaintiffs were also granted damages for emotional and mental distress and were awarded an additional \$15,000.00.

The Appeal

The Township appealed the Trial Judge's decision. The Appeal Judge agreed with the Trial Judge that it was unreasonable for the Township to grant a building permit without reviewing plans and specifications. The Appeal Judge also agreed that it was not reasonable for the Township to refrain from a final inspection after they had already made the decision to inspect the construction.

However, the Appeal Judge did agree with the Township under one deficiency, noting the test of an ordinary, reasonably prudent building inspector. The Appeal Judge referred to case law confirming that a municipality has made the decision to inspect, is not bound to discover every latent defect.

The Appeal was allowed in part and damages were slightly reduced.

Takeaways

Although the Appeal Judge slightly reduced damages awarded to the Plaintiffs, both the Appeal and Trial Judge held the Township to a Standard of Care considering the approval of the building permit and policy decision to inspect.

Municipalities need to maintain records for building permits, including old buildings, and ensure that plans and specifications are documented. Municipalities need to make sure that building permit requests have all required documentation attached to the application and that reasonable review between the application and the acceptance has been completed.

When performing inspections, municipalities should consider the qualifications of their staff and experts. A final inspection should be conducted for all construction if the decision to inspect is/was made by the Municipality. The responsibility to perform the final inspection was placed on the Municipality, regardless of the previous owner not submitting the request.