

Liability and municipal facilities

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One day, Mr. Herman caught his skate in a rut in the ice while playing recreational hockey at a local arena and fell, fracturing an ankle. Mr. Herman sued the municipality, as an occupier of the arena, for failing to maintain the ice so that it would be reasonably safe for use. These are some

of the facts in the Ontario case of *Herman v. London (City)*.

Swimming pools, arenas, recreation centers, playgrounds, municipal offices and libraries are commonly owned and operated by municipalities in Manitoba for the use and enjoyment of their residents and others. With

ownership or operation comes responsibility. The Occupier's Liability Act (Manitoba) provides that:

An occupier of premises owes a duty to persons entering on the premises and to any person, whether on or off the premises, whose property is on the premises, to take such care as, in all circumstances of the case, is reasonable to see that the person or property, as the case may be, will be reasonably safe while on the premises.

In determining if a municipality has carried out its duty as an occupier, the following factors can be considered:

1. whether the danger was foreseeable;
2. whether the occupier's conduct was in accordance with accepted standards of practice;
3. whether there was a system of inspection commensurate with the risk;
4. whether the danger was allowed to exist for an unreasonable period of time; and
5. the ease with which the danger could have been obviated.

The Municipal Act (Manitoba) limits the liability of a municipality for failing to maintain a 'public facility' in a reasonable state of repair. A 'public facility' is defined in that Act as a place that is subject to the

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direction, control and maintenance of the municipality, and includes playgrounds, swimming pools, arenas, recreation centers, offices, and libraries. The liability of the municipality is limited to cases where the municipality knew, or ought to have known, about the state of disrepair and failed to correct it in a reasonable time.

Simply put, a municipality must exercise due diligence. The municipality must demonstrate that it has developed, implemented and carried through with plans to upkeep, operate and maintain public facilities so that potential hazards can be identified and corrected (if not prevented) within a reasonable time.

The City of London avoided liability to Mr. Herman by proving that it had an effective system in place for maintaining the arena's ice surface. Evidence showed that the ice was usually among the best in the City of London. The ice was resurfaced after every 50 minutes of ice time for 10 minutes. Once a week the operators of the arena took time to "clean the ice down and re-flood the ice rink." It was proven that the operator of the Zamboni did look for the ice ruts and debris while he resurfaced the ice. Every time he completed the resurfacing, the operator completed a vehicle inspection report, which noted if the Zamboni was working properly, to show that the Zamboni itself was not creating any ruts in the ice. The evidence established that the blades on the Zamboni were replaced every Monday and Friday. There were also seasonal and yearly inspections conducted on the equipment. The City of London proved that a reasonable system was in place and carried through. The court held that a municipality is not required to do anything more.

A municipality cannot guarantee that a public facility will always be free of dangers, but it can show that reasonable steps are taken to detect and address hazards. Remember to:

- a) establish operation, repair and inspection programs;
- b) implement the programs;
- c) attend to repairs on a timely basis;
- d) document all actions;
- e) direct any complaints to the appropriate individuals on a timely basis and record the corrective actions; and
- f) report any potential claims to your insurer immediately.

Notice of such a claim against a municipality must be provided within the time limit set out in The Municipal Act:

To claim against a municipality for loss or damage as a result of the municipality's failure to maintain a municipal road or a public facility, the claimant must, in writ-

ing, notify the chief administrative officer of the municipality of the event on which the claim is based within three days after the event.

A claim will not be barred by reason of lack of notice if the claimant can show he or she had a reasonable excuse for the lack of notice that does not cause prejudice to the municipality, if the claim relates to a death, or if the municipality waives the notice requirement.

Notice is required for two main reasons. First, notice allows a municipality to investigate a complaint in a timely manner. The municipality can examine the

area to determine how and why an accident occurred. Second, notice allows a municipality to quickly remedy any danger in order to prevent future loss to another user of the facility. Where notice is not provided, a court will consider if a municipality has experienced prejudice in not being able to carry out these activities, as they would have had they received notice.

Municipalities are responsible for the public facilities they establish and maintain. It is also important for a municipality to protect users from injury and to protect itself from the legal liability that can stem from the use of those facilities. ●