

## Canada's Specialty Insurance Firm

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### Recent Developments in Canadian Municipal Law

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*Local governments throughout Canada are consistently exposed to new risks and creative claims aimed at targeting their perceived 'deep pockets'. Local governments who develop and implement policy-based risk management strategies will reduce their risk of liability exposure, both for their own benefit, their community members and that of the insurers. Two recent cases illustrate the challenging complexities faced by local governments in developing and instituting such strategies, particularly where novel legal claims are made.*

### ***Municipality not liable for Plaintiff's "shocking" injuries on soccer field***

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In *Onley v Town of Whitby*,<sup>1</sup> the Plaintiff was playing soccer at a field owned by the Town of Whitby ("Town"). The grass was wet from a recent storm. At some point during the course of the game, the Plaintiff left the field and sat on the grass near a light pole. When she attempted to get up from the grass, she felt an electric shock. Shortly thereafter, the Plaintiff collapsed on the field and was transported to the hospital via ambulance. She claimed to have suffered serious and permanent injuries as a result of the electric shock.

<sup>1</sup> 2020 ONSC 20.



During the trial, it was established that the lighting pole had damaged wiring. According to an expert for the Town, the damaged wiring leaked an electrical current into the ground. An engineering expert retained by the Plaintiffs suggested that the damaged wiring could have been the result of ineffective maintenance and inspection. However, the Court concluded that the damage had likely been from an earlier lighting strike, and that it was not apparent to the Town.

The Court held that it was not reasonably foreseeable to the Town that a shock hazard was present, particularly in light of the fact that the damaged wiring did not affect the functioning of the lights or cause the circuit breaker to trip. As such, the Town had not breached the standard of care and the action was dismissed.

#### **Take Away:**

Local governments, as occupiers, have a duty to take reasonable steps to ensure the safety of individuals using their sporting facilities. In the case at hand, the Town took reasonable steps to prevent foreseeable electrical mishaps, including ensuring that the *Electrical Code* requirements were met. While the risk of lighting striking an electrical pole was foreseeable, it was not foreseeable that a strike would damage the internal wiring and hurt someone as a consequence. This case is a good example of how local governments will not be found liable for unforeseeable hazards.

### ***Municipality Cannot Turn a Blind Eye to its Own Surveillance Systems<sup>2</sup>***

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The City of Calgary (“City”) offers free transit fares on its C-Train system on New Year’s Eve and in the early hours of New Year’s Day to discourage drinking and driving. On one such occasion, the Plaintiff, Kyle Lyndon McAllister, was assaulted on an overpass leading to the City’s C-Train station. The assault took

<sup>2</sup> *City of Calgary v Kyle Lyndon McAllister*, 2019 ABCA, leave to appeal refused 2020 CanLII 223 (SCC).





place over the course of 20 minutes, footage of which was captured by a City surveillance camera. The two City officers tasked with monitoring the surveillance system for the C-train network did not notice the assault on the Plaintiff as it was happening. The Plaintiff was significantly injured and commenced an action against the City for damages for its failure to respond to the assault.

Having found the City to be the occupier of the overpass, the Court held that the City owed the Plaintiff a duty of care. Given the novelty of the case, expert evidence was considered in the Court's determination of the standard of care. The standard that was accepted included the installation of sufficient video surveillance and proper lighting throughout the area. Further, sufficient staff were required to monitor the video footage in order to "deter crime or allow its detection and an appropriate and timely response thereto". In this instance, the City failed to meet the standard of care as it was found that deficient video surveillance combined with poor lighting conditions prevented its officers (of whom the Court also found there were not enough) from taking notice of the assault.

The Court of Appeal criticized the standard of care accepted by the trial Court as imposing an absolute duty that did not accord with the statutory obligation to "take such care as to ensure that visitors are reasonably safe". The Court of Appeal went on to say that the standard of care ought not to include the "deterrence" or "prevention" of crime given that the options open to the City to stop an assailant from committing an unprovoked, intentional assault on a person in a public place were very limited. Finally, the Court of Appeal held that the trial Court's decision simply assumed that the City had a duty to detect and respond to crime, without analyzing the scope of that duty or the standard of care associated with it. It noted that no expert evidence on these issues was presented at trial.

The Court of Appeal concluded that the standard of care that ought to be imposed in this case required that the City have systems in place to reasonably respond to assaults and other events. Given the facts of the case, the Court held that it would have been reasonable for the City to have detected the assault within five minutes and responded within a further 10 minutes.

This was a significant departure from the Trial Court's view that the City's response ought to have occurred within one minute.

While the City was found liable for failing to meet the standard of care, the Court of Appeal also held that it was only liable for the damage caused after ten minutes had passed, being the amount of time that the City would have reasonably taken to respond in any event. It was therefore only liable for the incremental damages suffered by the Plaintiff *after* the reasonable response time of ten minutes.

On January 9, 2020, the Supreme Court of Canada denied leave to appeal.

**Take Away:**

The key take-away from this case is that an in-depth consideration of resources should be undertaken when a local government decides to implement a surveillance system as it will likely invite a duty to detect and respond to events that might otherwise not fall within the purview of a local government's responsibility. It is important that a system, once implemented, is equipped with the manpower and resources to ensure that reasonable steps are being taken to detect and respond to events within a reasonable period of time. That said, it is likely that what constitutes a reasonable detection and response time in any given case will be largely dependent on the facts.

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