



PUBLICATIONS

9401

ARE YOU SKATING ON THIN ICE? AN UPDATE ON LASALLE *Reprinted from January 1994 COWAN NEWS*

An \$8.7 million judgment was awarded against a municipality for a severe injury in an ice hockey accident.

In our July newsletter we referred to the \$8.7 million dollar judgment that had just been handed down against one of our municipal clients. We indicated that we would have more to say about this in our next newsletter.

In October of 1988, John Stein was participating in a Minor Hockey League Association game in the Town of LaSalle. During that game he either skated into a hole in the ice or created a hole in the ice which resulted in him coming into forceful contact with the arena boards. As a result, he suffered a severe injury to his vertebrae and spinal cord resulting in quadriplegia.

John Stein and his family brought a suit against a large number of parties including the referees, the league, those responsible for the league, the vendors and sharpeners of the skates and others.

Over a period of time, the Plaintiff's whittled their case

down to a single defendant: the Town of LaSalle. The allegations brought forth against the Municipality were that they failed to maintain an ice surface of a sufficient strength and quality fit for the playing of hockey.

The trial of this particular claim took place during May and June of 1993, some four years after the accident, and lasted approximately seven weeks.

The trial Judge determined that the Municipality had control of the ice and that they were subject to the duty contained within the Occupiers Liability Act which states that, "an occupier of the 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 are reasonably safe while on the premises." In its simplest terms, the Judge indicated that the Municipality must take care to provide an ice surface that is reasonably safe for the playing of hockey. After listening to all the arguments and the testimony of witnesses the Judge made his conclusions.

Based upon evidence presented, he determined that the hole in the ice was approximately 2" wide, 5"-6" long and from 3/8" - 1/2" in depth, going all the way down to the concrete pad which supports the ice surface. The Judge further concluded that the fall did not occur because of any reason other than John Stein causing the hole in the ice by his skate going through it and this occurrence propelling him into the boards. The trial Judge further concluded that the ice in the specific area where the fall took place was too thin. He accepted that the standard of thickness should be between 1" and 1 1/2" thick in order to maintain stability and to be ideal for the purposes of its intended use. He stated that the ice at the specific location in question had become thin to the point that it was hazardous, and that it was thin as a result of a repeated number of passes over the same area by the ice resurfacing equipment.

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The Judge concluded that there was not an appropriate level of knowledge concerning the regular need for remedial action to maintain ice at the appropriate thickness and that no specific action to build the ice up had been taken in close proximity of time to the date of the accident.

The Judge indicated that the Municipality failed to take reasonable care to see that those playing on the ice surface were reasonably safe as required by Section 3, of the Occupiers Liability Act. He ruled that the Municipality was responsible for the injury to the Plaintiff and would be held 100% liable for the damages.

In assessing the damages to be awarded to the Plaintiff, the


Judge took into account the future lost income, the need for constant medical care and for reconstruction of the Plaintiff's home to accommodate his special requirements. When all of this was taken into consideration and further compounded by prejudgment interest, and the need to gross up the substantial amount of money for income taxes, a final figure of \$8.7 million was determined. This amount was not a structured settlement.

At the time of writing, this case is still under intense review by lawyers to determine the appropriate opportunities for appeal and the likelihood of success.

Whether the appeal proceeds or not, it is very important for Municipalities and operators

of arena facilities to be concerned about this judgment. It is imperative that appropriate steps be taken to make certain that all arena operations are done with the utmost of care, so that in the event of an accident in an arena facility, you and your insurers will be in a position to show that it was only an accident, and that it did not occur as a result of any negligence on your part.

To help you do this, the Frank Cowan Company has agreed to work with the Ontario Recreation Facilities Association to determine the appropriate standards, operating techniques, record keeping systems, etc.

We hope to deliver seminars across the Province to bring all these messages to you as soon as they are available. 

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