What Duty Does a City Owe to an Individual Who Gets Assaulted on its Property?

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A city's duty of care is the focus of *McAllister v. The City of Calgary*, 2019 ABCA 214. The City of Calgary (City) owns and operates a public transit system. At one of the stations, there is an open-air pedestrian overpass that provides pedestrian access to the station. The overpass is open 24 hours a day and there are no restrictions on access to it.

The plaintiff was with a friend, Chelsea, walking across the overpass when they saw Chelsea's ex-boyfriend and a friend. Chelsea's ex-boyfriend "just lost it" when he saw her with a "perceived rival" and he and his friend proceeded to assault the plaintiff for approximately 20 minutes. The incident went unnoticed by video surveillance monitoring personnel. The plaintiff brought the action against the City of Calgary only. The Court of Appeal (Court) considered whether the City was the occupier of the pedestrian overpass and the scope of the duty and standard of care owed by the City under the *Occupiers' Liability Act*, RSA 2000, c O-4 (the Alberta OLA).

Was the City an Occupier of the Overpass?

The Alberta OLA defines an occupier as a person who is in physical possession of premises or has responsibility for and control over the condition of the premises, the activities conducted on those premises and the persons allowed to enter those premises.

Although the overpass was open 24 hours a day, had no restrictions to access, and the City did not have staff present in the area the majority of the time, the Court nonetheless found that the City was an occupier of the overpass. In making this finding, the Court emphasized that the City built, owned and maintained the overpass and could block access to it if it chose to do so. Further, City personnel had the authority to order anyone to leave the overpass. These factors were suggestive of the fact that the City had the requisite control and responsibility of the premises pursuant to the Alberta OLA and therefore qualifies as an occupier.

Standard of Care is Not Universal

Section 5 of the Alberta OLA states:

> An occupier of premises owes a duty to every visitor on the occupier's premises to take such care as in all the circumstances of the case is reasonable to see that the visitor will be reasonably safe in using the premises for the purposes for which the visitor is invited or permitted by the occupier to be there or is permitted by law to be there.

Notwithstanding that the City was an occupier of the overpass, the Court found that the standard of care is not universal. The Court emphasized the importance of the nature and function of the premises in determining the level of control and, therefore, the standard of care. The Court noted that the standard of care will vary between open public spaces such as a sidewalk, park or pedestrian overpass as compared to a building in which the City conducts its business. In this case, the Court found that the City had little real control over who used the overpass and the conduct of persons on it and, therefore, engaged a less expansive duty than would be required in the public transit station itself.

While the City has regard for the overall safety of the pedestrian overpass, there is no reasonable expectation that that the City will be automatically responsible for crimes that are committed on it. The standard of care on the City with respect to the overpass is to have systems in place that could reasonably detect and respond to assaults and other events.

The Duty to Prevent Crime and Damage Caused by Third Parties

The Court found that where a tort is committed by a third party on City property, the nature of the third party's tort becomes relevant in determining the standard of care of the occupier of the premises where the tort occurred. The Court explained that an occupier will only be held responsible for failing to prevent damage caused by the intentional tort of a third party in narrow circumstances. It emphasized that the amount of control of the occupier over the third party was a key factor in determining the standard of care. As an occupier will generally have less control over third parties who engage in intentional torts, the standard of care is lower in those situations.

In this case, the City had no control over the action of the third parties who assaulted the plaintiff, especially as the third parties' violent actions were spontaneous. As a result, the Court did not find the City liable for the assault itself.

Standard of Care for Detecting and Responding to Assault

The standard of care requires the City to respond to an assault in a reasonable time having regard to all the circumstances. The Court found that the standard of care allows the City a reasonable time to first detect the assault (including contacting security personnel or police) and then a reasonable time to respond (*i.e.* for the security personnel to arrive at the scene).

In this case, the Court found that there would be a reasonable probability that the assault on the respondent should have been detected within five minutes if adequate monitoring had been in place. Once the assault was detected and a call for assistance was made, a response could have reasonably been expected in five to ten minutes after receipt of the call. In this case, the City didn't respond at all. As a result, the City was found liable for the damages that occurred between the time they ought to have responded to the assault and the end of the assault. The City was not responsible for the entirety of the damages, but rather, only for the incremental damages suffered by the plaintiff after 10 minutes, being what the Court determined would be a reasonable response time.

Implications for Other Provinces

We note that this decision may also have implications for other provinces with similarly worded Occupiers' Liability Acts, such as Ontario. However, it is important to note there may be slight differences in each province, which will make a close review of the relevant legislation against case law from other provinces important.

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