

Wednesday, February 12, 2014

Tobaggoning on City Property and Hurt: \$580,000 Award Upheld on Appeal

A family of four went tobogganing on a reservoir property owned by the City, in an area where tobogganing was expressly prohibited (but this was not known by the family). After their two children went down the hill, the plaintiff father went down, hit a ridge and overturned, and badly injured himself, including a crushed L1 vertebrae, chronic pain and depression. The mother and father eventually ended their 19 year marriage alleging that the father's changed personality after this accident was the main reason.

The dispute went to an Arbitrator and then the City appealed to the Ontario Superior Court of Justice: [Uggenti v. Hamilton \(City\), 2013 ONSC 7990 \(CanLII\)](#)

On appeal, all the heads of appeal by the City were dismissed.

The specific property was not found to be a utility right of way, which would have prohibited recovery by the plaintiffs (which is of interest to personal injury practitioners). In particular, sections 3 and 4 of the [Occupiers' Liability Act](#) are reviewed in detail in the context of this municipal property injury.

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