

The BC Court of Appeal Rules on Local Government Liability in Abdi v. Bottomleys and City of Burnaby

Background

In 2014, the plaintiff, Ms. Abdi, was seriously injured during a gathering at the residence of the defendant tenants, Mr. and Ms. Bottomley. Ms. Abdi and other guests were gathered around a fire in the Bottomley's backyard that was contained in a wheel rim acting as a fire pit. Mr. Bottomley poured used motor oil onto the fire, causing an explosion that severely burned Ms. Abdi. Ms. Abdi brought an action seeking damages against Mr. and Ms. Bottomley and the City of Burnaby, which was the landlord of the property where the incident took place.¹ The jury found all defendants liable, and apportioned 29% of the liability to the City. The defendants appealed.

Facts

In 2008, the City had received a complaint from a neighbour of a "huge" fire with 20-foot flames in the Bottomley's yard. The City's fire department attended to put this fire out. The evidence was that the City took no further steps as a result of this fire. The fire was in contravention of a City bylaw prohibiting the lighting of any open fires, including any outdoor fireplaces, without approval. The tenancy agreement between the Bottomleys and the City also required compliance with all City bylaws. The City rented other premises as well and had a policy to conduct annual safety inspections of its residential properties. However, the City did not have sufficient staff to carry out this policy, and had not conducted any such inspections during the tenancy of the Bottomleys, which had commenced in 2005.

Following the 2014 incident, the City sent a letter to the Bottomleys advising that the open fire was contrary to the City's bylaws and the tenancy agreement and requiring the removal of the fire pit or face eviction. The Bottomleys complied with this demand.

Duty of Care Finding by the Supreme Court

It is well established that local governments do not owe a duty of care when exercising discretionary legislative or quasi-judicial powers, but that local governments can owe a duty of care when exercising business or operating functions.² In this instance, the Supreme Court agreed with Ms. Abdi's argument that the City, as

landlord, owed her a common law duty of care, as well as a statutory duty of care under the Occupiers Liability Act.³

It was found that the City had actual knowledge that the Bottomleys had had prior unsafe open fires, contrary to the City's bylaws and the tenancy agreement. It was held that it was a foreseeable risk that having unsafe open fires could cause personal injury to guests at the premises, despite the City having no basis to foresee the exact circumstances that Mr. Bottomley would pour used motor oil on a fire and cause an explosion.

Regarding proximity, the court determined guests on the property were within the contemplation of the City as the landlord. The City created the fire bylaw to protect people, including visitors on the premises (City employees, contractors, and guests of the Bottomleys such as Ms. Abdi), from outdoor fires based on the knowledge that they can be dangerous and unsafe. This put these visitors in sufficient proximity to the City.

Once a duty of care is found, to establish negligence it must be shown a defendant breached the requisite standard of care, damages were suffered by the plaintiff, and the damages were caused by the defendant's breach. Here, the jury determined the City breached the standard of care and that this breach contributed to Ms. Abdi's injuries.

Court of Appeal

The defendants appealed, arguing, inter alia, that Mr. Bottomley's action of pouring used motor oil on the fire, causing the explosion, was too remote and not reasonably foreseeable by the City.⁴

The Court of Appeal dismissed the City's arguments, stating that "it was entirely foreseeable to the City that if it failed to take reasonable steps in fulfillment of its duty, persons coming to the property might be injured" and that given the City knew the Bottomleys had operated a dangerous fire in 2008, it was foreseeable that they would operate not just an illegal outdoor fire, but a dangerous one where someone could be injured. The court

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of appeal further held that the precise harm does not need to be foreseen, so long as harm in a general way could be foreseen.

Takeaways

Generally speaking, local governments do not owe a private law duty to individuals to enforce its bylaws against others where the decision as to whether and how to enforce bylaws is discretionary and may be subject to policy considerations. This case appears to have turned on the City's role as landlord, and its prior knowledge that its tenants had engaged in similarly dangerous behaviour, contrary to the City's bylaws and tenancy agreement. The Supreme Court went as far to state the City "preferred its commercial interest as landlord over compliance with its own bylaw".

Also of note, the City's failure to carry out its policy to conduct annual inspections of its residential properties contributed to the finding that it owed Ms. Abdi a duty of care. Local governments should be aware that its policies must be implemented, and the implementation must be reasonable, or it can give rise to liability. Consequently, it is important for a public entity's policies to meet minimum standards, rather than best practices.

¹ *Abdi v. Bottomley*, 2018 BCSC 2331; date of judgement June 19, 2018.

² *0956375 B.C. Ltd. v. Regional District of Okanagan-Similkameen*, 2020 BCSC 743.

³ It was also found the City owed a statutory duty of care pursuant to the *Residential Tenancy Act*.

⁴ *Levan Millwork Ltd. v. Larken Industries Ltd.*, 1989 Carswell BC 653 (BCSC).

¹² Limitation periods for commencing an action, proceeding or appeal in the Court of Appeal continue to be suspended and will be for 45 days after the date that the last extension of the March 18, 2020 declaration of a state of emergency expires or is cancelled.

September, 2020

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In his free time, Nicholas enjoys playing soccer, cycling, scuba diving, and travelling.

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