

Local Authority not Liable for Footpath Obstruction Injury

It is a belief held by many that public footpaths and walkways are the responsibility of the Local Authority and that they have a duty of care to ensure that these are kept clear of obstacles and encroachments. But who is liable when a third party creates the encroachment?

Case Study

The relatively recent decision of *David Hollyhead v M.N.G Investments Ltd t/as Australian Temporary Fencing & Ors* [2010] ACTSC 34 (31 March 2010) concerned a temporary fence around a construction site that used a concrete block to anchor fencing panels that protruded 20-30% on to the footpath. The Plaintiff suffered personal injury when he fell and broke his leg at night due to one of the concrete blocks. The Plaintiff maintained that the installer of the fence, the builder/occupier of the fenced land, and the Local Authority (Australian Capital Territory or "the ACT") were liable for the injury.

The Plaintiff's case against the ACT was that it had care and control of the footpath, and that it failed to inspect the footpath and the general area in circumstances where, if it had done so, it could have directed the repositioning of the concrete block.

The Result

The Court found the installer of the fence 70% liable, and the builder/occupier of the fenced land 30% liable. The ACT was found not liable. The Court accepted that if the ACT, through one of its employees or agents, had carried out an inspection of the area, a direction could have been given to move the block and that the Plaintiff would not have suffered the injuries he did. However, it was necessary for the Plaintiff to establish that the ACT was under a duty to conduct such an inspection, but failed to do so.

The Court accepted that if there had been a thorough inspection of the specific street where the accident occurred, in the months prior to the accident, the hazard would probably have been identified and removed. However, there was nothing about the street that would have placed it in a different position to any other street or footpath in any suburb in the ACT. In those circumstances the Court rejected a submission that the ACT was under a duty to inspect every footpath in every street in every suburb of Canberra once every six months, and stated the obvious, "it is only if a regime of that kind had been in place that one could be confident that this hazard would have been identified and removed".

The decision is a reaffirmation of the proposition that while a local authority owes a duty to all pedestrians on its streets and footpaths, for a local authority to be found liable for injuries sustained on land it occupies or maintains, it must have ignored or neglected to deal with a specific complaint, or that its attempts to do so were negligent. The decisions leading to, and the actual allocation of resources into maintenance, repairs and upgrade of public assets, are an area that is generally excluded from examination by Courts in claims of this nature.

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