



Case Commentary: *Lovely v. Kamloops (City)*

2010 BCCA 261, 2009 BCSC 1359

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This recent decision from the BC Court of Appeal illustrates the gravity of risks that exist for facility owners/operators such as municipalities and regional districts and reinforces the importance of evaluating the cost of prevention versus the cost of cure.

In 2006, Mr. Lovely attended the waste transfer station owned by the City of Kamloops to dispose of wooden pallets. The transfer station is used by residential and commercial customers to dispose of waste into one of eight bins accessed from unloading platforms. Each unloading platform is serviced by one large steel bin that sits about 6 inches below the level of the platform. The platform edge and the wall of the steel bin below are separated by a gap (approximately one foot wide) that is bridged by a metal debris plate. Mr. Lovely backed his pickup truck to the edge of an unloading platform and then, standing on the platform, removed the first of the pallets from the rear of the truck. With the frame lifted above him, Lovely stepped backwards towards the steel bin and in the process of hoisting the pallet into the bin, his foot stepped on the debris plate and he lost his balance and fell to the ground, 8 feet below the unloading platform.

Mr. Lovely suffered extensive injuries which ultimately resulted in the amputation of his right leg. He sued the City under the *Occupiers Liability Act* and in negligence, and the design engineers, Stantec Consulting, in negligence. Mr. Lovely was successful at trial though found 10% contributorily negligent; the City was found 55% liable and Stantec, 35% liable. On appeal, the City and Stantec alleged that the trial judge failed to apportion sufficient contributory fault to Lovely, however, the appeal was unsuccessful.

The court found that the City had failed to provide specific warning signs or markings on the platform to warn of the fall hazard at the edge of the unloading platform and to caution users to keep off the debris plate. Further, the City's reliance upon Stantec provided little defence as the City knew that Stantec had no specific expertise in transfer station design. In this case, the need for fall protection was seen as a matter of common sense rather than a technical matter requiring the City's specific reliance upon the consultant's expertise. Lessons learned? Expenditures for public safety are vital and within the purview of a local government's decision making capabilities; as this case has shown, such costs may be very small as compared to the capital and operating cost of a facility and the potential cost of liability.