

Nelson (City) v. Marchi, 2021 SCC 41 – negligence liability for public bodies

Facts:

In January 2015 there was heavy snowfall in Nelson, BC. As part of snow plowing operations, the city cleared snow from angled parking spaces in the downtown core. Snow was pushed to the curb. This created a snow bank between the parking spaces and the sidewalk. There was no path for people to get onto the sidewalk from the parking spaces. Taryn Marchi parked her car in one of these spaces and attempted to climb over the snowbank. Her leg went through the snow in a way that bent her foot up and locked her leg into place. She fell forward and felt her knee pop. She was later taken to the hospital with severe leg injuries.

Marchi sued the City for negligence. Both parties agreed that Marchi had suffered \$1 million in damages. However, the City claimed that it was not liable for negligence, because their procedure for removing snow from streets and parking spaces before clearing snow banks was a “core policy decision.” At trial, the judge agreed that the City did not owe Marchi a duty of care, because it was following its written and unwritten policies, and its decisions were made based on available resources. The judge said that even if the City did owe a duty of care, this was not breached because the snowbank did not pose an objectively unreasonable risk of harm, and Marchi could have been more careful.

The BC Court of Appeal ordered a new trial. It found that the trial judge had failed to distinguish between government policy and operation. Instead, the judge had just accepted that clearing snow “the way it has always been done” was a core policy decision. The City appealed to the Supreme Court of Canada.

The Decision:

The Supreme Court agreed with the Court of Appeal and ordered a new trial.

Under Canadian common law, parties owe each other a **duty of care**, or must act in a certain way, when their actions could reasonably and foreseeably hurt someone. If that duty of care is breached, the injured person may have a claim for negligence against the person that breached the duty. The law of negligence applies to both individuals and governments. In some cases, statutes might exempt some parties from negligence claims.

The Court has recognized in its past decisions that governments owe road users a duty to keep roads reasonably safe. But governments may be immune from negligence claims for policy decisions. Policy decisions are usually made at higher levels of government, and are made to further a specific course of action, usually based on social and economic considerations. Smaller scale decisions about how to carry these plans out are not policy decisions, and are not exempt from negligence claims.

Discussion Questions:

- 1) Do you agree with the outcome in this decision? Why or why not?
- 2) Do you agree with the idea that governments should be immune from negligence claims for policy decisions?

Relevant Law:

The common law of negligence

Resources:

You can read the entire case at:

<https://canlii.ca/t/jjs98>

For example, a decision to put warning labels on all tobacco products sold in Canada would be a policy decision, but the decisions about how these warnings should look or how big they should be would not be policy decisions.

It is important to distinguish between true policy decisions and day-to-day operational decisions. Governments should be accountable when their agents or employees act badly and cause harm to citizens. But they should also be able to do their jobs without being afraid of constantly being sued by citizens.

To help decide whether a government decision is a policy decision or an operational decision, the Court suggested considering four factors:

- 1) The level and responsibilities of the decision maker;
- 2) The process by which the decision was made;
- 3) The nature and extent of budget considerations;
- 4) The extent to which the decision was based on objective criteria.

The Court found that the trial judge's interpretation of "policy" was too broad. The issue in this case was the way the City had cleared snow from parking spaces in one particular area, and piled it in such a way that people could not get to the sidewalk. The trial judge had instead examined the City's total snow clearing operations throughout the whole city, and decided that the decision to clear snow was a City policy.

The Court then went through the four factor test:

- 1) The public works supervisor, who oversaw the snow clearing, claimed she did not have authority to change the way the parking spaces were plowed.
- 2) There was no evidence that there was any decision making process where competing objectives and goals were balanced against each other.
- 3) Budgetary considerations were involved, but not at a high level.
- 4) Courts routinely deal with road and sidewalk maintenance issues in negligence cases. Therefore, this was an objectively reasonable concern the City should have known about.

The Court found that the decision to clear snow in this way did not have any of the characteristics of a core policy decision.

Relevant Law:

This case did not rely on statutes. It relied on the common law of negligence, as written in previous court decisions made by judges.