

# MUNICIPAL DUTY OF CARE; 2 CASENOTES

Strong reputation, fresh approach.



# *McAllister v City of Calgary* - No good deed goes unpunished.

## Municipal expansion of the duty of care?

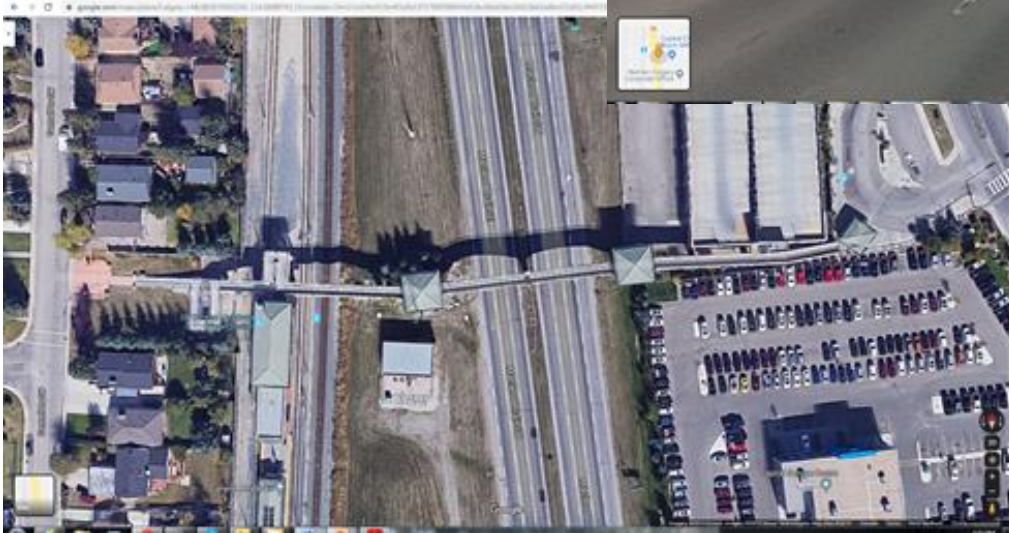
Adam Howden-Duke

November 1, 2019



# BACKGROUND FACTS:

- The overpass:



## The C-Train:

- 45 platforms;
- 337 cameras – 42 monitors; 3-4 second cycle
- 2 employees
- 46 transit officers; 2 on duty
- Canyon Meadows: 25 cameras; 12 parkade, 13 station
- 20 minute assault; 2 cameras (5 times each minute)



## Was the City an occupier of the overpass (vs the platform)?

- Nature & function relevant to standard of care
- Analysis focused on the C-Train network (not the overpass per se)
- Comments synonymous with any transit hub?



## The duty to deter & prevent crime:

- Within the exception to the general rule that no obligation to prevent damage caused by the intentional torts of a third party.
- Is this an expansion of this duty beyond police forces?
- Infrastructure and the importation of CPTED concepts



## The duty to detect and respond to crime:

- Application & relevance of *Childs v Desormeaux* (2006 SCC 18, [2006] 1 SCR 643)
- Uncertainty in determining when the duty arises?
- Creation of obligation to monitor?
- Where monitor, creation of obligation to respond?



## The Standard of Care (detection & response)

- Reliance on expert evidence
- Absence of evidence as to timeliness





## What now?

- Relevance of nature & function of public spaces
- Expanded duty of care to prevent crime?
- Uncertainty both in application of duty & standard of care
- Context and duty of care for special events?



# *Abdi v. City of Burnaby* - Beware Municipal Landlords!

## Is there a special duty of care?

Stephanie Hamilton

November 1, 2019



## BACKGROUND FACTS:

- The property
- The backyard fire pit



## Details of Tenancy

- Property owned by the City
- Tenancy agreement with Bottomleys since 2005
- Lease provisions:
  - maintenance and repair of premises - City
  - maintenance of yard - tenant
- City policy re annual inspections
- Fire bylaw



## Allegations

- Breach of *OLA* as occupier
- Breach of the *OLA* as landlord
- Common law negligence as landlord
- Negligent enforcement of bylaws



## Statutory Duty owed by the City?

- *Occupiers Liability Act s. 6*
- *Residential Tenancy Act s. 32*
- Tenancy agreement
- City bylaws
- City policy



## Was the statutory duty breached?

- City was responsible for maintenance and repairs - s. 6(1) *OLA*
- Lease provision delegating yard maintenance was not sufficient to set aside duty in s. 32 of *RTA*
- Fire pit was a fixture
- Wife and children had cause of action against City



## Common Law Duty of Care

- No established common law duty
- *OLA* s. 6(3)(b) - nothing relieves a landlord of a duty the landlord may have apart from this section
- *OLA* s. 7 - *Negligence Act* applies
- *Anns* test
  - Sufficient foreseeability and proximity?
  - Policy basis not to impose a duty?





## Foreseeability and proximity

- Risk was foreseeable – open fires could cause injury
  - Application of *Rankin's Garage v. J.J.* 2018 SCC 19
  - Possibility as opposed to reasonable foreseeability
- Proximity - guests were within the contemplation of the City as landlord
- No policy reason not to impose liability on the City



## What now?

- New common law duty on municipal landlords
- Balancing quiet enjoyment with oversight
- Extent of what is foreseeable
- Comments from court on City's placement of commercial interest over compliance with its own bylaw

