

Dealing with Municipal Failure to Meet Duty of Care and Standard of Care Obligations Affecting Pedestrians: Thoughts about Playing the Legal Card



Dr. Barry Wellar, MCIP, Principal
Wellar Consulting Inc.,
Professor Emeritus
University of Ottawa,
Distinguished Research Fellow
Transport Action Canada,
Policy and Research Advisor
Federation of Urban Neighbourhoods

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Scoping Municipal Interest Involving Pedestrians: Search Official Documents for Details

Search targets: commitments, policies, promises, pronouncements, agreements, advertisements, endorsements, pledges, and related statements that endorse, support, extol, exhort, encourage, promote, call for, and otherwise demonstrate a municipal “interest” in the use by pedestrians of such public transportation facilities as sidewalks, paths, bridges, roads, streets, highways, intersections, and crosswalks.





Table 1. Illustrative List of Municipal and Provincial Documents with a Legal Aspect Pertaining to Pedestrians

- Acts
- By-Laws
- Charters
- Circulars
- Committee minutes
- Council minutes
- Constitutions
- Drawings
- Laws
- Manuals
- Maps
- Media releases
- Official Plans
- Ordinances
- Public announcements
- Regulations
- Reports
- Resolutions
- Secondary Plans
- Surveys
- Website postings





Outlining Municipal Burden of Care Parameters Involving Pedestrians

In order to achieve duty of care and standard of care obligations with regard to pedestrians, there are states of affairs to be achieved and activities to be undertaken in reasonable ways by municipal governments to ensure that a reasonable effort is made to meet the reasonable needs and expectations of pedestrians.





Why Lawyers and Experts Are Involved in Deliberating Burden of Care Parameters Involving Pedestrians

Because producing and presenting evidence to establish or negate cause-effect relations and liability (due to negligence) begins with mastering the parameters and continues into the details. Table 2 contains several indicative reasons why lawyers and court-recognized experts are retained for duty of care/standard of care actions.





Table 2. Parameters of Burden of Care that Have Been and Are Matters of Political, Social, Methodological, and Legal Contention

“Duty of care obligations”

“Standard of care obligations”

“States of affairs to be achieved”

“Activities to be undertaken”

“Demonstrate that a reasonable effort has been made”

“Meet the reasonable needs of pedestrians in reasonable ways”





Previous Papers and Presentations Commenting on These and Other Burden of Care Parameters

A selection of online materials prepared by B. Wellar is provided in the Background Materials section at the conclusion of the presentation.





Taking Care of Business for Pedestrians Not a Simple Matter

Table 3 is indicative of the potential legal scope of municipal matters related to duty of care and standard of care obligations involving pedestrians.





Table 3. Municipal Duty of Care/Standard of Care Materials and Functions that Have, Could Have, or Should Have Implications for Pedestrians: An Indicative Listing

- Air pollution alerts
- Building demolitions
- Building permits
- By-laws
- Censuses
- Crimes against people reports
- Crimes against property reports
- Cyclist collision reports





Table 3. Municipal Duty of Care/Standard of Care Materials and Functions that Have, Could Have, or Should Have Implications for Pedestrians: An Indicative Listing (Continued)

- Development approvals
- Development charge schedules
- Emergency measures
- Emergency vehicle reports
- Engineering reports
- Hazards reports
- Health alerts
- Impact assessments





Table 3. Municipal Duty of Care/Standard of Care Materials and Functions that Have, Could Have, or Should Have Implications for Pedestrians: An Indicative Listing (Continued)

- Infrastructure reviews
- Intersection modifications
- Maintenance of roadway reports
- Maintenance of sidewalk reports
- Maps/mapping reports
- Motor vehicle collision reports
- Pedestrian slip-and-fall events





Table 3. Municipal Duty of Care/Standard of Care Materials and Functions that Have, Could Have, or Should Have Implications for Pedestrians: An Indicative Listing (Continued)

Pedestrian-motor vehicle collisions
Performance analysis reports
Performance measure reports
Plan amendments
Plans – Comprehensive
Plans – General
Plans – Official
Plans – Secondary





Table 3. Municipal Duty of Care/Standard of Care Materials and Functions that Have, Could Have, or Should Have Implications for Pedestrians: An Indicative Listing (Continued)

- Plans of subdivision
- Public safety programs
- Public safety reports
- Rezoning applications
- Risk analyses
- Road construction alerts
- Road signage practices





Table 3. Municipal Duty of Care/Standard of Care Materials and Functions that Have, Could Have, or Should Have Implications for Pedestrians: An Indicative Listing (Continued)

Road widenings
Surveys/surveying
Traffic counts
Traffic police assignments
Transit routing
Urban impact assessments
Zoning approvals





Meeting Duty of Care and Standard of Care Obligations for Pedestrians Involves Diverse and Non-Trivial Challenges

Table 4 and Table 5 list source materials which illustrate the many kinds of situations and events that underlie duty of care and/or standard of care legal actions involving pedestrians.





Table 4. Deaths, Injuries, and Other Costs of Burden of Care Failures that Affect Pedestrians: Results from Newspaper Searches Done More than TEN Years Ago

Newspapers as a Source of Fact and Opinion on Pedestrians' Safety, Comfort, Convenience: A Keyword-Based Literature Search and Review

(B. Wellar. Walking Security Index Project Report. Submitted to the Region of Ottawa-Carleton, January 2000.)





Table 5. A Selection of Headlines from the *Newspapers* Report

“No pedestrian professor – Fiery fighter:
U of O Prof. has taken on developers and governments”

“His latest beef is with dangerous drivers”





Table 5. A Selection of Headlines from the *Newspapers Report* (Continued)

“A dangerous intersection”

“Children’s lives needlessly put at risk –
Pedestrian situation dangerous”

“Crackdown at the crosswalks:
Crossing a hazard to pedestrians”

“Death adds to grim toll on roads”





Table 5. A Selection of Headlines from the *Newspapers* Report (Continued)

“Death of elderly woman puts dangerous stretch of road in context”

“Hamtramck crosswalk leads in pedestrian deaths”

“Icy sidewalks sore point for seniors”

“Minnesota rude: Drivers ignoring crosswalk law – motorists fail to stop or slow for pedestrians”





Table 5. A Selection of Headlines from the *Newspapers Report* (Continued)

“Ottawa plans to let sun melt snow – City feels expense of snow removal not warranted with spring on the way”





Table 5. A Selection of Headlines from the *Newspapers* Report (Continued)

“Pedestrian fatality raises new concerns”

“Pedestrian situation dangerous”

“Pedestrians are on the verge of a breakdown, study finds pedestrians get worst of the snow”

“Police report rise in elderly pedestrian deaths”





Table 5. A Selection of Headlines from the *Newspapers* Report (Continued)

“Road tragedy sparks suit”

“Safety threat”

“Seeing red on Sherbrooke Street”

“Stop, yield, and be nice – Region says it has done what it can, now safety is up to drivers”





Table 5. A Selection of Headlines from the *Newspapers* Report (Continued)

“The battle for the streets of Toronto”

“Whitby resident charged after mishap”

“Woman dies after being hit by car”

“10 most dangerous intersections – congestion, poor design deadly mix”





**Table 6. Evidence and Advice for Dealing with Standard of Care Failures Affecting Pedestrians?
A Selection of Headlines from the *Newspapers* Report**

“Accident sparks call for cameras”

“A matter of health – Scofflaw motorists endanger pedestrians, and health minister should speak out”





Table 6. Evidence and Advice for Dealing with Standard of Care Failures Affecting Pedestrians? A Selection of Headlines from the *Newspapers* Report (Continued)

“A pedestrian’s nightmare – Bad intersections make Ottawa-Carleton one of the most dangerous places in Canada to walk”





Table 6. Evidence and Advice for Dealing with Standard of Care Failures Affecting Pedestrians? A Selection of Headlines from the *Newspapers* Report (Continued)

“Collisions can-and-do happen as skaters, cyclists, and pedestrians vie for space”

“Crackdown at the crosswalks: Police help make streets a little less mean”

“Crossing a hazard to walkers”

“Cutbacks threatening citizens’ lives group warns”

“Fear and loathing at the cut-off”





Table 6. Evidence and Advice for Dealing with Standard of Care Failures Affecting Pedestrians? A Selection of Headlines from the *Newspapers* Report (Continued)

“Give Ottawa a winter of walkable sidewalks”

“Inaction on smog steams critics”

“Heavy trucks need side mirrors to prevent more deaths”

“Line won’t stop aggression”

“Ottawa-area drivers the most dangerous I’ve seen”

“Pedestrians are put at risk”





Table 6. Evidence and Advice for Dealing with Standard of Care Failures Affecting Pedestrians? A Selection of Headlines from the *Newspapers* Report (Continued)

“Political decision blocks photo radar”

“Portland studies ways to improve police enforcement of traffic laws”

“Quebec tightens rules on tinted windshields”

“Red alert – Drivers are running stop lights in rising numbers”





Table 6. Evidence and Advice for Dealing with Standard of Care Failures Affecting Pedestrians? A Selection of Headlines from the *Newspapers* Report (Continued)

“Region studies pedestrian safety at Kirkwood and Merivale”

“Report key to pedestrian safety”

“Safe intersections must be standard”

“Safety plan has serious problems”

“Seattle: A safe place to be if you’re a pedestrian”





Table 6. Evidence and Advice for Dealing with Standard of Care Failures Affecting Pedestrians? A Selection of Headlines from the *Newspapers* Report (Continued)

“The Walking Security Index – Working Towards Pedestrian-Friendly Intersections”

“Warning: Puddles a problem for pedestrians”

“Why bother with school “No Stopping” zones if even parents of students ignore them?”

“Why streets aren’t safe: The drivers”





That Was Then, This Is “Now”: Staying the (Newspaper) Course

“Roads scholar takes stand for pedestrian safety”
(*Ottawa Citizen*, Tuesday, June 29, 2010)





NOTE: Appreciating “The Literature” Is No Trivial Task

There are at least nine different types of literature which could be pertinent to this field, including popular literature, and newspapers are just one of at least six forms of popular literature. As a result, the process of searching and reviewing the pertinent literature can make or break how well the **Legal Card** is played. (See reference 2 in the Background Materials for further discussion of “the literature”.)





Basics of a Duty of Care/Standard of Care Action? Simple Arithmetic Test

An incident similar to one in
a newspaper article in Tables 5 and 6

+

Incident associated with material or a function in Table 2

=

Possibility that duty of care and/or standard of care obligation
was not met, and contributed to the incident.





Burden of Care Questions that Are Central to Examination for Discovery, Expert Witness Reports, and Evidence-in-Chief and Cross-Examination Activities

Q1A. What did you know, and when did you know it?

Q1B. As a result of having that knowledge at that time, what effect did it have on how you dealt with the burden of care situation?





Burden of Care Questions that Are Central to Examination for Discovery, Expert Witness Reports, and Evidence-in-Chief and Cross-Examination Activities

Q2A. What could you have known and when could you have known it?

Q2B. As a result of having that knowledge at that time, what difference could it have made to how you dealt with the burden of care situation?





Burden of Care Questions that Are Central to Examination for Discovery, Expert Witness Reports, and Evidence-in-Chief and Cross-Examination Activities

Q3A. What should you have known and when should you have known it?

Q3B. As a result of having that knowledge at that time, what difference should it have made to how you dealt with the burden of care situation?



Dealing with Municipal Failure to Meet Duty of Care and Standard of Care Obligations Affecting Pedestrians: Thoughts about Playing the Legal Card



Dealing with Municipal Failure to Meet Duty of Care and Standard of Care Obligations Affecting Pedestrians: Still Want to Play the Legal Card?

For anyone considering the decision to play the **Legal Card** as a means to deal with problems affecting pedestrians, I suggest that having due regard for Tables 1, 2, 3, 4, 5, and 6, and Questions 1A and 1B, 2A and 2B, and 3A and 3B may be instructive.





Background Materials

Duty of care and standard of care parameters were studied extensively and intensively during both the design and pilot study phases of the Walking Security Index Project, 1995-2002. Viewers wishing to know more about that research may wish to examine the several dozen project reports which are available via the City of Ottawa, the Ottawa Public Library, the University of Ottawa library and other libraries in Canada, the United States, and abroad, as well as in proceedings, readings, and journals. For this presentation I reference several of my online publications which discuss conceptual and/or operational aspects of the parameters, and may be of assistance to persons thinking about playing the legal card to deal with matters involving actual and potential deaths, injuries, and other negative consequences associated with pedestrians using such public transportation facilities as sidewalks, paths, bridges, roads, streets, highways, intersections, and crosswalks. The materials are listed in chronological order.





Background Materials (Continued)

1. B. Wellar, 2002. *Lessons Learned from the Walking Security Index (WSI) Project on How to Achieve Street-Smart Urban Transportation Improvements.*

<http://www.slideshare.net/wellarb/lessons-learned-from-the-walking-security-index-wsi-project-on-how-to-achieve-streetsmart-urban-transportation-improvements>

2. B. Wellar, 2005. *Geography and the Media: Strengthening the Relationship.*

<http://www.slideshare.net/wellarb/geography-and-the-media-strengthening-the-relationship>

3. B. Wellar, 2007. *Adapting Walking Security Index Concepts and Procedures to Serve and Promote the Mobility of Children.*

<http://www.wellar.ca/wellarconsulting/Mobility%20of%20Children.pdf>

4. B. Wellar, 2007. *Tips on Testifying as an Expert Witness.*

<http://www.slideshare.net/wellarb/aag-2007-tips-for-expert-witness>





Background Materials (Continued)

5. B. Wellar, 2008. *Methods and Techniques that Could be Used in Making Decisions about Identifying, Adopting, or Implementing Sustainable Transport Practices.*

<http://www.wellar.ca/wellarconsulting/TC%20Project%20Research%20Report%201.pdf>

6. B. Wellar, 2009. *Sampler of Commentaries on Methods and Techniques that Could be Used in Making Decisions about Identifying, Adopting, or Implementing Sustainable Transport Practices.*

<http://www.wellar.ca/wellarconsulting/TC%20Project%20Research%20Report%203.pdf>

7. B. Wellar, 2010. *Application of Walking Security Index Research to Standard of Care Situations and Analysis.* Federation of Urban Neighbourhoods.

<http://www.urbanneighbourhoods.ca/>

8. B. Wellar, 2010. *Careless Driving and Public Safety: Curtail the Pandemic by Raising the Bar.*

<http://www.transport-action.ca/dc/TACarelessDrivingandPublicSafety.pdf>





Background Materials (Continued)

9. B. Wellar, 2010. *Measures To Mitigate Intersections that Are Conflict Zones for Pedestrians*. Background Guide for Barry Wellar's Panel Presentation, Jane's Walk, Ottawa, 2010.

<http://www.janeswalkottawa.ca/database/view.asp?item=DOC-012>

10. B. Wellar, 2010. *Measures To Mitigate Intersections that Are Conflict Zones for Pedestrians*. Remarks for Panel Presentation, Jane's Walk, Ottawa, 2010.

<http://www.janeswalkottawa.ca/database/view.asp?item=DOC-013>





Barry Wellar Bio-Note

Barry Wellar, PhD, MCIP, Professor Emeritus at the University of Ottawa and Principal, Wellar Consulting Inc., is Distinguished Research Fellow at Transport Action Canada (<http://www.transport2000.ca/>), and Policy and Research Advisor for the Federation of Urban Neighbourhoods (<http://urbanneighbourhoods.wordpress.com/>). As Principal Investigator for the Walking Security Index project (funded by the former Region of Ottawa-Carleton and then the (new) City of Ottawa, 1995-2002), he designed ten indexes and three macro indexes to measure aspects of intersection design and performance that affect pedestrians' safety, comfort, and convenience at signalized intersections, and he has published more than 100 papers, articles, reports, etc., on topics related to the use of public transportation facilities by pedestrians. His current consulting activities include serving as an expert witness for duty of care and standard of care assignments involving pedestrians, vehicle operators, and vehicle passengers. More bio-information can be found at wellarconsulting.com.

