

SUPREME COURT LETS MUNICIPAL SOVEREIGN IMMUNITY STAND

In *O'Connor et al. v. City of Rutland*, Vt. Entry Order No. 2000-072 (Apr. 13, 2001), the Supreme Court declined to eliminate the governmental/proprietary distinction in the context of municipal sovereign immunity. In this case, it appeared that the City was negligent in failing to maintain adequate crosswalks and street lighting, which resulted in a pedestrian being struck and killed.

At the trial court level, the case was dismissed based on prior decisions of the Supreme Court, which upheld the doctrine of sovereign immunity for municipalities when they are acting in their governmental capacity. Since the maintenance of streets, lights and crosswalks is a governmental function, there can be no suit for liability.

The Supreme Court upheld that decision, saying that it would not “lightly overturn recent precedent, especially where the precedent could be changed easily by legislation at any time.” *Id.* at 1. This seems to refer to the fact that the Legislature has limited sovereign immunity for the state in 29 V.S.A. § 5601. It has also eliminated sovereign immunity for towns and counties in so far as they are covered by conventional liability insurance. 24 V.S.A. § 1403. (Coverage by PACIF is not considered “insurance” and is an exception here.)

The Court almost seemed to throw out a challenge to the Legislature, not unlike the challenge to change the school funding law or the legal barriers to same sex unions. It pointed out that it has already sent a hint to the Legislature that it should take the first step in addressing this issue. *Hillerby v. Town of Colchester*, 167 Vt. 270, 276 (1997). In *Hillerby* it referred to *Hudson v. Town of East Montpelier*, 161 Vt. 168 (1993) where Note 3 referred to attempts “by many courts, including this one, to alleviate the harsh results of municipal immunity, which has long been under attack.”

The major lesson from this case seems to be a preview of some change, either legislative or judicial, in the status of sovereign immunity for municipalities.

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