

She says that many cities have bylaws that ban tobogganing on city property. O'Connor proposes a middle ground, providing special places for these activities instead of banning them outright. She points to the success of the dirt-bike ramp on the Toronto lakeshore and local skateboard parks.

"Municipalities know that tobogganers frequent certain hills. They can make sure the surfaces are smooth and pay some attention to their upkeep," O'Connor says. "If there are areas that might be dangerous, cordon them off. Put up signs that they are not to be used. Make sure access is hard to get."

With respect to street hockey, the City of Hamilton has taken an approach with a designated hockey street, closed to traffic. O'Connor acknowledges that making official sites for recreation could act as a double-edged sword because it raises an expectation that the municipality will be managing the site.

"There could be proof that it's meant to be kept in a certain condition, but there would also be evidence if the complainant wasn't following the rules, O'Connor says. Let's say the rules are that you can only toboggan until the street lights come on and the accident happened afterwards, or if a person decides they're going 'beer-boganning,' where they're drinking beer while tobogganing and they get injured, that might share the liability amongst the parties."

Another measure that might help mitigate a municipality's liability would be posting a waiver.

"I don't think it would completely get them out of any liability," she says. "In these circumstances, depending on the age of the person, the complainant is either going to be liable for their own actions, depending on what it is, or their parents might also be named. So if a minor child was injured while tobogganing or skateboarding, a parent might be liable for not properly supervising."

Overall, O'Connor believes that outright bans are unwarranted from a legal perspective. "A handful of cases are creating a chill. It's getting a little out of hand," she says.