

# TREADING ON THIN ICE

## Keeping Sidewalks Safe

By Van Krkachovski

*Municipalities are responsible for keeping sidewalks clear of snow and ice and that means they may also be liable for any personal injury damages resulting from a slip and fall. But getting a handle on just what keeping sidewalks in a "reasonable state of repair" means can be as slippery as the footing underneath.*

For Canadians, learning to walk in the snow is a right of passage. We dress our children in bulky snowsuits, shove them out into the garden and smile as they trundle across the snow arms outstretched in a passable imitation of a troop of penguins. Fortunately, kids bounce. Adults don't. Every year, thousands of people slip on icy sidewalks. For most, it is more embarrassing than painful. For others, especially seniors, slipping on ice can lead to a serious, painful and debilitating injury and that in turn can lead to a personal injury action.

According to The Municipal Act, municipalities are responsible for keeping sidewalks in a reasonable state of repair and that includes keeping them clear of ice and snow. But even though a municipality is responsible for keeping sidewalks clear, that does not mean that it is liable for every slip and fall that occurs. A municipality is only liable in personal injury actions involving snow and ice on a sidewalk if there has been "gross negligence."

*On January 25, 2002, Assunta Cerilli, a self-employed hairdresser, slipped and fell on an icy sidewalk in Ottawa, breaking her ankle. She went back to work five months later but having lost a number of her clients during her absence, she eventually closed her business. Two years after the accident, she was still having difficulty exercising and doing household chores.*

*The court ruled that city officials knew that icy conditions put pedestrians at risk and had made a conscious decision to reduce winter maintenance to save costs. Ms. Cerilli was awarded \$75,000 in damages, \$32,100 for lost income and \$118,800 for future lost wages and care costs.*

But what does "reasonable care" and "gross negligence" mean? In November 2002, the government amended The Municipal Act to define minimum maintenance standards for each class of municipal roads but there are no equivalent minimum standards for sidewalks. Since there is no absolute definition of what a municipality has to do to keep its sidewalks in a state of good repair, judges have to rely on the wording of the act, case law, and a good dose of common sense and will take into consideration such factors as circumstances, knowledge and budgetary constraints in his or her determination.

Putting the situation into context is an important part of the determination. A municipality is not expected to guarantee that its sidewalks are completely free of ice and snow under all circumstances. It would not be reasonable, for

## InSight

### Winter Sidewalk Maintenance

- Municipalities are responsible for keeping sidewalks in a reasonable state of repair and free of snow and ice.
- Municipalities are liable for personal injury damages if there has been "gross negligence."
- Minimum maintenance standards do not specifically address sidewalks
- Adjacent property owners, even if by-laws require them to keep sidewalks clear, are not liable for damages.

example, to expect a municipality to keep its sidewalks clear in the middle of an ice storm. It would be reasonable to expect it to have cleared the sidewalks on a beautiful sunny day, two weeks after the event. It may not be reasonable to have a sidewalk cleared within 24 hours on a seldom-used side street in a small village whereas it would be reasonable to expect that a sidewalk in front of a busy hospital in downtown Toronto is cleared promptly and efficiently.

The judge will also be interested in whether or not a municipality has a reasonable understanding of the risks a particular situation involves since knowledge is a key component of any action. Is a particular stretch of sidewalk prone to icing? How many pedestrians use the path? How many complaints have there been in the past? What was the weather forecast for that particular time? And should the municipality have known whether or not this particular piece of sidewalk posed a danger? The improvements in weather forecasting and de-icing technology in recent years have given municipalities new tools to combat ice and snow but they have also raised the expectations as to what a municipality can reasonably be expected to do.

There is also the practical issue of money and resources. Does a municipality have sufficient resources to do the job? Judges appreciate that municipalities do not have unlimited resources and that practical decisions on priorities must be made. While pleading poverty probably won't get you too far, showing that a municipality is doing the best it can with the money available would carry some weight.

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Finally, the judge will take into consideration what is known as "contributory negligence." Municipalities are expected to act reasonably. So too are pedestrians. People who were hit by a car because they crossed a road against a red light or people who were injured because they used a chain saw carelessly contributed to their own injury. They were hurt in part because of their own negligence. The same goes for someone who slips on an icy sidewalk. Did they go out in obviously dangerous conditions? Were they wearing inappropriate footwear? Were they ignoring obvious warning signs that the footing was treacherous? Judges have the unenviable task of proportioning the negligence that contributed to the accident and awarding costs based on that assignment.<sup>1</sup>

*In the case of Ondrade v. Toronto, the plaintiff sued the city after having slipped and fallen and broken his wrist during a winter storm in February 2003.*

*Madam Justice Wailan Low found that the city had met its obligations under the Municipal Act.*

*"Unlike sinkholes or upheaved paving which are static and merely await human intervention, road conditions produced by winter storms are definitionally in a state of flux and can turn from safe to treacherous in a matter of minutes," the judge noted.*

*It was not enough to say that the City could have done more or could have done something different, because this will always be the case. The issue, according to the judge, was whether the City had met the flexible standard of a state of repair that is reasonable in the circumstances".*

The one party in all this that is not liable, contrary to what many people might expect, is the owner of the property

adjacent to the sidewalk where the accident occurred. Many municipalities have by-laws requiring property owners to clear their sidewalks within 24 hours from the time a storm has ended, which saves the municipality money and conscripts a large amount of man-power to do the work. It does not, however, relieve the municipality of its liability. You can delegate the work. You cannot delegate the responsibility.<sup>2</sup>

Even though most personal injury cases are settled out of court, they are expensive and time consuming for everyone. Apart from the legal costs, the damages for pain and suffering, lost wages, and future care can add up to hundreds of thousands of dollars.

So how can a municipality protect itself? The first and most obvious thing it can do is to take its responsibilities seriously and do whatever is reasonable to clear snow and ice from sidewalks. Establishing its own minimum maintenance standards for clearing sidewalks would show that the municipality has a policy in effect and consistently meets reasonably established standards.

It can also protect itself in case of litigation by keeping clear and accurate records of what was done to keep the sidewalks clear and the prevailing weather conditions. This is understandably not easy given the circumstances. Operators have better things to do during a snowstorm than keep notes but courts like to see detailed documentation. It is much more persuasive than relying on someone's vague recollection of what happened months ago or even years ago. **M**

*Van Krkachowski is a partner with McCague Peacock Borlack McInnis & Lloyd. A graduate of Osgoode Hall Law School, he has been in practice since 1986 and specializes in defence insurance litigation. He is a member of The Canadian Bar Association, The Advocates' Society, The Metropolitan Toronto Lawyers Association, The Medical Legal Society, The Association of Trial Lawyers of America, and the Defence Research Institute.*

<sup>1</sup> The accident victim does have one primary obligation. Unless there are extenuating circumstances, the complainant must provide written notice of intention to sue within 10 days of the accident so that the municipality has a reasonable opportunity to investigate the situation.

<sup>2</sup> There are exceptions. A property owner may be responsible if accumulated snow and ice on his property melts, flows onto the sidewalk and then freezes. Cases have gone both ways.



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