

Claim Case Studies & Legislation

McNulty v. Brampton (City), 2004 (ONSC)

Facts

The plaintiff slipped on an icy sidewalk owned and maintained by the Municipality. She fell down causing soft tissue damage to her shoulder, back and neck. She claimed that the City was grossly negligent for failing to adequately plow, salt and sand the area where she fell.

Issue

Was the City grossly negligent?

Legislation

The plaintiff must prove that the ice was present as a result of the gross negligence of the City, under s. 284 of the *Municipal Act*, RSO, 1990, c. M-45, which requires the municipality to keep its sidewalks reasonably safe for pedestrian traffic.

Findings

The City had an operating policy that stated the sidewalks were to be plowed, salted and sanded as needed, within 16 hours of a snowfall of greater than 7.5cm, and after a thaw/ freeze cycle. The Roads and Operations department monitors weather reports, works with police services and maintains regular road patrols to keep up to date on changing conditions. The City produced maintenance logs for the week leading up to the incident. There were spaces on each log entitled “plow”, “salt” and “sand”, with boxes underneath for the worker to checkmark indicating if the task was performed. In the logs submitted for the week leading up to the incident, the only box checked was the “plow” box. The City claimed it was standard operating procedure for the worker to spread salt and sand at their discretion and that when they checked the “plow” box it was to be understood that they meant they also dropped salt and sand where they deemed it necessary. By the City’s own evidence, the sidewalk in question had not been

plowed since 3 days before the incident, and may not have been salted and sanded for over a week. Furthermore, the area had gone through a thaw/freeze cycle a couple of days before the incident

The Court’s Ruling

In reviewing the law, both legislative and case law, it is evident that the determination of ‘gross negligence’ depends on the facts of each case. The City in this case had a statutory obligation to maintain its sidewalks. It knows the location of all sidewalks and monitors the weather conditions that create ice and snow. It is deemed to know ice and snow create unsafe conditions for pedestrians if not cleared or treated. In this case, the City had a comprehensive program to alleviate the danger of ice and snow from sidewalks. However, the City failed to adhere to the routine mandated in its own policy guidelines. The conduct of the City employees in failing to follow the program of winter maintenance of the sidewalk in question amounted to gross negligence. The plaintiff was awarded \$35 000 plus pre-judgment interest and costs.

Lessons Learned

This is an often cited case where courts are looking at whether a city has been ‘grossly negligent’ in maintaining its sidewalks (see *Cooney v. Kingston (City)*, 2006 (ONSC); *Billings v. Mississauga (City)*, 2010 (ONSC); *Crinson v. Toronto (City)*, 2010 (ONCA); *Cerillii v. Ottawa (City)*, 2006 (ONSC)).

Municipalities should have a suitable winter sidewalk maintenance program in place. Sidewalk inspection and maintenance should be recorded accurately and stored. Municipalities should educate their staff on the importance of completing the inspection and maintenance logs as well as how to appropriately use them.

When developing a winter maintenance policy, the municipality should consider:

- Prioritizing sidewalks for winter maintenance
- Designing inspection and maintenance routes
- Ensuring that the routes can be completed within a reasonable amount of time
- Having an inspection system that is not only tied to precipitation but also includes thaw/ freeze cycles
- Policies for response times and monitoring weather conditions
- Documenting all winter maintenance

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