



Claim Case Studies & Legislation: Lowe v. Sidney (Town of), 2020 BCSC 335

The Plaintiff was injured when she slipped and fell on a small patch of black ice in a municipal parking lot. The position of the Defendant Town was it was not liable for the Plaintiff's injuries.

The Policy

The Defendant Town had a policy in place with respect to snow and ice removal. The policy included written policies, unwritten policies and policy decisions. The Town's response was triggered by complaints from the public, weather reports, observations of staff and notifications from the RCMP.

The policy included the following general statement:

"The annual budget review and approval, and other expenditure approvals, will determine and reflect Council's judgment of the appropriate level of resources to be provided for each service. Council does not intend by its allocation of resources and provision of service, nor by the passage of related bylaws, to create a civil obligation to provide services to individuals to any given standard, but in all cases only to pursue the general interest of the town."

The policy also included the following specific statement:

"That the Town of Sidney will take action on complaints or advice that a sidewalk has not been cleared of snow and/or ice."

The Policy's Risk Management Plan provided for sanding, salting and/or snow ploughing based on weather reports or notifications from the RCMP, with a response time of within 30 to 60 minutes.

Proactive salting/sanding (when no ice is observed) requires budgetary and staffing considerations and is done based upon decisions of management and typically occurs only if there is an extreme weather event.

If ice was observed, a full crew was called out to sand the streets on a priority basis. Priority areas included areas identified by a complaint, wooden boardwalks, steep inclines and major collector roads. Non-priority areas included non-emergency services parking lots including the lot where the incident occurred.

The Incident

On the day of the incident, the RCMP contacted the Town to advise that the “roads are getting icy” which triggered the Town’s policy.

The Plaintiff parked in the lot with which she was familiar as she had parked there previously. She was wearing rain boots with a tread that was worn. She walked across the lot to her appointment without incident and she testified that the surface appeared to be “clear and dry”. She did not notice any ice or snow. As she approached a low spot near a drain she slipped and fell. She didn’t notice the patch of black ice until she was getting up.

The Plaintiff was injured, she suffered a partial rotator cuff tear, hurt her lower back and broke her wrist as a result of the fall.

Policy Decision v. Operational Decision

Decisions relating to budget allotments are generally considered to be policy decisions. The Judge further stated that true policy decisions will usually be dictated by financial, economic, social and political factors or constraints.

Decisions relating to the implementation and performance of the policies made based on administrative direction, expert or professional opinion, technical standards or general standards of reasonableness are considered to be operational decisions.¹

¹ Lowe v. Sidney (Town of), 2020 BCSC 335

In his decision, the Judge found that the Defendant had a complete defence to the action because the decisions it made during the morning in question regarding ice control were policy decisions, not operational decisions. The action was dismissed.

Takeaway

If a municipality has made a policy decision in good faith that is reasonable, they may have a complete defence to a claim if the circumstances leading to the claim arose from the policy decision and the policy was strictly adhered to.