

A Patch of Black Ice...

February 8th started out as a typical Tuesday morning for the plaintiff. She woke up her 8 year old daughter, got her ready for school and then prepared to walk her to school. The weather in the last few days was typical for an Ontario winter. There was some snow and some rainfall and the fluctuating temperatures gave rise to a thaw/freeze cycle. To prepare for the walk, the plaintiff put on a pair of winterized hiking boots that had a good rubber sole with a tread pattern. She was already anticipating the slippery sidewalks, based on past experience.

Out the door the two went, taking their usual route to school. That particular morning, they walked with another mother and the two chatted along the way, not paying close attention to morning sidewalk conditions.

In one short breath, this typical walk to school became atypical when the plaintiff slipped and fell on a patch of black ice, sustaining injuries that would prompt her to sue the City.

Sidewalk Clearing

This particular stretch of sidewalk is used by many parents and school children on the way to school. It is usually much safer on the way home because the City employee treats this sidewalk after the morning rush. There is heavy pedestrian traffic in the morning and he does not feel he can run his machine safely until after mid-morning. A child could run in front of him and get hurt. So he takes his morning break between 8:30 a.m. and 9:00 a.m. After his break, he begins

and usually between 10 a.m. and 11 a.m. this particular sidewalk is treated.

The City employee uses two pieces of equipment to maintain his route. One is a sidewalk vehicle, which may have a plow or blower on it. The second is a sander unit that attaches to the vehicle. The treatment consists of plowing and/or sanding. Field conditions determine whether or not plowing or sanding is required. The sidewalks in his route are maintained every day in the same priority sequence. It takes him the full eight hours to complete his route once.

Plaintiff Sues

Since the plaintiff sustained injuries in the fall, she sued the City. She alleged that her fall and resulting injuries were caused by the gross negligence of the City in failing to maintain its sidewalks. The damages were agreed upon before the trial, so there were only two issues to decide at trial.

- 1) The first issue before the Court was whether or not the City was grossly negligent and liable to the plaintiff under Section 44(9) of the Municipal Act which states:

"Except in case of gross negligence, a corporation is not liable for a personal injury caused by snow or ice upon the sidewalk"

- 2) The second issue was whether or not there was contributory negligence on the part of the plaintiff.

Is this a case of gross negligence?

Gross negligence has been described as very great negligence.

City Policy

The City has a 30 year old policy that addresses winter maintenance of sidewalks. It divides sidewalks according to Priority 1 (highest) and Priority 2. Sidewalks that lead to schools are a Priority 1. The City sidewalks are divided into eight routes and an employee is assigned to each route.

Maps and lists of sidewalks are given to the employees and the plowing directions on the map are to be followed. The maps do not

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prioritize the streets. Sanding is to be done on a priority basis and determined by field conditions. There is no criteria to assist employees in determining how often sidewalks need to be inspected for winter maintenance.

The policy does not require employees to attend to school route sidewalks before the start of school in the morning. But the street plowing and sanding schedule is flexible and allows night supervisors to call in crews for earlier than normal start times if weather conditions dictate. There are no written criteria for night supervisors to follow so they need to rely on their own experience. Their trigger is snow and freezing rain rather than thaw/freeze cycles. There was no early call in that Tuesday morning.

This particular route consists of 28 kilometres of sidewalks and 11 school properties. There are both Priority 1 and 2 sidewalks in the route. The City employee does not follow the plowing directions on his map. He also does not give any sidewalk in his route priority. Since all sidewalks lead to a school and since the City gives the highest priority to school sidewalks, every sidewalk in his route is a priority to him. He does it his way every day.

The Decision

The Judge ruled that the City was grossly negligent in maintaining its sidewalk at that time. There was also a finding of contributory negligence against the plaintiff. The plaintiff was awarded 75% of her damages and she was held 25% at fault.

Reasons for the Decision

- 1) Sidewalks leading to schools are the highest priority so how can one employee maintain, in a high priority sequence, sidewalks that lead to 11 schools within an eight hour shift?
- 2) Maps provided to employees did not mark the sidewalks according to Priority 1 or Priority 2. Rather the instructions were to plow according to the map directions.
- 3) The City policy did not provide clear guidance to supervisors or employees with respect to sanding operations, inspections and early morning call-in.
- 4) The City employee did not follow the plowing directions on his map.
- 5) To the City employee all sidewalks were a high priority so no sidewalk received priority.

- 6) The thaw/freeze cycle, which led to the hazardous condition, was not given consideration nor was this part of the night supervisor's consideration.
- 7) Documentation did not provide evidence as to the last time this portion of the sidewalk was sanded.

Lessons to be learned

- How old is your winter sidewalk maintenance policy?
- When was the last time it was reviewed or updated?
- When the community, within the route, changes (i.e. new school built) is the policy updated?
- Do you prioritize your sidewalks?
- If yes, how many Priority 1 sidewalks are within a route?
- Can all these Priority 1 sidewalks be properly maintained within an eight hour shift?
- Do your employees know which sidewalks within their route are Priority 1 and Priority 2? Are they clearly marked on their route map?
- Does your policy provide clear direction to supervisors and employees with respect to inspections, sanding and plowing operations?
- Do you take into consideration thaw/freeze cycles?
- Do all employees follow your policy or do they have their own policy?
- When was the last time you reviewed your policy with your employees?
- Do employees document their maintenance on a daily basis?
- Is your form of documentation adequate? Does it allow employees to document spot sanding, plowing and any other treatment?
- Do you have a snow clearing by-law?
- If yes, do you enforce it?
- If this slip and fall occurred in your jurisdiction, would the Court's decision be different?

Hopefully, old man winter is packing up his snow and ice making machine in preparation for his move to the next hemisphere and we'll find ourselves in nicer weather. Your thoughts will turn to spring and summer maintenance and trip ledges rather than black ice will be the focus of your attention. However, it may also be a prudent idea to take some time to review your winter maintenance sidewalk policy. Remember, old man winter will be back.

Indoor Slip & Falls: The Hidden Hazards

Indoor slip and falls continue to occur. For some it's an embarrassing moment but for others it's a life changing experience. While our average cost to settle a claim is \$19,000, the individual cost to settle can be in the millions. That's a lot of money to pay towards something that can be prevented through good housekeeping and a comprehensive maintenance program.

Why do people slip and fall?

A leading cause of indoor slip and falls is a slippery floor surface. Other causes are mats that are frayed and/or curled up, worn linoleum, cluttered entrance, walkways and stairwells, debris on floor surfaces and stairs and poor or insufficient lighting in entryways, walkways and stairwells.

The Duty of Care

The law (Statutory and/or Common Law) imposes a duty of care upon owners of public buildings to maintain their premises in a reasonable state so that persons entering their facilities are reasonably safe.

The Reasonable Person Standard

A reasonable duty of care can be met by adopting and following good housekeeping and maintenance practices. Maintaining logs and regularly documenting inspections and work performed will support the duty of care taken to prevent slip and falls.

Good Housekeeping and Maintenance Practices

- Maintain a regular floor inspection schedule and inspect more frequently during inclement weather.
- Clean spills immediately when notified or you first become aware.
- Mop all wet areas immediately and continually when the weather dictates.
- Mark wet areas to warn visitors that the area is wet and slippery.
- Position the markings in such a way that visitors will see them but not trip over them.
- Sweep up debris immediately.
- Keep walkways, entrances and stairwells free of obstacles and clutter.
- Make sure floor tiles and staircases are in a good state of repair and not a trip hazard.
- Keep all entrances, walkways and stairwells well lit.
- Place mats in high risk areas, such as entrances and walk surfaces that lead from the shower to the change area.
- Rugs that are worn, frayed and curled up must be replaced immediately.

- Include light bulbs and stairwells in your regular inspection protocol.
- Instruct workmen to cordon off their work areas from the public walkways. Remind them that this is a public building and not a construction site.

Consider the following

- Is your slip resistant floor still slip resistant?
- Do the floor cleaning products make it slippery and unsafe? Do they interfere with any slip resistant coatings?
- Should the floors be treated with a slip resistant coating?
- Are inspection and maintenance logs kept up to date?
- Is each inspection and floor maintenance procedure recorded including the date and time?
- Where are the logs kept?
- How long are they kept?

Preventable not Avoidable

Slip and falls inside buildings are preventable but not always avoidable. There will always be those visitors that are in a hurry, distracted and/or on their cell phones. There will always be those who choose fashionable footwear over appropriate shoes. So, falls will occur and actions will be launched for injuries sustained. But as the reasonable standard applies to the building owner it also applies to visitors.

We have been successful in defending actions against our building owners when they have been able to prove, through documentary evidence, that their premises were maintained in a reasonable state so persons entering their facilities were reasonably safe. The plaintiff doesn't always win.



ABC's of Building Maintenance

Attitude of management can raise or lower the bar for building maintenance.

Become familiar with Occupier's Legislation, the Building Code and all other applicable Codes.

Curled mats and linoleum and worn rugs should be repaired or replaced immediately to eliminate a tripping hazard.

Document all of your maintenance and repairs. Your documentation will form the basis of your defence if a third party is injured on your premises.

Exit signs should be illuminated, highly visible and show the direction of egress. Replace burnt out bulbs immediately. Inspect all exit signs once a month.

Fuse panels require a higher level of maintenance than circuit breaker panels. They also run the risk of improper replacement of fuses – using coins or pieces of metal to “jump” the circuit. Whenever possible, replace the fuse panel with a circuit breaker panel.

Grade the land to slope away from the building to prevent drainage problems and basement flooding.

Hallways and exits are not additional storage space. They must be clear of obstructions at all times.

Install smoke and/or heat detectors, illuminated exit signs, emergency lighting and fire extinguishers in appropriate areas of the building.

Junction boxes should have cover plates installed to prevent access by people and water.

Keeping an exterior building envelope in good repair helps maintain the security of a building, reduces the possibility of vermin infestation, mitigates weather damage to the interior, and forestalls further deterioration of the building as a whole.

Laudry room lint screens and the lint exhausted into the exterior wall of the laundry area should be routinely cleaned.

Mats placed in entranceways should be 30 feet in length. This will give visitors ample time to wipe water/dirt from their footwear.

Non-slip surfaces go a long way in reducing slip and falls on both floors and stairs.

Oily rags, paper towels and other combustible garbage should be stored in ULC approved containers for flammable trash.

Parking lots should be free of obstructions, potholes and free of ice or snow in the wintertime. Keep them safe for both vehicular and pedestrian traffic.

Quit procrastinating. Implement that regular inspection and maintenance system. Document work performed.

Reduce the risk of falls on stairways by painting the nosing in a contrasting color or installing grip tape on each stair tread to aid in safety to the users.

Smoking should be limited to designated areas segregated from flammable or combustible materials. No smoking signs should be posted and the regulations should be strictly enforced.

The practice of using wedges or flip-down door stops on Fire Doors should be discontinued and all employees made aware. Remember Fire Doors help to prevent the spread of fire and smoke.

Use perimeter fencing and “No Trespassing” signs to discourage unauthorized access to the premises.

Vacant buildings need to be maintained. Don't abandon them.

Welding, grinding, or other spark-generating processes conducted on the premises require a Hot Works Policy designed in conformance with documented guidelines in NFPA 51B-"Fire Prevention in Use of Cutting and Welding Processes".

Xtra caution should be exercised in buildings that cater to seniors or seniors' programs. Unintentional falls are the leading cause of injury among seniors.

You should always have fuel tanks installed on a concrete pad at grade level with appropriate bollard protection to prevent vehicle impact problems. If the tank is a single-wall design, a fuel containment system should be built into the concrete pad in case of a fuel spill.

Zero in on any “falling hazards” - loose building materials, icicles hanging off the roof, signs attached to buildings, awnings, etc. These could fall or be blown off the building and cause injury to an unsuspecting public.



Frank Cowan Company

4 Cowan Street East
Princeton, ON N0J 1V0
Toll free: 1-800-265-4000
Phone: 519-458-4331
Fax: 519-458-4366
www.frankcowan.com