



# PUBLICATIONS

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## WINTER IS COMING!

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### *Who is clearing the sidewalks?*

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Under the *Municipal Act*, the municipality has a duty to maintain highways and sidewalks under its jurisdiction.

*“Every highway and every bridge shall be kept in repair by the Corporation, the Council of which has jurisdiction over it or upon which the duty of repairing it is imposed by this Act, and, in case of default, the Corporation, subject to the Negligence Act, is liable for all damages sustained by any person by reason of such default.”*

With respect to sidewalks, the Act restricts liability arising from ice or snow on a sidewalk to gross negligence.

The question of such negligence will depend upon:


- (1) the notice of the existence of a dangerous condition which the authorities actually had or which should be imputed to them;
- (2) their opportunity of remedying it;
- (3) the state of the weather immediately before the accident; and
- (4) the relative situation of the place where the accident occurred.

Without spending a great deal of time and paper to review case law, this issue comes down to the adequacy of the municipal systems of maintenance and inspection. In other words, does the municipality have regular routines to respond to winter conditions as they affect sidewalks? This will include clearing the sidewalks, salting/sanding and emergency response.

In addition, this will necessitate adequate

documentation of the inspection and maintenance details.

It is common for municipalities to enact by-laws to require the owner or occupier to remove snow and ice from sidewalks in front of their property. However, the courts have consistently held that a municipality is not relieved of its liability imposed by the *Municipal Act* by reason of the enactment of such a by-law. For the municipality to gain any benefit from enactment of a by-law, it will be necessary to enforce the by-law and have a regular system of inspection to support such enforcement.

With the winter fast approaching, it is appropriate to give this matter some consideration. 

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