

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 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

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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.

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 ledgers 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.