



Health and Safety on sidewalks and boulevards

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A review of municipalities' obligations for maintenance of sidewalks and boulevards is apropos of the special Health and Healthy Living feature in this issue of *Municipal Leader*. Slips and falls and injuries on municipal sidewalks and boulevards are a fairly common occurrence. Such injuries can be prevented, as can lawsuits, by a careful program of inspection and maintenance, accompanied by thorough recording of work performed on log records.

Section 386 of *The Municipal Act*, S.M. 1996, c. 58, Cap. M225, sets out a municipality's duty of care for sidewalks (paraphrased):

386(2) A municipality is not liable for loss or damage in respect of a municipal road ...

c) caused by ... any construction, obstruction or erection, or ... the situation, arrangement or disposition of any earth, rock, tree or other material or thing, adjacent to or in, along or on the portion of the road that is not designed for vehicle use; or

(d) caused by rain, hail, snow, ice, sleet

or slush on the road or on a sidewalk adjacent to or along the road, unless the municipality is grossly negligent.

The classic definition of gross negligence by the Supreme Court of Canada is "very great negligence." That's not particularly helpful. Rather, a couple of cases can better illustrate the meaning.

In *Occhino v. Winnipeg (City)*, a woman slipped and fell while walking on the ice and snow covered grass section of a boulevard near the junction of a sidewalk. She had exited a transit bus and walked some 18 feet across the boulevard before slipping and injuring herself. She decided to walk on the boulevard because she felt the surface of the concrete pad around the bus stop was too slippery.

The applicable provision of *The City of Winnipeg Act* was similar to s. 386(2) of *The Municipal Act* and the trial judge found the city to have been grossly negligent in performing its obligations. He also found the plaintiff to be 50% "contributorily negligent" for walking on the grassy portion of boulevard over rough and uneven icy snow. Had she walked on

the sidewalk, the likelihood of her falling would have been greatly lessened.

The City's appeal was allowed. The court discussed the City's duty of sanding as follows:

If sand had been applied, especially on the boulevard portion, it might easily have sunk through the snow, onto the grass and thus have had little effect given the climatic conditions. I doubt if there is a responsibility on the part of the City to sand the grass boulevards even though some snow removal is effected at bus stops. It is too high a responsibility to impose on the City to regularly sand all the boulevards, which, in this part of the world, are snow covered from November until the end of March, if not later.

I note again that plaintiff did not fall on the sidewalk or on the street but on the boulevard.

There is no doubt that the municipal duty to keep streets in repair encompasses a duty to protect the public from the hazards of snow and ice upon the sidewalks. The duty to protect the public from the hazard of snow and ice is far from absolute. The City is not an insurer of safety. It must take reasonable steps to keep the sidewalks free of dangerous conditions, but its failure to do so does not necessarily result in liability to everyone who falls and is injured. For liability to ensue, the cause of the injury must be more than a mere breach of duty. The breach must be of such magnitude that it can properly be described as gross negligence.

However, while the *Occhino* decision might suggest that gross negligence is something quite egregious, different circumstances will dictate a different meaning of gross negligence. In *Bras v. The City of Winnipeg*, Winnipeg had experienced a significant, although not seasonally unusual, ice storm. Approximately 8.5 millimetres of precipitation fell between Friday and Sunday, in a combination of rain, freezing rain, snow flurries, and ice pellets. The plaintiff slipped and fell at a fairly busy intersection near her home on the following Tuesday. Ten witnesses gave evidence on



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“Slips and falls and injuries on municipal sidewalks and boulevards are a fairly common occurrence.”

behalf of the plaintiff to the effect that the intersection was very icy and that several people had fallen there over the weekend.

The City had an extensive and thorough policy on snow clearing and ice removal (71 pages long). Among other things, streets were prioritised based on traffic counts and were to be sanded according to those priorities. Unfortunately, the City’s evidence as to the actions it took to reduce the risks created by the ice storm was less than satisfactory. The City’s log sheets for sanding were completed in such a way that, although they showed sanding trucks were in the area, it could not be determined whether the intersection where the plaintiff fell was actually sanded. Inspectors were on duty to inspect the streets on an ongoing basis to ensure that acceptable standards were met. None gave evidence about the intersection having been inspected. No worker was presented to say that the intersection was sanded. The sanding, if it took place, was insufficient, and it took too long for the City to perform the sanding.

The court referred to other decisions in finding the City liable for the accident on the basis that it was grossly negligent:

The law is well-settled that if a municipality permits a slippery, icy sidewalk in a thickly peopled part of the municipality to remain unprotected or ignores it altogether, and some one is injured, that would constitute gross negligence.

Generally, if a municipality has a system of regular inspection and sanding in place, and can document that the procedures were followed, it will have discharged its duty even where an accident occurs. Of course, sanding – or other measures taken – in themselves must be reasonable. This means that extra caution is needed where particular danger is known, and a greater standard of repair is required in areas that receive a high volume of pedestrian traffic.

As indicated above, injuries and claims can be avoided by instituting an effective and timely system of inspection and maintenance and ensuring that that system is followed and properly documented. Ⓜ

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