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Homeowners not liable for sidewalk mishaps

Court rules legal responsibility rests with city despite snow-clearing bylaws

"On a typical winter morning almost anywhere in Canada, the silence of the pre-dawn hours is often broken by the sound of municipal snowploughs. Canadian taxpayers expect that their municipal governments will move quickly and efficiently to keep the streets and the sidewalks clear and safe."

So wrote Mr. Justice James MacPherson in a fascinating Court of Appeal case released earlier this year.

Winter officially arrives in this province with all its fury next Thursday, and a glimpse at the case of Bongiardina vs. (the City of) Vaughan is a worthwhile reminder of who bears the responsibility for failing to clear snow and ice from sidewalks in front of private property.

In many Canadian municipalities, local governments enact bylaws requiring residents to clear snow and ice from the municipally owned sidewalks in front of their properties within a prescribed period of time.

Failure to comply can result in a fine. But can it also result in the homeowner or tenant being responsible for damages in the failure to clear the sidewalk when someone is injured?

That was the question the Court of Appeal had to consider in the Bongiardina case.

On Jan. 23, 1997, Concetta Bongiardina fell on the sidewalk in front of a house on Chancellor Dr. in Vaughan, owned by Carlo and Carmela Mangiapane. Bongiardina suffered injuries in the fall and sued the City of Vaughan, claiming that the accumulation of snow and ice on the sidewalk was a hazard and nuisance.

Under the Municipal Act, Ontario municipalities have a duty to remove snow and ice from sidewalks and are responsible for breaching that duty. When Vaughan got sued, it denied responsibility and added the Mangiapanes to the lawsuit, claiming they were in violation of a bylaw requiring owners to clear snow from the sidewalks next to their properties.

The Mangiapanes objected to being named defendants and asked the court to dismiss the claim against them. As grounds for their application, they argued that a simple breach of the bylaw did not impose civil responsibility on them for any resulting damages.

The lower court judge tossed out the claim against the property owners, and the Court of Appeal agreed. It said there is no common-law duty on a property owner to clear snow and ice from public sidewalks adjacent to the property.

By law, the snow and ice are the legal responsibility of the municipality, not the adjacent property owner. There are two exceptions to this general rule.

First, a property owner may be responsible as an occupier of a sidewalk if the owner assumes control of the area - for example, a boulevard eating area in front of a coffee shop or a sidewalk fruit stall in front of a grocery store.

The second exception is that property owners have a duty of care to make sure nothing flows off the property that could injure persons on the sidewalk.

Neither exception applied to the Mangiapane's property, and the appeal court threw out the claim against them.

It noted that neither the Municipal Act nor the city bylaw imposed a liability for damages on to the owners of property adjacent to sidewalks. Cities and towns can't avoid their responsibilities by trying to pawn them off on to specific owners or occupiers.

Within a few weeks of the release of the Bongiardina decision, a similar case came before the Superior Court of Justice in Toronto.

It is now clearly settled law in Ontario that even if a property owner is in breach of a city bylaw for failing to clear snow and ice from an adjacent sidewalk, he or she is not responsible for damages resulting from injuries

In January 1997, Antonia Kreska slipped on snow or ice on the sidewalk in front of the Staro Polska Restaurant on Roncesvalles Ave. in Toronto. She sued the City, which owns the sidewalk, and the restaurant which is adjacent to the sidewalk.

There was no allegation in Kreska's claim that the restaurant was actually occupying the sidewalk, and the restaurant applied to have the case against it thrown out. The City of Toronto also sued its co-defendant Staro Polska for failing to keep the sidewalk clear.

Soon after the release of the Bongiardina decision, the city discontinued its cross-claim against the restaurant and even consented to the restaurant being released from the case. Relying on the Court of Appeal's decision in Bongiardina, Justice Colin Campbell dismissed the case against Staro Polska.

It is now clearly settled law in Ontario that even if a property owner is in breach of a city bylaw for failing to clear snow and ice from an adjacent sidewalk, he or she is not responsible for damages resulting from injuries incurred on the sidewalk. The owner or occupier of the property is only risking a fine under the city bylaw for failing to keep it clear of snow and ice.

The flip side of the Bongiardina case presents an interesting dilemma. An owner or occupier of a property, conscious of the civic law and duty to keep the adjoining sidewalk clear, is outside in the middle of a Toronto winter storm, furiously shovelling snow and chopping ice on the sidewalk.

He or she would clearly not be doing this miserable job - which is a municipal responsibility under provincial statute - were it not for the bylaw. What happens if the homeowner or tenant is injured in carrying out his civic responsibility? He or she may suffer a disabling back strain or a heart attack from lifting the heavy snow. Who should be responsible in law for those injuries?



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DIGGING OUT: Property owners can be fined for not clearing sidewalk but can't be sued in case of accidents, courts have ruled.

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