

## Introduction

BC Courts have previously confirmed that a property owner cannot be held liable in negligence for injuries sustained by a third party when a property owner fails to clear a sidewalk owned by the local government, even if the local government has a bylaw requiring the owner to clear the sidewalk.

However, local governments may still require that owners clear snow and ice from sidewalks in their bylaws, enforcing the requirement through ticketing.

Against this background, the British Columbia Supreme Court recently upheld a bylaw court decision dismissing the City of Vancouver's charge against a resident for failing to remove snow and ice from his sidewalk. This decision underlines the need for clear drafting of bylaws to ensure enforceability.

## Background

The accused was charged with failing to remove snow and ice from his sidewalk under section 76 of the City's *Street and Traffic By-Law No. 2849* (the "Bylaw"). The relevant Bylaw provision stated:

*The owner or occupier of any parcel of real property shall, not later than 10:00 a.m. every day, remove snow and ice from any sidewalk adjacent to such parcel for a distance that coincides with the parcel's property line and for the full width of the sidewalk. [emphasis added]*

At trial, the Judicial Justice dismissed the charge. The City appealed.

## Trial Decision

At trial, the City's witness testified that the City had received a complaint about snow on the accused's sidewalk. The witness attended at the property and observed snow on the sidewalk. Photographs tendered at trial indicated that some snow had been removed, but not all of it.

The Judicial Justice dismissed the charge, noting that the Bylaw required snow and ice to be "removed," but did not require the sidewalk to be "perfectly clear." As the photographs showed that some snow had been "removed", the City had not proved its case.

## Appeal Decision

On appeal, the City argued that the Judicial Justice had incorrectly interpreted the Bylaw by finding that the requirement to "remove" snow and ice did not require "all" snow and ice to be removed. The City argued that any interpretation that did not require all ice and snow be removed would render the Bylaw ambiguous and unenforceable.

The Court disagreed that the Bylaw required complete removal of snow, as the Bylaw did not require the "clearing of all snow and ice off a sidewalk". Accordingly, the appeal was dismissed.

## Takeaways

This decision highlights the importance of using clear and unambiguous language in bylaw drafting. Bylaws that are capable of multiple interpretations may be unenforceable.

In light of this decision, local governments should review their snow removal bylaws and ensure that they include language that “all snow and ice be completely cleared”, or other unambiguous language. This language should be similarly applied to other sidewalk clearing provisions, for example in relation to the accumulation of rubbish or dirt.

To mitigate the risks associated with ambiguous bylaws on an ongoing basis, local governments should:

- retain counsel with experience in bylaw drafting to draft or review their bylaws;
- use clear and unambiguous language in their bylaws; and
- regularly review older bylaws and consider whether amendments are required.

Finally, to reduce liability that may befall the City due to slip-and-falls on snowy sidewalks, local governments may consider ticketing enforcement to ensure that property owners are proactive in completely clearing their sidewalks.

## Questions? Contact a member of our experienced Local Government Law Team:



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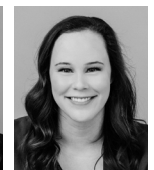
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