

A Slippery Snow Removal Case:

Best Practices for Snow Removal Contracts

By Ashley Winberg



The Ontario Superior Court of Justice's 2022 decision of *Musa v Carleton Condominium Corporation No. 255, 2022 ONSC 1030*, underscores specific criteria that condominiums should look for when selecting a snow removal contractor and emphasizes the importance of incorporating specific contractual clauses in snow removal contracts to limit a condominium's exposure to potential liability.



The plaintiff, who was a resident at the condominium, sued the condominium and its snow removal contractor for injuries that he sustained after he slipped and fell on the condominium's common element roadway, which had been plowed earlier that morning but not yet salted. On the day in question, it started snowing at 4:00 a.m. and the snow removal contractor arrived on site at 7:30 a.m. to plow. The snow removal contractor spent approximately 2.5 hours plowing the snow and then left the property without applying any salt. An hour later, the snow removal contractor returned to the property and applied salt.

The **first important takeaway** of this decision is that the snow removal contractor was deemed to be the occupier of the condominium's common elements for liability purposes under the *Occupier's Liability Act, 1990*, R.S.O. 1990, c. O-2 (the "OLA"), not the condominium since the condominium's obligations for winter maintenance were fully delegated to the snow removal contractor in the contract between the two parties. Accordingly, the court held that it was the snow removal contractor, not the Corporation, who had an infirmity of duty under Section 3 of the OLA to ensure that condominiums common elements were reasonably safe by taking reasonable care to protect persons while on the common elements from foreseeable harm. Thus, this decision highlights the importance of including provisions in a snow removal contract that limit a condominium's exposure to potential liability by:

1. including a requirement that the condominium be named as an additional insured on the contractor's commercial **insurance** policy, and that proof of the same be provided to the corporation; and
2. including an **indemnification** provision holding the contractor liable for any damage, loss, injury and/or harm related to or arising out of snow and ice removal at the condominium's property and designating the contractor as the occupier of the condominium's common elements for liability purposes under the OLA as the same pertains to snow and ice removal and winter maintenance.

Since the snow removal contractor was deemed to be the occupier of the condominium's common elements, the question before the court was whether the snow removal contractor breached its duty of care by failing to plow and salt the roadway concurrently and by delaying the application of salt. More specifically, the court examined whether the delayed salting practice employed by the snow removal contractor adhered to a reasonable standard of care for commercial snow removal contractors.

The **second important takeaway** of this decision is that the court relied heavily on the well-established road maintenance guidelines presented by the plaintiff's expert witness. The plaintiff's expert witness advised that when the snow was plowed that morning the plow likely compacted the remaining snow due to the back-and-forth movements, which likely caused the remaining snow to freeze thereby exacerbating the dangerous icy conditions. The plaintiff's expert witness testified that the plowing should have commenced at 6:00 a.m. that morning as opposed to 7:30 a.m. to ensure that there was sufficient time to plow the snow and salt the roadway before residents left for work that morning. The snow removal contractor dismissed the well-established road maintenance guidelines presented by the plaintiff's expert witness indicating that he was not aware of the same as he lacked any sort of formal training. The court sided with the plaintiff's expert witness and found that the snow removal contractor breached its duty of care as it did not salt the roadway concurrently with plowing and the failure to do so created an unnecessary slip-and-fall risk.

This decision stresses the importance of ensuring that a snow removal contractor retained by a condominium has formal training, is aware of well-established road maintenance guidelines, and has internal operating policies and procedures in place that reflect the well-established road maintenance guidelines. It is important that the foregoing is expressly stated in a contract entered into with a selected snow removal contractor in addition to contractual clauses, which:

1. stipulate that the contractor must comply at all times with well-established road maintenance guidelines as well as the requirements of the OLA, the *Occupational Health and Safety Act*, R.S.O. 1990, c. O.1, the *Workplace Safety and Insurance Act*, 1997, S.O. 1997, c. 16, Sched. A, and all applicable municipal codes and by-laws; and
2. specify the following **standards of performance** in addition to penalties in the event of non-compliance:
 - the locations of the property that require snow removal and salting,
 - the order in which said locations must be attended to,
 - a deadline by when snow must be plowed and the property salted following the onset of snow or hail,
 - a requirement that salting occurs concurrently with snow plowing,
 - the locations of permitted snowbanks on the property,
 - a requirement that the contractor keep thorough logs that record times of attendance, tasks performed, and observations made at the property; and
 - penalties in the event of non-compliance with any of the foregoing standards of performance.

Accordingly, before officially retaining a snow removal contractor and entering into a contract with the same, condominiums should carefully review a proposed contractor's qualifications and internal policies and ensure that the contract presented to the corporation for execution includes provisions similar to those discussed above. However, if doubt, a condominium should obtain legal advice and have any proposed contract reviewed by a solicitor.

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