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Defender
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Sprowl v. First Capital: Winter Maintenance and Why Owners Can't Simply Delegate

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Overview

As we approach another season of winter and snow, it's important to remind commercial property owners of their obligations to keep the premises reasonably safe and avoid liability for slip and falls. A cautionary case was released this past summer addressing this issue and reminding owners to take steps to oversee the work done by winter maintenance contractors.

In the recent decision of *Sprowl v First Capital,* 2025 ONSC 3628 ("*Sprowl*"), the court held that commercial property owners could not rely on their winter maintenance contracts to avoid liability for accumulated ice and snow in a mall plaza parking lot.

Section 6(1) of the *Occupiers' Liability Act* ("*OLA*") provides that an occupier will not be liable for a contractor's negligence if (a) it acted reasonably in entrusting the work to the contractor; and (b) it took reasonable steps to ensure that work had been properly done.

Despite having hired a well-established and reputable winter maintenance contractor, the court held that the owner failed to satisfy the court that they took reasonable steps to ensure that work had been properly done.

The Facts in Brief

On January 12, 2020, an 81-year-old woman slipped on a snow-covered sheet of ice while walking through a retail plaza parking lot in Waterloo.

The premises included a Walmart, Sobeys, Rogers Communications store, Tim Hortons, and Bulk Barn. The lot was over 6 acres in size with room for hundreds of vehicles. The Plaintiff arrived at 10:00 a.m. and over the next 2 hours she walked through the lot several times. As she was walking back to her car the final time, the Plaintiff fell on a patch of ice that was within one of the double rows of parking spaces.

There was light snow covering the lot. She admitted she had noticed that the lot was slippery in various areas as she crossed it that day. She suffered a fractured hip which then required surgery.

The plaza was owned by First Capital Corporation ("First Capital") and maintained by Clintar Landscape Management ("Clintar") under a winter-maintenance contract that required weather monitoring, plowing, salting, and inspections throughout the day.

The Legal Framework

The issue for the Court was whether the Defendants' system satisfied the duty of reasonable care.

Section 3(1) of the *OLA* provides that an occupier of a premises owes a duty to take such care as in all the circumstances of the case is reasonable to see that persons entering on the premises are reasonably safe while on the premises.

Courts have held that the standard under s. 3(1) is one of reasonableness and not perfection.

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Why the Contractor's Work Failed

Clintar provided evidence that they were monitoring the weather and had completed early-morning plowing and salting. However, the Court found that Clintar's system broke down in the parking spaces, precisely where pedestrians walk. Clintar's salting method focused on the laneways and relied on salt spray reaching the stalls, even though parked cars routinely block that coverage.

The inspection that followed was equally limited. The supervisor remained in his vehicle, assessed only the driving lanes and entrances, and never walked the rows. As a result, no one identified or treated the icy areas forming between vehicles.

The Plaintiff's description of widespread slipperiness matched Clintar's own internal communications about icy parking stalls at other sites that same morning. Given those known risks, the Court held that Clintar's approach did not reasonably address pedestrian-use areas and fell short of the standard required under s. 3(1) of the *OLA*.

Justice Smith held that because customers must walk through parking spaces and between vehicles, a maintenance system must address those specific pedestrian access zones. A system that concentrates only on laneways, ignoring the walking area, does not meet the standard under s. 3(1). The fact that Clintar was aware of slick parking spaces elsewhere earlier that morning aggravated the failure.

Why the Owner Could Not Rely on Section 6(1)

First Capital hired a competent winter maintenance contractor under a detailed contract imposing strict reporting and performance obligations, which, on its face satisfied the first element of s. 6(1).

But the second element, which requires taking reasonable steps to ensure the work was properly done, was absent. The owner offered no evidence of inspection, monitoring, or follow-up. Nobody from First Capital testified, no review of reports occurred, and no deviation from the contract's baseline was challenged. Justice Smith held "there is no evidence that the owner of the lot, First Capital, had any employee who was charged with monitoring ice and snow."

Takeaways & Practical Implications

The central takeaway of *Sprowl* is this: hiring a contractor alone does not fulfill the occupier's duties and obligations. Owners may outsource winter-maintenance work but cannot outsource their responsibility to ensure that the work is done properly. There must be reasonable oversight of the independent contractor's work. Liability likely could have been avoided by the owner having employees regularly patrolling, observing and reporting any issues to the winter maintenance contractor.

Property owners and contractors should inspect the conditions of all walking zones which includes not only designated pedestrian sidewalks but also parking stalls and spaces between cars. Occupiers must ensure that their system accounts for vehicle-blocked stalls, hidden ice sheets, and pedestrian movement throughout the premises.

Lastly, occupiers should document all inspection and maintenance efforts. Absent evidence of reasonable steps a trier of fact may conclude no such steps were taken.

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