

## HOME DEPOT NOT LIABLE FOR SLIP AND FALL IN PARKING LOT

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In Alberta, occupiers owe a duty to maintain a reasonable system of maintenance and inspection to keep their premises reasonably safe for lawful visitors. This duty can be discharged either by the occupier itself, or by hiring an independent contractor. With respect to snow and ice maintenance, the courts have held that implementing a system where the independent contractor is to clear snow and ice after snow accumulation exceeds two inches is reasonable if combined with a system of inspection.

In *Reichert et al v. Home Depot Canada Inc. et al*, 2017 ABQB 184, the Plaintiff slipped and fell on some freshly fallen snow (between half-an-inch and one inch) in the parking lot of a Home Depot in Calgary, Alberta at 10:00am. It had snowed earlier that morning. However, only trace amounts of snow had fallen during the prior two weeks. There was no snow on the ground the day before the slip and fall.

Home Depot had hired an independent contractor to perform snow and ice maintenance for the parking lot. The contract implemented the two inch threshold. Home Depot also performed its own inspections of the parking lot every day before the store opened. Accordingly, Home Depot, arguing it had implemented a reasonable system of maintenance and inspection, made an application for summary dismissal. The independent contractor made a concurrent application, as well.

Both applications were heard on the same day before Master Prowse. However, in his reasons, he dismissed arguments about the inspections performed (or not performed) by the parties as irrelevant. Given the snow “was there for all to see”, the issue before the court was whether anything ought to have been done about the snow before the slip and fall.

Master Prowse accepted the case law regarding the reasonableness of the two inch threshold. He also accepted evidence that the two inch threshold was industry standard. Master Prowse finally found even if this standard was not reasonable, it would be unsafe to operate snow plows in the parking lot while customers were attending the store. The evidence suggested it would be safer to plow the snow at night, after the store had closed and the parking lot was empty. The fresh snow that fell earlier that morning could not have reasonably been removed prior to the slip and fall. As a result, Master Prowse determined Home Depot and the independent contractor would very likely succeed at trial. Thus, he granted the summary dismissal applications.

*Reichert* stands for the proposition that the two inch threshold is reasonable and industry standard. It is unreasonable to expect an occupier to clear fresh snow from a parking lot filled with customers and their vehicles. Instead, that snow should be cleared at night. Therefore, an occupier, who has implemented a system of maintenance and inspection that incorporates the two inch threshold for its parking lot, will not likely be held liable for a slip and fall that occurs in that parking lot.