

Court Finds Agreement to Defend and Indemnify Where Insurer Appointed One Counsel to Represent Both City and Winter Maintenance Contractor

June 21, 2016

The recent Court of Appeal decision of *Seidel v. Markham*¹ involved a claim where the plaintiff alleged that he had slipped and fallen on an icy sidewalk in the City of Markham (the "City"). The subject sidewalk was ploughed and salted by V.T.A. Construction ("V.T.A.") pursuant to their contract with the City.

Pursuant to the winter maintenance contract, V.T.A.'s insurance policy with Intact Insurance ("Intact") named the City as an additional insured, "but only with respect to the legal liability arising out of the operations of V.T.A."

The City issued a third party claim against Intact seeking a declaration from the Court that Intact owed the City a defence.

An Assumption of Defence agreement was subsequently drafted by the City but never signed; however, counsel for V.T.A. delivered a Notice of Change of Lawyer confirming that it would represent both the City and V.T.A. in the action.

Sixteen months later, counsel for V.T.A. brought a motion to remove itself as counsel of record for both V.T.A. and the City. New counsel was subsequently appointed for V.T.A. but not the City.

In response, the City brought a motion seeking to enforce its "settlement agreement" and Intact's obligation to defend and indemnify the City. The motion was dismissed by Glass J. on the grounds that there had been no "meeting of the minds" in relation to indemnification of the City.

The Court of Appeal reversed the motions judge's decision, holding that the appointment of one counsel to represent both the City and V.T.A. was sufficient to demonstrate that an agreement was in place. The Court found that:

Intact's appointment of a single firm to represent both Markham and V.T.A. could not have occurred if V.T.A. and Markham continued to be adverse in interest... The fact that BPB was appointed to represent both defendants and in fact did represent them in litigation until discoveries had been completed was only consistent with one meaning, namely, that Intact had agreed to both defend and indemnify Markham, including in respect of its own negligence unrelated to V.T.A.'s acts or omissions.²

In sum, Intact's appointment of a single firm to represent both defendants demonstrated support for the fact that it had agreed to defend and indemnify the City. If it had been Intact's intention to deny indemnification, two counsel would be required to represent each of the City and V.T.A. since there would have been an "obvious and untenable" conflict of interest. Intact was therefore ordered by the Court to appoint counsel to defend the City at its expense and indemnify the City with respect to any damages awarded against it in the main action.

¹Seidel v. Markham (Town), 2016 ONCA 306 (CanLII)

²Ibid at para. 12.

By

[Michael J.L. White](#), [Matthew Gray](#)

Expertise

[Insurance Claim Defence](#)

BLG | Canada's Law Firm

As the largest, truly full-service Canadian law firm, Borden Ladner Gervais LLP (BLG) delivers practical legal advice for domestic and international clients across more practices and industries than any Canadian firm. With over 800 lawyers, intellectual property agents and other professionals, BLG serves the legal needs of businesses and institutions across Canada and beyond – from M&A and capital markets, to disputes, financing, and trademark & patent registration.

blg.com

BLG Offices

Calgary

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

The information contained herein is of a general nature and is not intended to constitute legal advice, a complete statement of the law, or an opinion on any subject. No one should act upon it or refrain from acting without a thorough examination of the law after the facts of a specific situation are considered. You are urged to consult your legal adviser in cases of specific questions or concerns. BLG does not warrant or guarantee the accuracy, currency or completeness of this publication. No part of this publication may be reproduced without prior written permission of Borden Ladner Gervais LLP. If this publication was sent to you by BLG and you do not wish to receive further publications from BLG, you may ask to remove your contact information from our mailing lists by emailing unsubscribe@blg.com or manage your subscription preferences at blg.com/MyPreferences. If you feel you have received this message in error please contact communications@blg.com. BLG's privacy policy for publications may be found at blg.com/en/privacy.

© 2026 Borden Ladner Gervais LLP. Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership.