

S.C. No. 24 - A0120

SUPREME COURT OF YUKON

Between:

RAMESH FERRIS and EVA VON FLOTOW on their own behalf and on behalf of all other persons resident in Whitehorse during any period on or after September 9, 2018, who, during that period, lived with legal blindness or a physical, neurological or musculoskeletal condition, whether temporary or permanent, limiting their mobility such that, at the time, they would have met one of the three conditions to apply for a City of Whitehorse accessible parking permit, whether or not they applied for such a permit

Plaintiffs

And:

CITY OF WHITEHORSE

Defendant

STATEMENT OF CLAIM

Ramesh Ferris and Eva von Flotow c/o:

LAROCHELLE LAW

201-4133 4th Ave
Whitehorse, YT Y1A 1H8

Vincent Larochelle (vincent@larochellelaw.ca)

Tel: 1-867-333-6308

McKENZIE LAKE LAWYERS LLP

140 Fullarton St, Suite 1800
London, ON N6A 5P2

Emily Assini (emily.assini@mckenzielake.com)

Tel: 1-519-672-5666

City of Whitehorse

2121 Second Ave
Whitehorse, YT Y1A 1C2

TAKE NOTICE that this action has been commenced against you by the Plaintiffs for the claims set out in this Statement of Claim.

IF YOU INTEND TO DEFEND this action, or if you have a counterclaim, YOU MUST

(a) GIVE NOTICE of your intention by filing an APPEARANCE in Form 9 in the registry of this court, at the address shown below, within the time for appearance provided for below and YOU MUST ALSO DELIVER a filed copy of the Appearance to the Plaintiffs' address for delivery, which is set out in this Statement of Claim, and

(b) FILE A STATEMENT OF DEFENCE in Form 10 in the registry of this court within the time for defence provided for below and DELIVER a filed copy of the Statement of Defence to the Plaintiffs' address for delivery.

YOU OR YOUR LAWYER may file the Appearance and the Statement of Defence. You may obtain an APPEARANCE form and a STATEMENT OF DEFENCE form at the registry or www.yukoncourts.ca.

JUDGMENT MAY BE MADE AGAINST YOU IF

(a) YOU FAIL to file the Appearance within the time for appearance provided for below, or

(b) YOU FAIL to file the Statement of Defence within the time for defence provided for below.

TIME FOR APPEARANCE

If this Statement of Claim is served on a person in Yukon, the time for appearance by that person is 7 days from date of the service (not including the day of service).

If this Statement of Claim is served on a person outside Yukon, the time for appearance by that person is 21 days from the date of service (not including the day of service) in the case of a person residing anywhere within Canada, 28 days from the date of service (not including the day of service) in the case of a person residing in the United States of America, and 42 days from the date of service (not including the day of service) in the case of a person residing elsewhere.

OR

If the time for appearance has been set by order of the court, within that time.

TIME FOR DEFENCE

A Statement of Defence must be filed and delivered to the Plaintiffs within 14 days from the end of the time for appearance provided for above.

OR

Where the time for defence has been set by order of the court, within that time.

(1) The address of the registry is:
The Law Courts 2134 Second Ave
Whitehorse, YT Y1A 5H6
Tel: 1-867-667-5937
Fax: 1-867-393-6212

(2) The Plaintiffs' ADDRESS FOR DELIVERY (**Required:** (per Rules 4(10) and (11)) **must be a residential address OR business address AND postal address in Yukon**) is:

LAROCHELLE LAW
201-4133 4th Ave
Whitehorse, YT Y1A 1H8
Email: vincent@larochellelaw.ca
Tel: 1-867-333-3608

(3) The names and office addresses of the Plaintiffs' lawyers are:

Vincent Larochelle
LAROCHELLE LAW
201-4133 4th Ave
Whitehorse, YT Y1A 1H8
Email: info@larochellelaw.ca
Tel: 1-867-456-2325

Emily Assini
McKENZIE LAKE LAWYERS LLP
140 Fullarton St, Suite 1800
London, ON N6A 5P2
Email: emily.assini@mckenzielake.com
Tel: 1-519-672-5666

STATEMENT OF CLAIM
(RULES 5(11), 8, 20)

Overview

1. This action concerns the excessive accumulation of snow and ice on sidewalks, streets, roads, lanes, driveways, highways, and other thoroughfares (collectively “**Highways**”) located within the municipality of Whitehorse. Such accumulation has severely restricted or impaired the mobility of residents of Whitehorse who live with a physical, neurological or musculoskeletal disability or legal blindness.
2. This action also concerns the lack of barrier-free accessible parking spaces in parking lots owned and operated by the City of Whitehorse (the “**Defendant**”). The Defendant’s failure to ensure that its “accessible” parking spaces meet the barrier-free design requirements in order to actually be accessible has severely restricted or impaired the mobility of residents of Whitehorse who live with a physical, neurological or musculoskeletal disability.
3. Finally, many city transit stops are not accessible for persons who live with a physical, neurological or musculoskeletal disability affecting their mobility, again further restricting their mobility as city residents.
4. The Plaintiffs assert that the Defendant’s policies, bylaws, operations, decisions, and actions surrounding snow and ice removal, barrier-free accessible parking spaces and city transit stops create a distinctive and discriminatory effect on disabled individuals who reside in Whitehorse. The conduct of the Defendant, and its employees, servants, and agents, amounts to a substantial breach of the rights of the Plaintiffs and Class Members under ss. 7 and 15 of the *Canadian Charter of Rights and Freedoms*, Part I of the

Constitution Act, 1982, being Schedule B to the *Canada Act 1982 (UK), 1982, c 11* (the “*Charter*”).

The Plaintiffs and Class

5. The Plaintiff, Ramesh Ferris, is an individual resident of Whitehorse. Mr. Ferris lives with a permanent physical disability. Both his legs are paralyzed due to the effects of having childhood polio. He relies on leg braces and forearm crutches to walk at all times.
6. Mr. Ferris’s health is deteriorating into a condition referred to as post-polio syndrome. This condition results in a further weakening of muscles, such that Mr. Ferris will eventually rely on the use of a wheelchair on a daily basis.
7. The Plaintiff, Eva von Flotow, is an individual resident of Whitehorse. Ms. Von Flotow was born prematurely on October 21, 2000, resulting in a diagnosis of Quadriplegic Cerebral Palsy and Dystonia.
8. Ms. Von Flotow is unable to walk and has little control over most of her muscles. She requires a wheelchair for all her mobility needs and requires full assistance for all her activities of daily living. She requires the presence of a caregiver at all times, as it is unsafe for her to be alone.
9. Ms. Von Flotow has complex seating needs, such that her wheelchair is custom built to support her body. She cannot drive a motorized wheelchair and therefore uses a manual wheelchair, which must be maneuvered by a caregiver.
10. The Plaintiffs seek to represent the following Class of which they are members:

All persons resident in Whitehorse during any period on or after September 9, 2018, who, during that period, lived with legal blindness or a physical, neurological or musculoskeletal condition, whether temporary or permanent, limiting their mobility such that, at the time, they would have met one of the three conditions to apply for a City of Whitehorse accessible parking permit, whether or not they applied for such a permit (collectively, the “**Class**” or “**Class Members**”).

The Defendant

11. The Defendant is a municipality located in the Yukon and was created pursuant to the *Municipal Act*, RSY 2002, c 154 (the “*Municipal Act*”).
12. Pursuant to s. 1 of the *Municipal Act* and s. 6(1) of the *Highways Act*, RSY 2002, c 108 (the “*Highways Act*”), the Defendant holds jurisdiction, management, and control over every Highway contained within its geographical boundary that the public is ordinarily permitted to use. Further, pursuant to s. 274(2) of the *Municipal Act*, the Defendant is responsible for the maintenance and repair of every Highway contained within its boundaries. Therefore, the subject matter further alleged is, at all material times, in the direct management and control of the Defendant.

Mr. Ferris’s Lived Experiences

13. Mr. Ferris is unable to use the Whitehorse public transit system, as many important stops do not have benches. Mr. Ferris cannot stand for very long on his crutches and braces. Some transit stops would require Mr. Ferris to stand in the street without a bench, which is unsafe and physically impossible for him to do.
14. In the winter, these issues are compounded, as transit stops are rarely cleared of snow or ice. Where the transit stop is not properly cleared of snow or ice, Mr. Ferris is required to stand on the plowed street or bike lane in order to remain near the transit stop.

15. Mr. Ferris requires additional space in order to enter or exit his vehicle safely. Mr. Ferris also requires an accessible curb cut in order to get on or off the sidewalk safely from his vehicle without going into the street traffic.
16. Almost all of the “accessible” public parking stalls in the downtown core area are impossible, difficult or unsafe to use for Mr. Ferris, as they are not wide enough, do not contain a curb cut allowing Mr. Ferris to get on or off of the sidewalk, or contain obstacles on the sidewalk near the curb, such as garbage cans, trees, tree grates, or biking infrastructure.
17. In the winter months, all of the above barriers are exacerbated, and additional barriers are created.
18. For example, in the winter, “accessible” parking stalls are used as an area to pile up snow from the other parking stalls, and those snow piles can remain there for days or weeks.
19. Every winter, because of snow or ice buildup, or because of obstacles preventing safe passage to or from the sidewalk, Mr. Ferris has slipped approximately 10 to 15 times while trying to use an “accessible” parking stall, either while getting in or out of his vehicle, or on and off of the sidewalk.
20. During the winter, every time Mr. Ferris considers leaving his residence to go into town, his decision-making factors the risks and dangers posed by the inaccessible parking stalls, and accumulation of snow and ice on the sidewalks, curbs, and parking spaces.
21. At times, Mr. Ferris decides not to leave his home because of these risks and dangers.
22. Other times, Mr. Ferris decides to drive to run an errand but remains in his vehicle, as the conditions are too risky or unsafe for Mr. Ferris to exit his vehicle or move on the sidewalk.

23. When walking around during the winter months, Mr. Ferris often encounters sidewalks not cleared of snow or insufficiently plowed widely enough for him to walk using his crutches and swinging his leg. Often, these portions of sidewalks remain uncleared or insufficiently cleared for extensive periods of time or the entire winter, without the City of Whitehorse taking any action.
24. In the absence of an effort to properly plow and sand the sidewalks in a timely and consistent manner in the core downtown area, the conditions of sidewalks in Whitehorse have quickly deteriorated every winter, such that Mr. Ferris does not usually walk downtown in the winter months, instead relying on a caregiver.
25. This has resulted in Mr. Ferris feeling trapped in his home during the winter. The overall situation has caused Mr. Ferris to feel anger, stress, anxiety, sadness, humiliation, and disappointment.
26. Mr. Ferris has experienced a particular sense of injustice and humiliation when witnessing that the City of Whitehorse is busy at work at 4 a.m. after every snowfall in order to clear bike paths, streets, and multi-use trails in and around the downtown area, meanwhile leaving accessible parking stalls, sidewalks, and curb cuts in key areas unplowed for days.
27. The end result is that Whitehorse is accessible to residents who do not suffer from any disability after every snowfall, but inaccessible to Mr. Ferris for extensive periods of time, and indeed, for the entire winter.
28. Owing to the state of the streets, curbs, and sidewalks of Whitehorse in the winter months, it is only at the risk of physical injury that Mr. Ferris can reasonably participate in the community as a resident of the City of Whitehorse.

Ms. Von Flotow's Lived Experiences

29. Ms. Von Flotow has been unable to use Whitehorse public transit, including the Whitehorse Handi Bus system, which offers a transportation system to persons who have difficulty using the regular transit system.
30. The Handi Bus is unable to pick up Ms. Von Flotow out of her driveway, owing to their policies; they require her to make her way to a pick-up point approximately 200 yards from her home. It is sometimes impossible for her caregiver to push her wheelchair to or from that pick-up point, owing to snow, mud, slush, ice or weather conditions.
31. The street where Ms. Von Flotow lives, Strawberry Lane, is an unpaved road, is not plowed regularly during the winter, is often muddy, and often has many potholes and ruts, making use of the Handi Bus difficult or impossible much of the year, including during the entire winter.
32. The nearest public transit stop from Ms. Von Flotow's residence is approximately 8km away, making it inaccessible to her. Furthermore, the stop is unsafe and inaccessible during the winter for Ms. Von Flotow. Snow and ice build up at or around the stop, as well as on the sidewalks and curb cuts to access the bus stop.
33. As a result of the public transit and public highway barriers she is facing, Ms. Von Flotow has no choice but to have her own wheelchair-accessible vehicle and caregiver to drive it in order for her to leave her residence.
34. When she is out and about Whitehorse, Ms. Von Flotow uses her own wheelchair-accessible vehicle, and depends on accessible parking stalls, sidewalks, and curb cuts in order to get in and out of her vehicle and move around town.

35. Ms. Von Flotow's accessible van has a hydraulic-lift system on the passenger side that allows her to get in and out of the vehicle. This lift system requires that at least 8 feet of space on the passenger side of the van be free from other vehicles or any obstacles.
36. Once out of the van, Ms. Von Flotow requires a curb cut accessible from the passenger side of her van in order to gain the sidewalk without going through the traffic.
37. Almost all "accessible" public parking stalls in the downtown core area are not accessible to Ms. Von Flotow because they do not have any or enough space for her to operate the van lift, have space on the wrong side of the parking stall, do not contain a nearby accessible curb cut from which Ms. Von Flotow can safely access the sidewalk, or even worse, contain obstacles on the sidewalk preventing a wheelchair from going up or down from the sidewalk.
38. The City of Whitehorse has placed public garbage cans and bike stalls on the sidewalk directly in front of almost all "accessible" parking stalls, resulting in an additional barrier to an already inaccessible parking stall.
39. Often, when she goes downtown, Ms. Von Flotow is required to stay in her van while her caregiver runs errands because Ms. Von Flotow cannot exit her van. This is humiliating.
40. It has happened that Ms. Von Flotow took a chance and exited her van while the parking stall next to hers was empty, only to come back and be unable to get back in the van because someone has parked next to the van. This situation requires Ms. Von Flotow and her caregiver to engage in dangerous maneuvers on the street while blocking traffic and exposing themselves to ongoing traffic.

41. Ms. Von Flotow has tried to put a cone on the neighboring parking stall on the passenger side to create space, but that has not always worked. Often, the cone has been stolen or moved and a car parked in the spot.
42. The issues described above are compounded, and additional barriers are created, during the winter when snow and ice is found on the streets and sidewalks of Whitehorse. Ms. Von Flotow's chair is heavy, and it is difficult to get through even a little bit of snow with it. Ice on the ground makes operation of the wheelchair impossible or dangerous.
43. When the Defendant allows snow to accumulate on or around curb cuts, it is difficult or impossible for Ms. Von Flotow to move onto or off of the sidewalk. This happens often.
44. When the Defendant allows snow to accumulate on or around "accessible" parking stalls, it is difficult or impossible for Ms. Von Flotow to exit her vehicle even if the parking stall next to it is unoccupied.
45. Sometimes the City of Whitehorse clears the snow from a row of parking stalls and piles it up on or near the accessible parking stall, which is at the end of the row. This can block an "accessible" parking stall for days or weeks.
46. Often in the winter while being pushed down a sidewalk, Ms. Von Flotow is forced to turn around because a business owner has not cleared their sidewalk of snow or ice. Sometimes there is no other route, and Ms. Von Flotow is forced to go down on the street (which is plowed by the City) in the traffic in order to get past an uncleared section of sidewalk.
47. However, if there are no curb cuts, or if the curb cuts are obstructed by snow or ice, which happens often, Ms. Von Flotow cannot go around the obstacle and is forced to retreat back to her van.

48. The barriers described above continuously prevent Ms. Von Flotow from doing what she needs and wants to do. Such barriers cause stress, anger, shame, humiliation and disappointment and cause Ms. Von Flotow to feel like a second-class citizen of Whitehorse.
49. The barriers described above also put Ms. Von Flotow's safety and the safety of her caregiver at risk. Sometimes Ms. Von Flotow does not even want to leave her house, as it is too hard to go downtown and move around.
50. Ms. Von Flotow's parents are both seniors and she is worried that they or her caregiver will get injured while trying to help Ms. Von Flotow to navigate the obstacles described above.

The Defendant's Policies, Bylaws

51. Pursuant to s. 177 of the *Municipal Act*, the Defendant is responsible for developing and evaluating the policies and services of the City of Whitehorse for the safety and benefit of its residents and visitors; and for ensuring that such policies and services are appropriately carried out.
52. Pursuant to this legislative framework, the Defendant has enacted the following policies that are relevant to this action:
 - (i) City of Whitehorse, revised by-law No 2022-01, *Snow and Ice Control Policy* (23 October 2023) ("**Snow and Ice Policy**"); and
 - (ii) City of Whitehorse, by-law No 2017-09, *Maintenance Bylaw* (12 December 2022) ("**Maintenance Bylaw**").
53. The Plaintiffs state that the Snow and Ice Policy and Maintenance Bylaw, each described in more detail below, and the Defendant's administration of such policy and bylaw have

created discriminatory impacts on the Plaintiffs and Class Members, and have interfered with their security of the person contrary to the *Charter*.

(1) *The Snow and Ice Policy*

54. The Defendant's Snow and Ice Policy outlines the Defendant's responsibility for snow and ice removal from city-owned Highways. It sets out the Defendant's purpose, objective, and standards in regard to snow removal. Of note, the Snow and Ice Policy states:

[...] an effective and efficient Snow and Ice Control program is vital to allowing the City to function under normal winter weather conditions to reduce snow and ice hazards and to provide reasonable winter mobility on City infrastructure [...]

[and]

[...] standards are established to provide the greatest benefit to the majority of the travelling public.

55. The Snow and Ice Policy sets three levels of priority and associated standards for the removal of snow and ice control within City limits. Detailed maps contained in the policy specify which roads, trails and city-owned sidewalks fall within which priority level.

56. The Defendant provides snow- and ice-clearing services on multi-use paved trails throughout Whitehorse according to a designated priority schedule. Some of these trails are plowed, cleared or maintained on a priority one basis.

57. According to its Snow and Ice Policy, the Defendant will only plough snow from sidewalks contingent to city-owned property, pursuant to its Maintenance Bylaw.

58. In particular, the Defendant does not plough snow or control ice in the core downtown area of Whitehorse, where most services and businesses are located.
59. In the end result, the Defendant's Snow and Ice Policy prioritizes vehicle drivers and other residents able-bodied enough to use multi-use trails such as the Millennium Trail or the Two Mile Hill bike path on their way to or from work.
60. The Defendant has not considered the needs of the Plaintiffs and Class Members in the purpose, objective, or standards of the Snow and Ice Policy. The Snow and Ice Policy fails to consider that individuals with disabilities have unique mobility concerns, such that the way in which the Defendant establishes priorities will disproportionately impact the Plaintiffs and Class Members.
61. The Defendant's failure to recognize and address the particular needs of Class Members in creating a Snow and Ice Policy has resulted in an exclusionary state of affairs for Class Members, who are restricted in their ability to move into, out of and around Whitehorse. Such restriction has impacted the dignity and quality of life of the Plaintiffs and Class Members.
62. Moreover, the Defendant has allowed the Snow and Ice Policy to be administered in such a way as to create further barriers for the Plaintiffs and Class Members. The manner in which the Defendant clears ice and snow has led to a dangerous and excessive accumulation of ice on Highways and sidewalks that often persists for weeks at a time. Often, certain Highways are not cleared at all.

63. The result of this excessive accumulation is that the Plaintiffs and Class Members are either: (a) confined to their homes until whenever the Defendant deems ice and snow removal necessary; or (b) forced to attempt to navigate snow- and ice-covered Highways or sidewalks, leading to a serious risk of injury or death.

(2) The Maintenance Bylaw

64. While sidewalks are city-owned property, the Defendant has assigned the task of clearing its sidewalks of snow and ice to private owners throughout its Maintenance Bylaw.

65. The Maintenance Bylaw indicates that the owner or occupier of a property is responsible for clearing snow and ice from sidewalks adjacent to this property. An owner or occupier must clear snow and ice on the day following a snowfall for a commercial property, and within 48 hours after a snowfall for a residential property.

66. Owners and occupiers are only required to clear a width of 1.5m on the relevant sidewalk or lane crossing.

67. Thus, even where snow is cleared, if the sidewalk is larger than 1.5m, which is the case in most of the downtown area, snow accumulates and prevents the Plaintiff and Class Members from moving on or off of the sidewalk.

68. Furthermore, as snow is allowed to accumulate on sidewalks, freeze-thaw cycles result in snow, ice and ice chunks pooling at or on sidewalk curb ramps, on a portion of or entire width of sidewalks, or on the street, making it difficult or impossible for the Plaintiffs and Class Members to move to or from pedestrian crossings, or across lane crossings.

69. The snow accumulation on sidewalks (before, during or after any freeze-thaw cycles) also prevents the Plaintiffs and Class Members from safely accessing the sidewalk from on-street parking.
70. Once snow or ice has formed and accumulated on sidewalks, curb ramps, or “accessible” parking spaces, the City does not address the situation by putting sand or salt on the ice or snow, as the case may be. This places Class Members at an increased and disproportionate risk of injury.
71. By contrast, able-bodied residents can hop, walk or jump over snow windrows or other obstacles, move around obstacles, or, at times, will not even be impeded by the snow, ice or ice chunk obstacle(s).
72. The Defendant has failed to effectively implement or effectively enforce its Maintenance Bylaw.
73. By contrast, the Defendant devotes significant resources to parking infractions and enforcement, again underscoring the priority given to drivers in Whitehorse and the second-tier status of the Plaintiffs and Class Members.
74. The lack of enforcement of the Maintenance Bylaw and/or the inadequacies of the obligation placed on owners and occupiers thereunder have resulted in checkered sidewalks throughout the city for decades.
75. Some sidewalks are – at times – satisfactorily ploughed and cleared of ice; others are partially or inadequately cleared; and other sidewalks are left to the mercy of the elements throughout the fall, winter and spring seasons.

76. Inadequately ploughed or cleared sidewalks disproportionately affect the Plaintiffs and Class Members by posing a difficult or impossible mobility barrier to them.
77. Sidewalks that are not maintained at all disproportionately affect the Plaintiffs and Class Members by posing a difficult or impossible mobility barrier to them.
78. The overall haphazard and checkered situation concerning sidewalks disproportionately affects the Plaintiffs and Class Members by posing a difficult or impossible mobility barrier to them. While able-bodied residents can easily adapt and deal with obstacles strewn in the way of their intended destination, the Plaintiffs and Class Members do not have such ease.
79. The Defendant has known for many years that its Maintenance Bylaw and its failure to put ice or sand in the areas described above have resulted in a haphazard and inadequate state of affairs as regards snow and ice on all or part of sidewalks, curb ramps, and on-street parking in Whitehorse.
80. The Defendant has, for as many years, been aware of or inexcusably blind to the disproportionate impact that its failure to apply salt or sand, its Maintenance Bylaw and lack of enforcement thereof has had on the Plaintiffs and Class Members.

Defendant-Operated Accessible Parking Spaces

81. In addition to the above, the Defendant is also responsible for ensuring that city-owned accessible parking spaces located within its jurisdiction meet the barrier-free design requirements prescribed by the Barrier-Free Design Guide ("**Design Guide**"), pursuant to s. 3.8 of the *National Building Code of Canada* (NBC) 2020, adopted by Yukon Consumer

and Safety Services under the *Building Standards Act*, RSY 2002 c.19, and the Defendant's own Planning & Development Services.

82. The accessible parking spaces located within the Defendant's jurisdiction are intended to serve disabled members of the Whitehorse community and facilitate accessibility and mobility for individuals who use mobility aids or live with a physical impairment.
83. However, the Defendant-operated accessible parking spaces do not meet the barrier-free design requirements prescribed by the Design Guide. The accessible parking spaces under the jurisdiction of the Defendant are deficient in the following ways:
 - (a) they provide no access, or only impeded access, to ramps, contrary to s. 3.8.3.4 of the Design Guide;
 - (b) they are of insufficient width, contrary to s. 3.8.22 of the Design Guide;
 - (c) there is an insufficient ratio of designated accessible parking spots to non-accessible parking spots, contrary to A-3.8.22 of the Design Guide; and
 - (d) there are barriers present in the path of travel to accessible parking spaces, by way of erected sign posts, garbage bins or bike racks, contrary to s. 3.8.22 of the Design Guide.
84. Moreover, the Defendant has removed accessible parking spots from key locations within the city, reducing the proportion of such parking spots in the downtown core area to a level that is insufficient to ensure access to Class Members.

85. In the summer months, the City of Whitehorse has allowed food trucks to operate in such a way as to disproportionately impede access to accessible parking spots.
86. Finally, because accessible parking spots are often located near a street corner, accessible parking spots and nearby ramps (if they even exist) are disproportionately affected by the pooling of water in the summer, fall or spring, such pooling being the result of improper drainage infrastructure, which is the responsibility of the City.
87. In spring or during mild winter weather, the same improperly operating drainage infrastructure results in the formation of large patches on or near accessible parking spots, which become completely unusable.
88. The Defendant's failure to ensure that the accessible parking spaces meet the design requirements in order to be accessible have caused the Plaintiffs and Class Members significant harm, and have limited the Plaintiffs' and Class Members' ability to participate in society, as described below.

City Transit Stops

89. Many city transit stops are inaccessible to Class Members.
90. These stops are not wheelchair accessible. There are curb cuts in the way of accessing transit stops, such that Class Members must wait for transit on the road, on the shoulder of the road or in an active bike lane.
91. Transit stops do not have benches for Class Members to sit and wait for the bus.
92. Transit stops do not have accessible shelters for Class Members.

93. Scheduled bus times at transit stops are placed so that a person must be standing to consult the timetable.
94. Transit stops are not prioritized for snow and ice removal during winter months, such that snow and ice will build up around them and render them unsafe or impossible to use for Class Members.
95. Transit stops are not lit or improperly lit, which disproportionately affects Class Members.

Causes of Action: Breaches of ss. 7 and 15 of the *Charter*

96. As an agent of the government, the Defendant continually owes a duty under the *Charter* to the Plaintiffs and Class Members.
97. The Plaintiffs state that the Defendant's actions or inactions via the enactment, administration and enforcement of its policies and bylaws have, both separately and collectively, created a state of affairs that has severely interfered with their right to liberty and security of the person, and that amounts to substantial discrimination based on disability. Accordingly, the Defendant, and its employees, servants, and agents, have breached, and continue to breach, the s. 7- and s. 15-protected *Charter* rights of the Plaintiffs and Class Members.

(1) Section 7

98. Section 7 of the *Charter* states:

Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

(a) Right to Liberty

99. The Plaintiffs and Class Members, residents of Whitehorse, must make use of services and amenities within the community in order to maintain a basic standard of living. The Defendant, along with the Yukon and Canadian governments, is directly responsible for providing many of these services.
100. The Defendant, as a municipality, offers a variety of local services to its residents, including, but not limited to, the use of parks and outdoor spaces, trails, recreation facilities, and libraries. In addition to the local services the Defendant offers, the Yukon government ensures access to health and medical services, social services, and education for residents of Whitehorse, and the Canadian government provides Indigenous services as well as information and services related to the Canada Pension Plan, Old Age Security, the Social Insurance Number Program, and passport applications.
101. For example, Service Canada, Yukon Health and Social Services, Yukon Employment Services, the Yukon Department of Justice, the Whitehorse Housing Office, Whitehorse City Hall, and the Whitehorse mayor's and councillors' offices are all located in the city's downtown core.
102. The use of any of these services requires that residents be physically able to access them. The Plaintiffs and Class Members who, due to a disability, require the use of one or more mobility aids are precluded from accessing any of the above-mentioned services if the Highways, accessible parking spaces, and city transit stops within the Whitehorse community are not accessible to them. The Plaintiffs and Class Members require clear and

accessible Highways, accessible parking spaces, and city transit stops in order to attend to their most basic needs and maintain an adequate standard of living.

103. The right to full and effective participation and inclusion in society, respect for inherent dignity, and respect for individual autonomy and independence are well-respected principles of human rights law. The Defendant owes the Plaintiffs and Class Members a duty to consider the accessibility needs of persons with disabilities and to take steps to actively identify and remove barriers to accessibility.
104. The Plaintiffs state that the Defendant's unreasonable administration of the Snow and Ice Policy and the Maintenance Bylaw and the Defendant's failure to maintain adequate accessible parking spaces and city transit stops has rendered the city's Highways (particularly in the downtown core) unusable to them during winter months, preventing the Plaintiffs and Class Members from being able to freely and autonomously move about Whitehorse. The Defendant's actions have resulted in the Plaintiffs' and Class Members' inability to receive benefits or participate in programs and/or services offered by the Defendant, or the Yukon or Canadian governments, to which they are otherwise legally entitled.
105. The Defendant's conduct has, in effect, deprived the Plaintiffs and Class Members from being able to make fundamentally personal decisions. By virtue of being unable to access the necessary services above, the Plaintiffs and Class Members have experienced a loss of personal autonomy and the freedom to make decisions about their own lives. Such conduct severely degrades the Plaintiffs' and Class Members' dignity and independence.

(b) Security of the Person

106. Further, the Defendant's conduct has imposed significant and serious psychological harm on the Plaintiffs and Class Members.
107. The Defendant's conduct has made it nearly impossible for the Plaintiffs and Class Members to control their own bodily integrity. Even with the use of mobility aids, the state of the Defendant's sidewalks and other pedestrian walkways, accessible parking spaces, and city transit stops severely limits the mobility of the Plaintiffs and Class Members. At times, the Plaintiffs and Class Members are forced to remain in their homes for indeterminate amounts of time.
108. The Defendant's actions have, in effect, added barriers to mobility for the Plaintiffs and Class Members. These barriers have resulted in severe stress and anxiety, feelings of inadequacy, worthlessness, and an overall sense that they are less worthy of consideration than able-bodied residents of Whitehorse.

c) Principles of Fundamental Justice

109. The Defendant's conduct in administering the Snow and Ice Policy and the Maintenance Bylaw and the Defendant's failure to maintain adequate accessible parking spaces and city transit stops have deprived the Plaintiffs and Class Members of their liberty and security of the person. Such deprivation is not in accordance with any principle of fundamental justice.
110. More specifically, the Plaintiffs submit that the Defendant's conduct, detailed above, bares no connection between the purpose of the Defendant's policies and bylaws, and the mental

suffering that the Plaintiffs and Class Members experience as a result of the Defendant's administration of those policies and bylaws.

111. Ironically, despite the objectives of the Defendant's policies and bylaws being to provide reasonable winter mobility, the Defendant's conduct is directly responsible for the state of affairs that severely limits the Plaintiffs' and Class Members' movement and ability to access government services. The Defendant has chosen to enact its policies and bylaws in an arbitrary manner that is inconsistent with its stated objectives.
112. The Plaintiffs therefore state that the Defendant's actions infringe on the s. 7-protected rights of the Plaintiffs and Class Members under the *Charter*.

(2) Section 15

113. The Plaintiffs state that the discriminatory priorities located in the Snow and Ice Policy, the Defendant's administration of the Snow and Ice Policy and the Maintenance Bylaw, and the Defendant's failure to ensure adequate accessible parking spaces and city transit stops, both together and in isolation, disproportionately affect the Plaintiffs and Class Members, given their mobility issues, and, in their impact, perpetuate two of the most important historical disadvantages of people with disabilities: mobility, and equal participation in society and in the services offered by society.
114. The Defendant has chosen to administer the Snow and Ice Policy and the Maintenance Bylaw in a manner that results in Highways with an excessive accumulation of ice and snow. This decision has a discriminatory impact on the Plaintiffs and Class Members, and violates the well-recognized norm of substantive equality.

115. The Defendant and its employees, servants, and agents have prioritized snow removal for motorists, and residents able-bodied enough to use multi-use trails, leaving sidewalks and other pedestrian walkways inaccessible. While able-bodied residents may find this failure simply frustrating or inconvenient, disabled residents find themselves debilitated by the choices of the Defendant and its employees, servants, and agents.
116. Despite the accumulation of ice and snow, abled-bodied residents of Whitehorse are still able to access necessary services by virtue of being able to step over, avoid, or navigate the barriers present on the Highways the Defendant and its employees, servants, and agents are responsible for maintaining.
117. In contrast, the failure of the Defendant, and its employees, servants, and agents, to remove ice and snow has, in effect, left the Plaintiffs and Class Members completely immobilized and unable to navigate even the main Highways of Whitehorse.
118. The risk of injury from the conduct of the Defendant and its employees, servants, and agents is also greater for the Plaintiffs and Class Members than it is for able-bodied residents. While ice and snow are known hazards for slips and falls for all residents of Whitehorse, the vulnerabilities of the Plaintiffs and Class Members, coupled with the limited range of motion most mobility aids offer, leave the Plaintiffs and Class Members in a highly precarious position when attempting to make use of the Defendant's Highways, accessible parking spaces, and city transit stops.
119. In effect, the inconsistency in the Defendant's administration of the Snow and Ice Policy and the Maintenance Bylaw and the Defendant's failure to maintain adequate accessible parking spaces and city transit stops have left the Plaintiffs and Class Members unable to

obtain necessities for basic living, attend appointments, or participate in leisure activities without assistance.

120. Requiring the Plaintiffs and Class Members to seek assistance from able-bodied members of the community due to the failure of the Defendant and its employees, servants, and agents to keep Highways, accessible parking spaces, and city transit stops accessible further creates a distinction in services offered based on an enumerated ground and clearly exacerbates an existing disadvantage. The Plaintiffs state that the conduct of the Defendant and its employees, servants, and agents amounts to a substantial breach of their s. 15-protected *Charter* rights.

Damages

121. The Plaintiffs state that the Defendant knew, or ought to have known, that as a consequence of its actions, inaction or policies, and its violation of the Plaintiffs' and Class Members' rights guaranteed by s. 7 and s. 15 of the *Charter*, the Plaintiffs and Class Members would suffer significant physical, emotional, and psychological harm.
122. The Plaintiffs and Class Members have been demeaned, marginalized, and deprived of their inherent dignity and freedom to make their own choices. In general, and without restricting the generality of the foregoing, the Plaintiffs and Class Members have suffered:
- (a) an impaired ability to fully and effectively participate in society;
 - (b) an impaired ability to complete or pursue education;
 - (c) an impaired ability to obtain or sustain employment, resulting in lost or reduced income and ongoing loss of income;

- (d) an impaired ability to enjoy and participate in recreational, social, athletic, or employment opportunities;
- (e) physical injuries;
- (f) physical pain and suffering;
- (g) loss of enjoyment of life;
- (h) loss of friendship, companionship, and support of friends and community; and
- (i) psychological disorders, including depression and anxiety.

Legislative Framework

123. The Plaintiffs plead and rely upon the following legislation:

- (i) the *Charter*, ss. 7, 15;
- (ii) the *Municipal Act*, ss. 1, 177, 274(2);
- (iii) the *Highways Act*, s. 6(1);
- (iv) the *Building Standards Act*, s. 2;
- (v) the *Human Rights Act*, RSY 2002, c 116;
- (vi) the *Universal Declaration of Human Rights*, GA Res 217(III), UNGAOR, 3d Sess, Supp No 13, UN Doc A/810, (1948), art. 1-2; and
- (vii) the *Convention on the Rights of Persons with Disabilities*, GA Res 61/106, UNGAOR, 61st Sess, Supp No 49, UN Doc A/Res/61/106 (2007), art. 3, 4, 9.

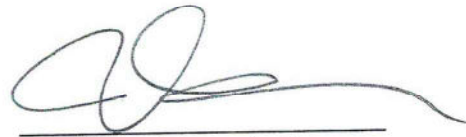
Relief Claimed

124. The Plaintiffs claim as follows:

- (a) an order certifying this proceeding as a class proceeding and appointing the Plaintiffs as representative plaintiffs for the Class pursuant to rule 5(11) of the *Yukon Rules of Court*, YOIC 2022/168;
- (b) a declaration that the Defendant and/or its employees, servants, and agents systemically violated, and continue to violate, s. 7 of the *Charter* in such a way that is not reasonably justified in a free and democratic society pursuant to s. 1 of the *Charter*;
- (c) a declaration that the Defendant and/or its employees, servants, and agents systemically violated, and continue to violate, s. 15 of the *Charter* in such a way that is not reasonably justified in a free and democratic society pursuant to s. 1 of the *Charter*;
- (d) base-level *Charter* damages pursuant to s. 24(1) of the *Charter* for compensation, vindication, and deterrence, to be paid into a fund to be distributed *pro rata* among the Plaintiffs and Class Members, after deduction of Class Counsel's legal fees, disbursements, and applicable taxes;
- (e) directions that the *Charter* damages awarded in paragraph (d) are without prejudice to the Plaintiffs and Class Members claiming additional *Charter* damages at any Court-ordered individual trials or assessments;

- (f) in the alternative, directions that individual assessments of *Charter* damages be conducted;
- (g) pre-judgment and post-judgment interest in accordance with the provisions of the *Judicature Act*, RSY 2002, c 128;
- (h) the costs of this action on a substantial indemnity basis, together with all applicable taxes; and
- (i) such further and other relief as to this Honourable Court may seem just.

Signed in Whitehorse, on September 9, 2024

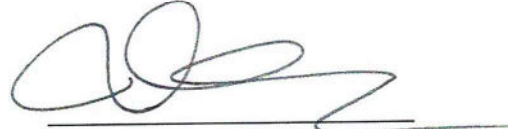


Vincent Larochelle
Emily Assini
Lawyers for the Plaintiffs

NOTICE OF CASE MANAGEMENT CONFERENCE

TAKE NOTICE that this action is exempt from mandatory Case Management Conference because Petitioners are represented by counsel, pursuant to Practice Direction (Civil-10).

Dated: September 9, 2024

A handwritten signature in black ink, appearing to read 'Vincent Larochelle', written over a horizontal line.

Vincent Larochelle

Emily Assini

Lawyers for the Plaintiffs

S.C. No. _____

SUPREME COURT OF YUKON

Between

RAMESH FERRIS and EVA VON FLOTOW on their own behalf and on behalf of all other persons resident in Whitehorse during any period on or after September 9, 2018, who, during that period, lived with legal blindness or a physical, neurological or musculoskeletal condition, whether temporary or permanent, limiting their mobility such that, at the time, they would have met one of the three conditions to apply for a City of Whitehorse accessible parking permit, whether or not they applied for such a permit

Plaintiffs

and

CITY OF WHITEHORSE

Defendant

STATEMENT OF CLAIM

LAROCHELLE LAW
201-4133 4th Ave
Whitehorse, YT Y1A 1H8

Vincent Laroche
Email: info@larochellelaw.ca
Tel: 1-867-456-2325

McKENZIE LAKE LAWYERS LLP
140 Fullarton St, Suite 1800
London, ON N6A 5P2

Emily Assini
Email: emily.assini@mckenzielake.com
Tel: 1-519-672-5666