

Crack in the Road Results in Injury but No Municipal Liability

It is mid-April and Anne is nearing the completion of her final exams. She is in her fourth year of university and after tonight's exam she has just one more exam to write. Then her life as a student will be over and she can concentrate on all the big plans she has for the summer.

Anne is not planning an idle summer. She has secured a high-paying summer position with an auto parts manufacturer, and is planning to work part-time as a lifeguard at a municipal pool. Between the two jobs she plans to clear some debt and still be able to bank some money. The money in the bank will give her some breathing space as she begins to look for full-time employment in her chosen field in the fall. Who knows – she thinks she might even be able to do some travelling before she enters what her parents call "the real world".

Rather than staying in her apartment to study for her last exam, she decides to go to her parent's home after tonight's exam. She figures it'll be quieter and give her a better chance of concentrating. Her mother agrees to pick her up and drive her home.

Shortly after 10:00 p.m. Anne exits the campus and sees her mother waving at her from across the street. Rather than walking to the crosswalk, she looks both ways and proceeds

to cross the road directly across from where her mother is parked. It is dark and this particular street is a busy one, so she concentrates on looking both ways while crossing the street rather than concentrating on the condition of the road. She doesn't notice the crack in the road until her shoe gets caught and wedged in the crack, causing her to fall. That night Anne breaks a bone in her foot and her plans for a lucrative summer come to an end. Instead of working on an assembly line and at a municipal pool, she spends the better part of the summer with her foot in a cast.

As far as Anne is concerned, her trip and fall was caused by the municipality's failure to maintain the road. Yes, there was a cross-walk a little further down the street, but this is a busy campus and many students routinely ignore the cross-walk and cross the street wherever it is convenient for them. The municipality knows this is happening on a regular basis so they should have repaired the crack in the road. Anne's legal counsel agrees and a legal action is launched against the municipality.

Based upon the facts and the evidence presented, the Court finds that the municipality was not negligent in meeting its statutory duty under the Municipal Act. The roadway is intended for vehicular traffic and was in a reasonable state of repair for its intended purpose.

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H1N1 the “Newest” Camper this Summer

Summer camp is a time of learning new skills and making new friends. Campgrounds echo with the sound of children’s laughter, and memories are made around the glow of a camp fire. Summer camp is supposed to be a time of carefree joy, but this past summer, it is also a time of illness as several overnight camps have had campers become ill with the H1N1 virus.

This virus, similar to the ‘seasonal’ flu, is spread through coughing and sneezing or by touching your nose or mouth after touching an object with the virus. Unlike the seasonal flu, which affects the oldest and youngest of our population, this virus seems to be affecting those between 5 and 24 years of age. And this is the very age group most likely to attend camp, or to work at a camp as a counsellor or lifeguard.

Campers and staff can be at risk for infection from the physical structure of the camp (shared sleeping quarters and shared washrooms), the location of the camp (wilderness, not located near medical facilities), or lax hygiene enforcement, a lack of hand washing facilities or alcohol-based hand sanitizers).

The Ontario Ministry of Health and Long Term Care has issued guidelines for influenza-like illnesses (ILI) in summer camps. These include:

- Screening campers for ILI symptoms prior to them boarding bus transportation to overnight camps. Those showing symptoms should be asked to return home.
- Ensuring alcohol-based (60-90% alcohol) hand rub and facilities for hand washing (running water, dispensed soap, paper towels) are located throughout the camp, particularly in the dining room and other areas where campers congregate.
- Ensuring sleeping arrangements are in a head-to-foot placement in bunk beds with an arms length between persons – this applies to tents as well as cabins.

- Designating an area that allows a sick individual to be isolated from the others. This area should have surgical masks and its own disinfectants.
- Making arrangements in advance for prompt identification and medical attention for ‘wilderness’ type camps or those that have a wilderness component. This may require the use of satellite phones and arrangements with water or air evacuation services.
- Regularly sanitizing all commonly-touched surfaces such as light switches, door handles, counters, sports equipment, tables, etc.
- Create a checklist of what must be wiped down, and ensure that this is done frequently.



- Requiring staff to observe all participants and each other for evidence of flu symptoms, which is typically a fever and cough with at least one of the following: sore throat, muscle aches, joint pains, or weakness. In addition, some children under the age of 5 may also have gastrointestinal symptoms rather than a fever.

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- Monitoring the health of all staff and participants, and advising the local Public Health office if the illness rate exceeds 10%. Have a protocol in place on when parents are to be contacted and when participants are to be released from the camp program.

Although summer camps traditionally end as Labour Day approaches, this also heralds the time when schools and recreational programs gear up for their fall and winter sessions. It is unlikely that the threat of H1N1 flu will disappear with the change of the seasons. Schools, daycare providers and municipal recreational programs will all need to incorporate prudent H1N1 flu prevention protocols into their fall programs.

The Ministry of Health of each province issues flu prevention updates and guidelines for schools, camps, businesses, etc. These guidelines must be scrupulously followed, and a means found to document how these protocols were incorporated by each organization.

After all, viruses don't take vacations.

Our Building Valuation Methodology

We use a dynamic methodology which is updated quarterly for costing of reconstruction risks. The model that we use is specific to the postal code and therefore reflects the local cost issues for the area across Canada.

Our primary source of commercial costing is the Marshall & Swift/Boeckh (MSB) software program. As well, we have secondary sources such as Means Costworks software, Hanscomb and the Toronto Real Estate Board manuals.

Based on a physical inspection of the risk, the square footage and the type and quality of construction, the input is analyzed using our valuation model.

The resultant costs represent not only the reconstruction costs for the local area but also demolition and debris as well as all soft costs (architectural fees, permits, overhead and profit) and fixed equipment.

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A Lesson to be Learned

Accidents that result in injury or property damage are unfortunate occurrences. But they do not necessarily mean that the municipality is negligent or liable for damages. Each and every incident must be assessed on its own merits.

Municipal staff and elected officials should be reminded that at time of claim they should adhere to the following recommended protocol:

- Listen and document the conversation
- Offer empathy and not monetary restitution
- Do not admit fault
- Let the claimant know that you will report the incident to the appropriate party within the municipality and proceed with a thorough investigation
- If contacted by the media, inform them that the incident has been reported to the appropriate party within the municipality and an investigation is taking place
- If appropriate, instruct the claimant to report the incident to their insurer
- Refrain from commenting on the incident to avoid prejudicing the insurer and/or breaching any privacy laws

Remind staff and elected officials that an insurance policy is in place and the terms and conditions within the policy must be followed at time of claim. Talking out of turn can prejudice the insurer's position or defence of the claim. This can result in denial of the claim thereby requiring the municipality to rely on its own funds to pay monetary damages, investigation costs, expenses and legal fees.

*If at any time you are unclear as to how to proceed, contact of one of our claims management team members. They are there to assist, advise and guide you through the process. When in doubt call 1-800-265-4000 and ask to speak with **Derek Sarluis** or **Brenda MacDonald**.*

ABC's of Protecting Confidential Information

All entities are at risk of security and privacy breaches.

Banking information changes for electronic transfers should never be taken over the phone.

Continuously audit the enforcement of your policies and procedures.

Dumpsters should be stored in a secure area to avoid "dumpster diving" for sensitive information.

Exterior doors should never be propped open. Keep them closed to keep intruders out.

Firewalls on computer systems should be installed and enabled.

Guidelines should be developed regarding the types of documents that must be shredded.

Have all employees log off or shutdown their computers at the end of the day.

Instruct employees to lock their computers when away from their desks.

Jotting down passwords and leaving them in open view is not a good idea.

Keep current on privacy and security risks.

Let your employees know what type of information is sensitive and confidential and what must be safeguarded.

Make sure all employees understand that IT staff have administrator privileges – they don't ask for passwords. Outsiders, posing as IT staff, ask for passwords.

Never ignore threats made by a disgruntled employee. Deal with them.

Old electronic equipment must have the hard drive/ internal memory wiped clean prior to disposal, either with special software or by physically removing and destroying the hard drive.

Passwords should be safeguarded by employees. They shouldn't be shared with anyone.

Question your employees as to ways of improving your current security procedures.

Reception should have a list of the contractors and suppliers that will be on the premises on a given date.

Staff should be regularly reminded of safety and security protocols.

Third party cleaning and building staff should be bonded.

User accounts should be terminated as soon as an employee leaves your employ.

Visitors, contractors, etc. should be required to report to the receptionist and then escorted throughout the facility by a staff member.

Whistleblowers can provide you with information regarding potential security breaches. Listen to them and protect them.

X'plain to staff that privacy and security is everyone's job.

Your security measures are only as strong as your weakest link. Your weakest link is your employees.

Zero in on your weakest link.



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