

## 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.

### 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**.*