



Investigative Guidelines for Sidewalk Trip and Fall Claims

Defences

1. The sidewalk is in a reasonable state of repair in light of all the circumstances. The common law judicial “rule of thumb” for liability is $\frac{3}{4}$ ” although judges do not always acknowledge it – the circumstances of the area are relevant;
2. A municipality is not liable for failing to keep the sidewalk in a reasonable state of repair if it complied with the minimum maintenance standards applicable to the default alleged, s. 44(3)(c) Municipal Act, 2001.
3. A municipality is not liable for failing to keep the sidewalk in a reasonable state of repair if it took reasonable steps to prevent the default from arising, s. 44(3)(b) Municipal Act, 2001, i.e. the municipality had a reasonable system of inspection of repair which it complied with;
4. A municipality is not liable for failing to keep the sidewalk in a reasonable state of repair if it did not know and could not reasonably have been expected to have known about the state of repair of the sidewalk, s. 44(3)(a) Municipal Act, 2001, i.e. a condition developed unexpectedly;
5. Injury caused by a condition not on the travelled portion of the sidewalk, s.44(8) Municipal Act, 2001;
6. 10-day notice period, s. 44(10) Municipal Act, 2001; compliance requirement can and likely will be waived by a court (s. 44(12)), however, it is still important to determine (i) whether the plaintiff has a reasonable excuse for any failure to comply; and (ii) any prejudice to the municipality because of the lack of notice;
7. 2-year limitation period, Limitations Act, 2002;
8. Involvement of third parties, occupying the sidewalk, creating the dangerous condition or possibly subcontractors (see Carneiro);
9. Contributory negligence, Negligence Act.

Checklist

1. **Timely Investigation:** Particularly if notice is provided shortly after the accident, since timely inspection is likely to show conditions at time of accident;
2. **Photographs:** The allegedly defective condition, the area of the defect, the neighbourhood, proximity to attractions such as bus stops, hospitals, businesses, any potential contributing causes, such as trees on adjoining property, etc.
3. **Measurements:** It is important to measure the trip ledge and to be specific about the method of measurement;
4. **Weather Information:** Not as much as a factor in these cases but possibly still useful;
5. **Policies and Procedures:** Sidewalk maintenance policies and procedures for the area of the fall;
6. **Logs:** MMS records, inspection logs, repair logs, equipment logs, anything that people record regularly in the course of sidewalk maintenance – often more than one department keeps records of sidewalks, i.e. the engineering department may review sidewalks for replacement purposes, while the roads department may be responsible for sidewalk repairs (see the type of records usually obtained in General Road Maintenance Claims);
7. **Journals/Daybooks:** Supervisors usually keep journals in addition to other records they are required to keep; some workers do this independently as well;
8. **Statements:** Although in trip and fall cases memory is not usually an issue, i.e. there is nothing to remember, it is still important to take witness statements from municipal personnel sooner rather than later. Supervisor can also usually provide other required information, described above. Other potential witnesses should also be contacted.