

Claim Case Study for Public Sidewalk Trip and Fall

Anderson v. Hamilton (City), 2009 (ON SC)

Facts

The plaintiff brought an action against the City for damages because of a slip and fall that happened on the sidewalk in front of her house. She had walked on this sidewalk many times in the 3 years that she lived on the street. She had never noticed a depression in the sidewalk until the evening she fell. It was twilight when the incident occurred, but the plaintiff claimed that there was plenty of light in the area from street lamps. The woman sustained a broken left wrist.

Issues

1. Was the sidewalk in a state of disrepair?
2. Was the City liable for the plaintiff's damages?

Legislation

Section 44 of the *Municipal Act*, 2001, RSO 2001, c.25, governs the duties that a municipality has in maintaining sidewalks. It reads as follows: "44. (1) The municipality that has the jurisdiction over a highway or bridge shall keep it in a state of repair that is reasonable in the circumstances, including the character and location of the highway or bridge. (2) A municipality that defaults in complying with subsection (1) is, subject to the *Negligence Act*, liable for all damages any person sustains because of the default. (3) Despite subsection (2), a municipality is not liable for failing to keep a highway or bridge 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 highway or bridge;
- It took reasonable steps to prevent the default from arising; or
- At the time the cause of action arose, minimum standards established under subsection (4) applied to the highway or bridge and to the alleged default and those standards have been met."

There is only one reference to sidewalks in section 44, and that is subsection 9 dealing with snow and ice. From

case law we know that section 44 governs the liability of the City in matters dealing with sidewalks. In the *Law of Canadian Municipal Corporations*, 2nd Ed., (LCMC) Ian Mac F. Rogers, Q.C. states that: "A sidewalk is that part of a street set apart for pedestrians. It is generally a part of the highway."

Findings

The supervisor that looked after the streets and sidewalks was responsible for about one thousand kilometers of sidewalk. He stated that there was a sidewalk check done each year. They would do visual inspections and make notes regarding their findings and followed guidelines on how to mark the sidewalk inspections.

Section 44 of the *Municipal Act* imposes a duty of repair that is reasonable in the circumstances. The LCMC outlines the extent of that duty:

"Both legislatures and courts have defined the scope and extent of the obligation of municipal corporations to repair highways and have placed limitations thereon. The measure of the duty is to be found in the statute creating it. In some provinces the duty is imposed to keep the highways in a 'reasonable state of repair'. The obligation imposed by the *Municipal Act* requires a municipality to keep its roads, or to use all reasonable efforts to keep them, in a state reasonably sufficient...The duty to keep in a reasonable state of repair involves the duty to prevent, as far as reasonably possible, the continuance of known conditions which will bring about a state of disrepair...However, local authorities are not required to maintain their streets according to an ideal standard of perfection; the duty is not an absolute one so far as to call for the perfect repair. Hence, they are not the insurers of persons using their streets..."

There are many factors that the Court takes into consideration with respect to non-repair of sidewalks and roadways such as the nature of the locality, financial means and weather. What is reasonable repair is a question of fact depending on all the surrounding circumstances. The test to be applied to determine whether a municipality has fulfilled or breached its statutory duty to maintain a road in a reasonable state of repair is whether the conditions that existed at the time

of the accident presented an unreasonable risk of harm. Not every unevenness or hole in the sidewalk amounts to a non-repair.

There was a dispute in this case regarding the size and depth of the depression. The City went to the site after learning of the incident, measured the depression and then repaired it with a cement patch. The plaintiff believed that the City worker had the ruler on a tilt. The plaintiff had the patch removed and took another measurement, finding the depression deeper than the City's initial measurements. Some of the discrepancy in the measurements is likely due to the fact that when the cement patch was removed, it removed more than just the patch, resulting in a greater depth. The Court accepted the City measurements and agreed that the depression was about five-eighths of an inch.

Court's Ruling

The Court found that the sidewalk was not in a state of disrepair and the plaintiff's action was dismissed. In coming to its decision, the Court looked at many past cases regarding what constitutes a state of disrepair. In its research, it was clear that each case of non-repair of sidewalks was governed by its own factual basis. The woman in this case had walked on that sidewalk many times in darkness and daylight. She was well aware of the state of the sidewalk in front of her home.

The Court further commented that even if it erred in finding that the sidewalk was not in a state of disrepair, the City may have been saved with the defences set out in section 44(3) of the *Municipal Act*. The City inspected their sidewalks once a year starting in early spring. The workers would start in a high traffic area and progress to the residential areas. The staff had a set of guidelines to follow and inspection reports to fill out. The City had a regular inspection and documentation procedure in place and thus satisfied the duty placed on it.

Lessons Learned

The claim above happened in 2009, before the sidewalk standard was introduced. In February 2010, the Minimum Maintenance Standards was amended to include minimum standards for sidewalk surface discontinuities (section 16.1, Minimum Maintenance Standards, O Reg 239/2). The standard states that if a surface discontinuity exceeds 2 cm (3/4 of an inch); it must be treated within 14 days.

Having a spring sidewalk inspection program in place along with documenting procedures is a good way for a municipality to safeguard against liability claims.

- Compile an inventory of all sidewalks and develop a checklist of their condition.
- Identify the condition and any special risks.
- Determine the state of non-repair.
- Prioritize any maintenance to be done and warn the public of any areas of non-repair.
- Develop written maintenance schedules and procedures.
- Continue to monitor.
- Keep all reports of maintenance activities and inspections.

For more information on creating policies and procedures for sidewalk inspection and maintenance, see our article on [Summer Sidewalk Maintenance](#).