



Claim Case Studies & Legislation: Road Shoulder Trip and Fall *Bellefleur v. City of London*, 2002 (ON SC)

Facts

The Plaintiff and her two small children were walking along the shoulder of the road because the street didn't have a sidewalk. This was a common practice for pedestrians living nearby who were on their way to local shopping areas. Unknown to the Plaintiff, there was a hole in the shoulder of the road. The Plaintiff did not see the hole because it was filled with leaves. When she stepped into the hole, she fell and twisted her ankle. She brought an action against the City alleging the road was in a state of non-repair.

Issues

1. Is the City liable under s. 284 of the *Municipal Act* R.S.O. 1990, c. M.45 for failing to keep the shoulder of the road in a reasonable state of repair?
2. Was there any contributory negligence on the part of the Plaintiff?

Legislation

Section 284 of the *Municipal Act* R.S.O. 1990, c. M-45 reads as follows:

(1) The council of the corporation that had jurisdiction over a highway or bridge shall keep it in a state of repair that is reasonable in light of all the circumstances, including the character and location of the highway or bridge.

(1.1) In the case of default, the corporation, subject to the *Negligence Act*, is liable for all damages any person sustains because of the default.

(1.2) The corporation is not liable under subsection (1) or (1.1) 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 know about the state of repair of the highway or bridge.

(1.3) the corporation is not liable under subsection (1) or (1.1) for failing to keep a highway or bridge in a reasonable state of repair if it took reasonable steps to prevent the default from arising.

Findings

The Court acknowledged that the hole on the shoulder caused the fall. Next, the Court considered whether or not the shoulder was in a state of non-repair under s.284. In its review, the Court concluded that the standard of maintenance for this shoulder, being that it was commonly used by pedestrians, approached that of a sidewalk. However, the Court found it important to note that due to the nature of a shoulder's composition, one could not expect it's surface to equal that of a sidewalk's surface (uniformity and free from irregularities). Due to the presence of the hole, the Court determined that the site of the accident was not in a reasonable state of repair.

The evidence provided to prove that the City was aware, or should have been aware, of the state of the shoulder included:

1. History of water main breaks in the area.
2. No proof of City inspections.
3. History of past complaints.

The Court's Ruling

The Court found the City negligent in failing to maintain the shoulder of the street in a state of reasonable repair and in the circumstances, they knew or ought to have known about the state of disrepair. The Court found no contributory negligence on the part of the Plaintiff as no matter how careful she could have been there was no way she could have seen the hole hidden beneath the leaves.

Lessons Learned

1. A process should be developed for identifying pedestrian walking areas within the road allowance. Consult your planning department. Once these areas are identified, they too should be inspected and maintained.
2. Whenever repairs affect these areas, inspect the site after repair completion. Document all inspections and maintenance work performed.
3. Create a process for responding to complaints.
4. Document the actions taken.

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