

Lessons Learned from Recent Cases: The Importance of Documenting Maintenance Activities

April 30, 2018

Background

This case involved an elderly patient leaving the hospital following an out-patient procedure. Video surveillance cameras showed her exiting the hospital with her husband. They crossed the entrance driveway and walked along an interlocking brick pathway towards the parking lot. From the video, she walks close to the edge of the **pathway and falls sideways off the edge onto the grass beside the path. She suffered a fractured ankle as a result of the fall.**

The video surveillance footage was very important to the defence of the hospital. The video showed the patient and her husband walk at an angle on the pathway, gradually getting closer and closer to the edge until the patient fell over sideways. We were able to successfully argue that the patient was substantially responsible for her own injuries because she had failed to pay proper attention as she walked along the path.

However, investigations after the incident showed that the soil had eroded from beside the pathway, resulting in a height difference between the pathway and the abutting grass. The patient and her lawyer blamed the fall on the height difference and improper maintenance.

The hospital advised that there was an informal system for outside maintenance - walkaround inspections of the hospital grounds a few times per year by the maintenance department, as well as by the Joint Occupational Health and Safety Committee (JOHSC). Security staff were also expected to conduct rounds and report any hazards that they conducted. At the location of this fall, hospital staff would periodically add soil and seed to level up the grass area to the edge of the pathway.

Outcome

Unfortunately, there was very little documentation to support any of this maintenance activity, in terms of either when it had occurred or what was done. This created substantial risk to the hospital, as we would not be able to show proper maintenance

prior to the fall in question. As a result, we settled the case on behalf of the hospital, but with a substantial discount to reflect the patient's own negligence in contributing to the fall.

Conclusion

This case demonstrates the importance of keeping proper records or logs of maintenance activities. In this case, a record showing when and where the walkaround and JOHSC inspections had occurred would have provided very valuable evidence to the defence of the hospital. If we could have better established that there had been a recent inspection of the area, the hospital's position would have been more defensible.

BLG | Canada's Law Firm

As the largest, truly full-service Canadian law firm, Borden Ladner Gervais LLP (BLG) delivers practical legal advice for domestic and international clients across more practices and industries than any Canadian firm. With over 725 lawyers, intellectual property agents and other professionals, BLG serves the legal needs of businesses and institutions across Canada and beyond – from M&A and capital markets, to disputes, financing, and trademark & patent registration.

blg.com

BLG Offices

Calgary

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

The information contained herein is of a general nature and is not intended to constitute legal advice, a complete statement of the law, or an opinion on any subject. No one should act upon it or refrain from acting without a thorough examination of the law after the facts of a specific situation are considered. You are urged to consult your legal adviser in cases of specific questions or concerns. BLG does not warrant or guarantee the accuracy, currency or completeness of this publication. No part of this publication may be reproduced without prior written permission of Borden Ladner Gervais LLP. If this publication was sent to you by BLG and you do not wish to receive further publications from BLG, you may ask to remove your contact information from our mailing lists by emailing unsubscribe@blg.com or manage your subscription preferences at blg.com/MyPreferences. If you feel you have received this message in error please contact communications@blg.com. BLG's privacy policy for publications may be found at blg.com/en/privacy.

© 2025 Borden Ladner Gervais LLP. Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership.