Measurements matter: City avoids liability for sidewalk fall

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In Weiler v. City of London, the Ontario Superior Court dismissed a trip-and-fall claim because the sidewalk defect did not exceed the strict two-centimetre Minimum Maintenance Standards (MMS) threshold. The decision reinforces that plaintiffs bear the onus of proving that a sidewalk discontinuity exceeded the applicable repair threshold. The decision provides helpful guidance for Ontario municipalities in claims involving sidewalk discontinuities near the two-centimetre repair threshold.

The Ontario Superior Court of Justice recently dismissed a plaintiff's trip-and-fall lawsuit against the City of London in *Weiler v. City of London*, 2026 ONSC 2011. The court found that the plaintiff failed to prove the sidewalk discontinuity exceeded the two-centimetre threshold under the *Minimum Maintenance Standards* (*MMS*). The court also ruled that the city's pandemic-related decision to pause annual inspections was protected by core policy immunity.

Background

On March 11, 2021, the plaintiff tripped and fell on a city-owned residential sidewalk near her home in London, Ontario. At trial, the key issue was the size of the sidewalk discontinuity. Under section 16.1(3) of the *MMS*, a sidewalk surface discontinuity of two centimetres or less is in a state of repair.

Evidence at trial

The parties each relied on their own photographs and expert evidence concerning the height of the sidewalk discontinuity. The plaintiff's expert opined that the discontinuity was "approximately" two centimetres and might have been higher. The plaintiffs also argued that the City's subsequent marking and repair of the sidewalk supported the conclusion that the discontinuity exceeded the repair threshold.

Conversely, the City measured the discontinuity at several points, which ranged from 1.3 to 1.8 centimetres. Although the city marked the discontinuity with orange paint and requested a repair, the city testified that it did so out of prudence because of the reported fall, not because the *MMS* required repair.

The City's engineering expert reviewed the photographs and CCTV video evidence from a neighbouring home and concluded that the discontinuity in the area where the plaintiff fell was approximately 1.6 centimetres.

The Court accepted the City's evidence, finding that the discontinuity ranged between 1.2 and 1.7 centimetres and in the area where the plaintiff's foot struck the sidewalk, the discontinuity measured approximately 1.6 centimetres. The sidewalk was therefore deemed to be in a state of repair under the *MMS*, and the action was dismissed on that basis.

Core policy immunity

Although it was unnecessary to the final result, the court also reviewed the city's alternative defences.

The City admitted it did not complete its annual sidewalk inspection in 2020, as required under section 16.1(1) of the *MMS*. At trial, the City led evidence that, following the declaration of states of emergency by the Province of Ontario and the City of London due to COVID-19, it transitioned to minimal operations focused on essential services. Specifically, sidewalk maintenance was shifted to a minimal or emergency-only basis, and no annual inspections occurred in 2020.

The Court applied the Supreme Court of Canada's core policy immunity framework from *Nelson (City) v. Marchi*. It found that the City's decision not to complete the sidewalk inspection was not merely operational. Rather, it formed part of a broader emergency decision-making process involving public-health concerns, staffing restrictions, financial pressures, service reductions and budgetary mitigation measures approved by senior City officials and City Council. The City's decision-making bore the hallmarks of core policy, and there was no evidence that the decision was irrational or made in bad faith.

Accordingly, if the sidewalk had been in a state of non-repair, the Court would have found the City immune from liability for its failure to inspect. Further, given the City's failure to inspect the sidewalk, the Court held the City did not know, and could not reasonably have been expected to know, about the state of repair of the sidewalk, giving rise to a statutory defence under s. 44(3)(a) of the *Municipal Act*.

Key takeaways

- **Measurements must be exact:** This decision is helpful for municipalities defending against trip-and-fall claims near the two-centimetre threshold. Evidence that a discontinuity is "approximately" two centimetres is insufficient; plaintiffs must prove it exceeds the limit.
- **Immunity has its limits:** The core policy immunity analysis here is important but narrow. The court specifically grounded its conclusion in the exceptional circumstances of the COVID-19 emergency. Municipalities should not interpret this ruling as broad permission to skip routine inspection obligations under normal conditions.

How BLG can help

Managing municipal liability claims requires a clear understanding of the *Minimum Maintenance Standards* and statutory defences. BLG's municipal law and litigation teams regularly defend local governments against trip-and-fall lawsuits and other complex tort claims. We can help your municipality assess risk, build strong litigation strategies and apply protections like core policy immunity effectively.

If you have questions about how this decision might impact your risk management practices, please reach out to our team or the author of this article to discuss your specific needs.

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