

Slip and fall claims present complex legal challenges for both parties involved. Municipalities must adhere to strict provincial laws to defend themselves, while claimants must build a robust case to seek compensation. *Photo: Adobe Stock*



Maintaining reasonable standards of care

by Warren WhiteKnight

Slip and fall accidents are a frequent source of liability for Canadian municipalities. Towns and cities are responsible for maintaining public spaces. Pedestrian accidents can and do happen. And when someone sustains an injury due to a fall, they may file a claim.

Despite the prevalence of this liability, these cases present a challenging situation for claimants due to their need to navigate a legal process as dictated by provincial law.

Knowing the legal steps municipalities and claimants must take once a slip and fall claim is filed is crucial for both public service workers and citizens. As a municipality, it is also important to know the steps to take how to reduce risk and proactively work to resolve issues after a slip and fall claim.

Understanding the Legal Framework

When a slip and fall claim is filed, both the claimant and the municipality must

operate under provincial legislation that governs liability and legal processes.

Each province has its own specific rules. In Ontario, the *Municipal Act, 2001*, and *Limitations Act, 2002*, plays a critical role. These statutes outline the parameters within which a claimant can file a lawsuit, including the requirement to provide notice to the municipality – typically within 10 days of the incident. Missing this window can jeopardize the claimant’s case, making it essential for them to act quickly.

For municipalities, the legal framework requires them to maintain public spaces to a reasonable standard of care, but they are not automatically liable for every accident. They are expected to regularly inspect and repair potential hazards, but they can defend themselves if they have taken reasonable steps to ensure safety.

For claimants, understanding these obligations is crucial to building a successful case. *Nelson (City) v. Marchi*,

2021 SCC 41 provides an example of how courts assess municipal liability.

In this instance, the Supreme Court ruled in favour of the municipality, emphasizing that reasonable efforts had been made to maintain safety. For claimants, this underscores the importance of collecting evidence that the municipality failed in its duty to maintain public spaces.

Initial Steps After a Claim Is Filed

Once a slip and fall claim is filed, the actions of both the claimant and the municipality are critical in determining the outcome of the case. Each party must take specific steps to protect their interests.

1. Claim investigation

After receiving the claim, the municipality will initiate an investigation. This includes reviewing incident reports, photographs, surveillance footage, and maintenance records to assess what led to the accident.

Municipalities must adhere to strict provincial laws to defend themselves, while claimants must build a robust case to seek compensation.

The municipality will also work with legal counsel to evaluate their liability and potential defences. Involving their insurance provider is essential at this stage, as the outcome could affect the next steps, including settlement discussions.

On the claimant's side, gathering evidence is equally crucial. This includes medical records documenting their injuries, photos or videos of the accident site, and witness statements that can support their version of events.

The claimant will also consult with legal representation to evaluate the strength of their case and ensure that they meet statutory requirements, such as the notice period.

At this point, the claimant's lawyer may also assess whether the municipality was negligent in maintaining the property, which forms the foundation of the legal argument.

2. Respond to the claim

The municipality must formally respond to the claimant in a timely manner.

Typically, this response will acknowledge the claim without admitting liability, as municipalities need to avoid any statements that could be used against them later in court.

During this phase, the municipality may also assess the potential for early settlement discussions to avoid the costs and risks of litigation.

For the claimant, receiving a response from the municipality is an important milestone. Depending on the evidence gathered, the claimant's legal team may push for early settlement discussions if they believe the case is strong enough.

In cases where the municipality disputes the claim, the claimant's lawyer will prepare for the next steps, which could include litigation.

What Happens When a Claim Goes to Court

If settlement discussions do not result in a resolution, the claim may proceed to litigation, with both the claimant and the municipality preparing their case for court.

Pre-trial processes

During the discovery phase, the municipality must share all relevant evidence, including maintenance logs, witness statements, and any expert testimony they intend to use.

Expert witnesses, such as safety engineers, may testify about the conditions at the accident site, explaining how municipal standards were met and whether reasonable precautions were taken.

Meanwhile, the claimant must provide their own evidence, which may include medical reports, expert witnesses, and any documentation of the accident scene.

Claimants often rely on medical experts to testify about the extent of their injuries and the impact on their life, supporting the claim for compensation.

Defending the municipality

To defend itself, the municipality must prove that it took reasonable care to maintain public spaces and that any hazards present were either addressed in a timely manner or were the result of unforeseeable circumstances.

Statutory defences, such as weather conditions beyond the municipality's control, can be critical in these cases. The municipality will aim to demonstrate that it met all legal obligations and was not negligent.

The claimant's defence rests on proving that the municipality failed to uphold its duty of care. This could involve showing that the municipality neglected to maintain the area in question or failed to respond to hazards within a reasonable timeframe.

The claimant's legal team will argue that the municipality's actions (or inactions) directly contributed to the accident and the resulting injuries.

Lessons for Municipalities and Claimants

Regardless of the outcome of a slip and fall case, both parties can learn valuable lessons from the experience.

For municipalities, the goal should always be to prevent future claims by

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adopting more stringent risk management strategies. This includes:

- increasing the frequency of public space inspections
- keeping detailed maintenance logs
- implementing public education campaigns

Public education campaigns are particularly important during the winter months, when slip and fall accidents are more common. Regularly reviewing policies to ensure they comply with the latest provincial laws is also crucial in minimizing risk.

For individuals who have suffered a slip and fall accident, documenting the incident thoroughly and consulting with legal professionals early on is key to building a strong case.

Understanding the municipality's legal obligations helps claimants focus on areas where the municipality may have fallen short, improving the chances of a successful outcome.

Protecting Public Spaces, Limiting Liability

Slip and fall claims against municipalities present complex legal challenges for both parties involved. Municipalities must adhere to strict provincial laws to defend themselves, while claimants must build a robust case to seek compensation.

By understanding the legal process, both municipalities and claimants can navigate the system more effectively.

Municipal professionals should focus on preventive measures, such as rigorous

maintenance schedules and updated risk management policies, to reduce their exposure to liability. Claimants, on the other hand, should ensure they gather ample evidence and consult legal experts early to improve their chances of securing compensation.

Ultimately, both sides have the opportunity to learn from these cases, contributing to safer public spaces and a clearer understanding of legal responsibilities.



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