

Municipal Sidewalks: The Silent Killer



Agenda

- (1) Legal Duty to Keep Sidewalks Safe under the *Municipal Government Act*
- (2) Designing an Effective Sidewalk Inspection & Maintenance Policy
- (3) Questions

Part 1: Legal Duty to Keep Sidewalks Safe



Municipal Government Act

- Section 532 of the Municipal Government Act (“MGA”) requires municipalities to keep roads, sidewalks, and other public places “in a reasonable state of repair”, having regard to:
 - a) the character of the road, public place or public work, and
 - b) the area of the municipalities in which it is located.
- However, a municipality is only liable for state of disrepair if it knew or ought to known about the disrepair (MGA section 532 (6))
- Further, a municipality is not liable for state of disrepair if it can prove it took “reasonable steps to prevent the disrepair from arising” (MGA section 532 (7))

What is a Reasonable State of Repair?

- The standard is not perfection
- As one judge put it: “There is no duty to keep [a sidewalk] free of imperfections or as smooth as a billiard-table”
- Instead, “reasonable state of repair” means that a person using the sidewalk may, exercising ordinary care, use it safely
- Depends on area of the municipality the sidewalk is in and what it is used for. Higher standard to maintain busy sidewalks downtown as opposed to seldom-used sidewalks on the edge of town

Reasonable State of Repair – Specifics

- Unlikely that a depression, hole, protrusion, or separation of $\frac{3}{4}$ of an inch (roughly 2 cm) or less constitutes a state of disrepair, but could be in certain circumstances (hidden danger, high traffic area, etc.)
- Ontario requires municipalities to repair any height variances of more than 2cm
- In some cases, courts have found variances of several inches acceptable if located in low traffic areas



Knew or Ought to Have Known About State of Disrepair

- Municipality only liable for damages if it knew or ought to have known about state of disrepair
- Complaint made to Town = actual knowledge
- Dangerous area noted in third-party sidewalk report provided to Town = Constructive knowledge
- Highly dangerous situation in front of City Hall that “allegedly” no employees noticed = ought to have known



Inspections & Maintenance

- Municipalities are not liable for damages resulting from:
 - (a) a system of inspection, or the manner in which inspections are to be performed, or the frequency, infrequency or absence of inspections, and
 - (b) a system of maintenance, or the manner in which maintenance is to be performed, or the frequency, infrequency or absence of maintenance (MGA section 530)

Inspections (Pt. 1)

- No liability for system of inspection and maintenance does not mean that a municipality can just decide not to inspect or maintain sidewalks, since it has a duty to maintain them in a reasonable state of repair
- Insufficient inspections, or failing to comply with inspection policy can also mean a finding that municipality “ought to have known” about a state of despair
- If a municipality has a reasonable system of inspecting sidewalks, taking the size of the municipality and budget considerations into account, then it will not be liable if it does not identify disrepair as a result of how the inspection system was designed



Inspections (Pt. 2)

- Example: municipality inspects a sidewalk every September, which a court finds is a reasonable frequency. Municipality is not going to be liable if a massive variance develops in October, causing a trip and fall, even if that variance constituted a state of disrepair
- So long as the inspection & repair regime is reasonable, a municipality has satisfied its obligation to take reasonable steps to prevent a state of disrepair from arising and won't be liable for it (*MGA* section 532(7))

How Often to Inspect?

- Short answer, with least amount of risk: as often as your budget permits
- Long answer:
 - Court found the City of Moose Jaw inspecting 1/3 of City sidewalks per year was reasonable
 - Court found that the City of Edmonton inspecting sidewalks on arterial roads every two years and sidewalks on residential roads every four years was reasonable
 - Court found that Calgary inspecting all sidewalks annually was reasonable
 - Ontario requires municipalities to inspect sidewalks at least once every 16 months



When to Repair?

- Short answer, with least amount of risk: as soon as possible after learning of the state of disrepair
- Courts will respect a reasonable prioritization system based on budgetary concerns, location, traffic, presence of vulnerable people (hospitals, seniors' homes, etc.)
- If not possible to repair immediately, consider closing sidewalk, putting up cones or signage or spray-painting area
- Ontario requires municipalities to repair sidewalk discontinuities of at least 2cm within 14 days

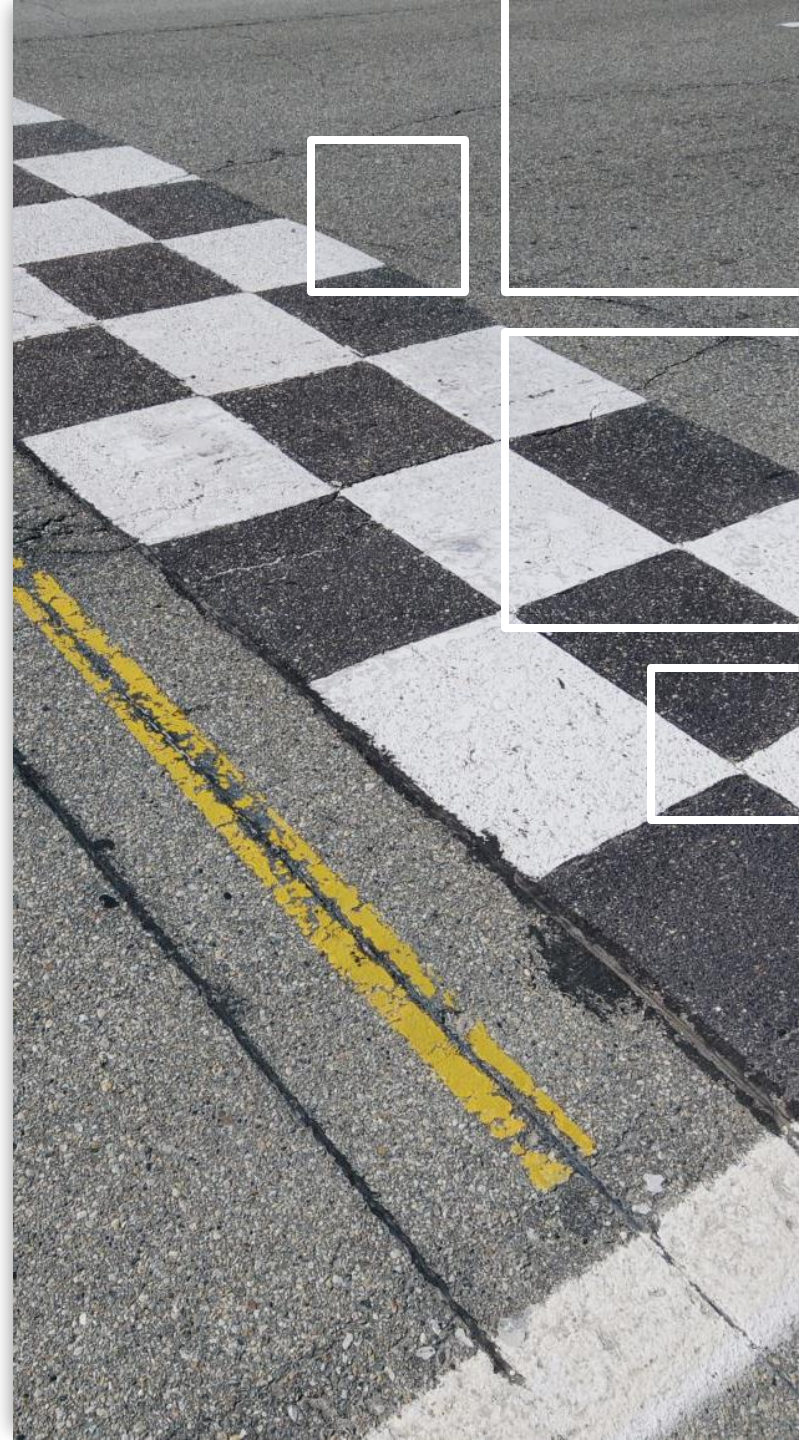
Takeaways

- Institute reasonable system of inspections
- Listen to, and act on, resident complaints
- Follow your systems!! Only thing worse than no system is failing to follow one
- Document when inspections took place and the results of same
- Repair dangerous conditions as soon as possible, either permanently or with temporary fix
- If you can't repair right away, close the sidewalk, or notify the public of the danger using spray paint or signage



Part 2: Creation of Sidewalk Inspection and Maintenance Policy

- Here we will discuss why this is a good idea, some ideas of how to make the policy and what the staff can do in the field and why



Creating a Sidewalk Inspection Policy

WHAT WE SAY:

- *Implementing a policy for inspecting and maintaining municipal sidewalks is a vital piece of the public safety puzzle.*
- Having a policy in place that helps identify and fix hazards promptly can prevent accidents and improve accessibility for everyone, including those with disabilities. This approach is important to promoting inclusivity and compliance with legal standards.



Legal Advantages of a Sidewalk Policy

- But as we've learned, it's also important to provide legal defense in case of claim of injury.
- The *Municipal Government Act* provides protections for Municipalities from liability. If the Municipality:
 - Has a policy in place
 - Follows the policy
 - Documents the policy being followed
- Then the *MGA* can shield the municipality from liability.
- How its written:
- **Inspections and maintenance 530(1)** A municipality is not liable for damage caused by
 - (a) a system of inspection, or the manner in which inspections are to be performed, or the frequency, infrequency or absence of inspections, and
 - (b) a system of maintenance, or the manner in which maintenance is to be performed, or the frequency, infrequency or absence of maintenance.

SO WHAT GOES INTO THIS POLICY?

- Firstly, it's important that the policy is achievable given your budget. Having a policy that isn't followed is worse than having no policy at all.
- Define who is responsible for Sidewalk and Curb maintenance
- Set a budget for inspection and maintenance each fiscal year
- Outline how often the policy is reviewed.
Recommended at the start of each new council term so all councilors are aware of the policy

SO WHAT GOES INTO THIS POLICY?

- Define frequency of inspections:
 - Category A – High pedestrian traffic areas (high streets etc)
 - Category B – Pedestrian collection corridors, residential
 - Category C - Light commercial and industrial
- Inspect hazards reported by public or administration based on budgetary constraints
- The more high traffic an area, the more often an inspection should take place
- Of course this could be broken out into more categories, or even subcategories depending on size of the municipality

Set Inspection Criteria

What are the suggested Inspection Criteria?

- Vertical Separation and other Trip Hazards
- Crack Width and Multi-Directional Cracking
- Spalled Concrete
- Ponding
- Settlement/Heaving
- Remaining Curb Face and Gutter

TRIPPING EDGE

Occurs due to unevenness at the joint of a single sidewalk section and/or curb and gutter.

SEVERITY	GUIDELINES
1	Less than 1.3 cm <i>No action required – No hazard</i>
2	Cracks 1.3 cm to 1.9 cm <i>Flag for future inspection. Highlight hazard.</i>
3	Cracks 1.9 cm to 2.6 cm <i>Highlight hazard. Medium hazard. Assign for future re-inspection and prioritize for action.</i>
4	Cracks 2.6 cm to 39 cm <i>Highlight hazard. Medium-high hazard. Assign for prioritization for action.</i>
5	Cracks greater than 39 cm <i>Highlight hazard. High hazard. Assign for immediate action.</i>

- Assessment for Repair or Replacement
- Use severity guidelines to determine next steps
- An example of severity guidelines

And Finally Standardized Documentation

Suggestions for data to track includes:

Location/Address: The specific address or location of the sidewalk.

1. Inspection Date: Date when the inspection was conducted.
2. Length of Crack (centimeters): The length of the crack measured.
3. Width of Crack (Centimeters): The width of the crack measured.
4. Condition: A general assessment of the sidewalk condition (e.g., Good, Fair, Poor).
5. Severity: Rating the severity of the damage (e.g., Low, Medium, High).
6. Hazard: Indicate if the condition presents a hazard (Yes/No).
7. Flag: Spray painted to highlight hazard (Yes/No).
8. Grind: Indicate if grinding is recommended (Yes/No).
9. Patch: Indicate if patching is recommended (Yes/No).
10. Replace: Indicate if replacement of a section is recommended (Yes/No).

- 12. Curb Only: Mark if the issue is with the curb only (Yes/No).
- 13. Ramp Needed: Indicate if a ramp is needed (Yes/No).
- 14. Comments: Additional observations or notes
- 15. Action Taken: Description of the repair or maintenance work carried out.
- 16. Action Date: Date when the action was taken or completed.

LOCATION /ADDRESS	INSPECTION DATE	LENGTH	WIDTH	CONDITION	SEVERITY	HAZARD	FLAG	GRIND	PATCH	REPLACE	CURB ONLY	RAMP NEEDED	COMMENTS	ACTION TAKEN	ACTION DATE
123 Main St.	01-10-24	125 cm	2.9 cm	Poor	High	Yes	Yes	No	Yes	No	No	No	-	Patched	01-15-24

The above is just a starting point. Can be customized on specific needs

Questions?

Daniel Jackson
Manager, Risk Services
Alberta Municipalities
Daniel@abmunis.ca
780.431.4533



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