

# Ontario municipality has trip and fall claim dismissed due to late notice and lack of duty of care

March 13, 2024

In the recent decision of *Marderosian v. City of Niagara Falls*, [2024 ONSC 1043](#), the defendant municipality had the claim dismissed based on sections 44(8) and (10) of the Municipal Act, confirming that municipalities owe no duty of care for property maintained by private homeowners, even when technically located on a municipality's road allowance.

## Background

The plaintiff was walking her dog and encountered a crowd of people waiting for a bus and blocking the sidewalk. The plaintiff stepped off the sidewalk and onto the snow-covered front lawn of the adjacent property. She tripped over a tree root and fell. It was unclear whether the tree was located within the city's road allowance or on private property. From the view of a bystander, the tree would appear to be on the adjacent property owner's front lawn.

## Decision

### Lack of notice

The plaintiff provided a notice to the city more than 70 days after her fall.

Section 44(10) of the Municipal Act requires that an individual who intends to make a claim against a municipality on an alleged disrepair of a highway provide written notice of the claim within 10 days of the occurrence of the injury.

Under section 44(12) of the Municipal Act, failure to give notice is not a bar to the action if a judge finds that:

- there is a reasonable excuse for the want of the notice; and
- the municipality is not prejudiced in its defence.

The plaintiff bears the legal burden of satisfying both elements.

In this case, the plaintiff was unaware of the 10-day notice requirement. As well, she offered the following additional explanations for failing to give notice within the 10-day period:

- She was solely focused on trying to heal her injuries.
- **She was “stuck at home” and had little mobility.**
- She attended physiotherapy several times, hoping she would overcome her injuries.
- She visited her doctor several times and realized that her condition was not improving.
- Until the date she retained her lawyer, she believed that her injuries would improve and that pursuing a claim would not be necessary.

The court concluded that the plaintiff failed to provide any reasonable excuse for her failure to provide the city with notice of her fall.

The court recognized that an examination of the sidewalk may not have been fruitful even if notice had been given within a few days after the fall, as changing weather conditions may have taken place. Nevertheless, the court found that the delay in receiving notice deprived the city of the opportunity to investigate the incident by examining the sidewalk conditions, interviewing witnesses and making inquiries, all of which caused significant prejudice. The plaintiff argued that the city was not prejudiced in its defence, as it did not provide any evidence to that end. The court accepted the **city’s submissions that prejudice was presumed and that the onus was on the plaintiff to disprove or rebut the presumption of prejudice.**

## **No duty of care**

**The court accepted the city’s submission that regardless of whether the fall occurred on private property or on property occupied and maintained by private homeowners and located on the city-owned road allowance, there was no duty owed by the city under the Municipal Act.**

Section 44(8) of the Municipal Act states that no action shall be brought against a **municipality for damages caused by “any construction, obstruction or erection, or any siting or arrangement of any earth, rock, tree or other material or object adjacent to or on any untravelled portion of a highway.”**

**Citing previous decisions, the court reiterated that “there is no obligation, statutory or otherwise, on the City to maintain the road allowance where the plaintiff fell, if, indeed, she did fall on the City-owned road allowance.”**

## **Takeaway**

This decision provides some guidance as to what may or may not constitute a **“reasonable excuse” under section 44(12) of the Municipal Act.** As well, the decision confirms that there is no duty owed by municipalities for failure to maintain areas

occupied and maintained by private homeowners, even if the area is located within the municipality's road allowance.

By

[Natalie D. Kolos](#), [Sunny Kim](#)

Expertise

[Municipal Liability](#), [Government & Public Sector](#)

---

## 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](http://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](mailto:unsubscribe@blg.com) or manage your subscription preferences at [blg.com/MyPreferences](http://blg.com/MyPreferences). If you feel you have received this message in error please contact [communications@blg.com](mailto:communications@blg.com). BLG's privacy policy for publications may be found at [blg.com/en/privacy](http://blg.com/en/privacy).

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