Cameron Hall
COMPENSATION LAWYERS

Court says trip on concrete footpath an 'obvious risk' - council not liable for injury compensation

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A woman tripped on a 23mm raised lip on a concrete footpath, sustained significant injuries, and took her local council to court - armed with evidence that the council had identified the exact hazard seven years earlier and done nothing about it. She still lost. The NSW Court of Appeal upheld the original decision, finding the council was not legally responsible for her injuries. Here's why.

Why did the plaintiff fail in her case?

The law regarding trip and fall cases is more or less the same in every state and territory. To win, the injured person needs to convince the court that their injury was the result of a breach of duty of care by the responsible party, and that the breach caused their injury. Here, Ms MacLean failed to convince the court that Richmond City Council had breached the duty of care they owed to her.

But the council identified it as a trip hazard - so why did she still lose?

The answer, like everything involving a negligence claim, lies in the interpretation of one critical word: reasonable. The court determined it was reasonable for the council not to have fixed the 23mm rise in the footpath, for two key reasons.

First, the council's failure to act on its own Footpath Trip Hazard Inspection Report was not, of itself, enough to establish a breach of the legal standard of care. The court noted the council's internal inspection policy was a self-imposed guideline - "aspirational not obligatory" - not a legal obligation imposed by an Act of Parliament.

Second, and perhaps most significantly, the court was critical of Ms MacLean for not taking sufficient care to look where she was going. The court found that an ordinary person using the footpath would have seen the raised lip and been able to avoid it. On that

basis, the reasonable response of the council to this particular hazard was to do nothing - or to fix it when resources permitted.

Would the outcome have been different in a workplace?

Possibly. Had Ms MacLean tripped on the same 23mm rise in her workplace, the case may well have been decided in her favour. Courts have recognised that employers owe a higher duty of care to their workers than a public authority owes to a member of the general public.

What are the takeaways from this case?

It is not always possible for lawyers to accurately predict what a court might do with the facts of any particular personal injury case. Whilst Ms MacLean was not successful before this particular Judge, another Judge might have decided the case in her favour (that is, another judge may well have determined that it was 'unreasonable' for the Council not to have acted on their own Report, and have fixed the raised lip in the intervening period of 7 years.

The Author of this blog was not involved in this case, so is not aware if Ms MacLean was made any offers-to-settle before the trial. But if she did receive some offers, then, as this case ultimately demonstrated, it is always important to give proper consideration to the old saying 'a bird in the hand is worth two in the bush' and always give careful consideration to settling your case and avoid the risk of losing (which usually will involve a large order for the unsuccessful injured person to pay the other side's legal costs which, in this case, probably were over $300,000).

Thinking of Making a Trip or Fall Claim? Get an Honest Assessment First.

As this case shows, even seemingly strong claims don't always succeed - and going to court without the right advice can be a costly mistake. Understanding the realistic prospects of your claim early is just as valuable as knowing you have one.

If you or someone you know has been injured in a fall, speaking with an experienced compensation lawyer before you do anything else is the smartest first step you can take.
