

# Lessons Learned from Recent Cases: The Importance of Documenting Maintenance Activities

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We recently resolved an occupier's liability case for a hospital client. This case demonstrates the importance of documenting maintenance activities in order to best defend the hospital following a trip and fall accident.

## Background

This case involved an elderly patient leaving the hospital following an out-patient procedure. Video surveillance cameras showed her exiting the hospital with her husband. They crossed the entrance driveway and walked along an interlocking brick pathway towards the parking lot. From the video, she walks close to the edge of the pathway and falls sideways off the edge onto the grass beside the path. She suffered a fractured ankle as a result of the fall.

The video surveillance footage was very important to the defence of the hospital. The video showed the patient and her husband walk at an angle on the pathway, gradually getting closer and closer to the edge until the patient fell over sideways. We were able to successfully argue that the patient was substantially responsible for her own injuries because she had failed to pay proper attention as she walked along the path.

However, investigations after the incident showed that the soil had eroded from beside the pathway, resulting in a height difference between the pathway and the abutting grass. The patient and her lawyer blamed the fall on the height difference and improper maintenance.

The hospital advised that there was an informal system for outside maintenance – walkaround inspections of the hospital grounds a few times per year by the maintenance department, as well as by the Joint Occupational Health and Safety Committee (JOHSC). Security staff were also expected to conduct rounds and report any hazards that they conducted. At the location of this fall, hospital staff would periodically add soil and seed to level up the grass area to the edge of the pathway.

## Outcome

Unfortunately, there was very little documentation to support any of this maintenance activity, in terms of either when it had occurred or what was done. This created substantial risk to the hospital, as we would not be able to show proper maintenance prior to the fall in question. As a result, we settled the case on behalf of the hospital, but with a substantial discount to reflect the patient's own negligence in contributing to the fall.

## Conclusion

This case demonstrates the importance of keeping proper records or logs of maintenance activities. In this case, a record showing when and where the walkaround and JOHSC inspections had occurred would have provided very valuable evidence to the defence of the hospital. If we could have better established that there had been a recent inspection of the area, the hospital's position would have been more defensible.

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