Municipality not liable for missing lights in pedestrian crosswalk

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The Ontario Superior Court of Justice recently released its decision in *Morris v. Prince*, 2023 ONSC 3922, finding the defendant municipality not liable for a nighttime pedestrian knockdown incident allegedly caused by two missing luminaries in the median of a crosswalk. The Court reiterated that a municipality's duty to keep a roadway in a reasonable state of repair is owed to an ordinary driver, not a negligent driver, and that the *Minimum Maintenance Standards for Municipal Highways* (the MMS)do not impose a positive statutory duty nor do they establish a standard of care.

Background

The plaintiff suffered serious injuries after being struck by a left-turning truck while crossing the intersection of Aldersbrook Gate and Fanshawe Park Road in the City of London, Ontario (the City) during a rainy evening after sundown. The plaintiff and his immediate family sued the truck driver as well as the City, alleging that if a pole in the median of the crosswalk with two luminaries had been functioning, the accident might have been prevented due to better lighting that would have allowed the driver to see the plaintiff earlier. The pole in question had been toppled in an accident a month prior and not replaced as of the date of loss.

The truck driver was convicted of making an unsafe turn and ultimately did not contest his own liability at trial. Accordingly, the issues to be determined at trial were the quantum of damages and whether the City ought to share any portion of liability for the accident. Moreover, both the driver and the City had issued third party claims against the City's contractor responsible for repairing and replacing traffic poles.

The trial decision

The Court rejected all claims against the City and its contractor, finding the defendant driver 100 per cent responsible for the plaintiff's injuries.

The Court began by considering whether the City had failed to keep the subject intersection "in a state of repair that is reasonable in all the circumstances," pursuant to s. 44 of the *Municipal Act.* The Court affirmed that the reasonable state of repair

standard is tailored to the ordinary and attentive motorist and noted that the driver in this case had admitted his own negligence by pleading guilty to a *Highway Traffic Act* charge. It concluded that despite the missing luminaries, there was enough light in the intersection generally to have allowed an ordinary driver exercising reasonable care to avoid the collision, such that the intersection was in a reasonable state of repair.

In addition, the Court went on to find that even if the intersection had not been in a reasonable state of repair, the City had a complete defence pursuant to s. 10 of the MMS, which provides that luminaries are deemed to be in a state of repair "if the number of non-functioning consecutive luminaires on the same side of a highway does not exceed two." Since exactly two luminaries were absent in this case, the City was entitled to rely on this provision. The Court also observed that the MMS creates a potential defence for municipalities but does not impose a positive statutory duty nor establish a standard of care that can be relied upon by plaintiffs.

Commentary

This decision highlights the obstacles faced by parties trying to impose liability on municipalities for motor vehicle accidents, particularly when a motorist has been convicted of a driving offence in respect of the same incident. The mere fact that an element of the roadway infrastructure is not functioning normally or as intended is not necessarily sufficient to find a municipality liable.

For more information, please reach out to any of the key contacts listed below.

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