Stop Here, Not There: Supreme Court Refuses Leave to Appeal in Two Roadway Repair Cases that are Seemingly at Odds

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On September 19, 2018, two decisions released by separate panels of the Ontario Court of Appeal considered similar fact patterns involving allegations of roadway disrepair and intersections with faded or partially removed stop lines. The motor vehicle accidents in both Smith v. Safranyos, 2018 ONCA 760 (Smith) and Chiocchio v. Hamilton (City), 2018 ONCA 762 (Chiocchio), occurred when a vehicle stopped at a stop sign, but then did not stop closer to the intersection with a clear view of oncoming traffic, only to collide with an oncoming vehicle. Both actions involved a driver's obligations under s. 136(1) of the Highway Traffic Act (HTA) to stop their vehicle "immediately before entering the intersection."

Both panels held that a road authority may be found liable for roadway non-repair for failing to paint or maintain a stop line even where a driver negligently failed to comply with s. 136(1) of the HTA. However, in one case the court absolved the road authority and in the other, the liability finding was upheld. A deeper analysis of the reasoning of the court, and the tension between the decisions, was provided in a previous BLG bulletin.

The Supreme Court, however, recently denied leave to appeal in both cases.

In light of these decisions, the state of the law with respect to roadway disrepair cases involving negligent drivers remains unclear. In Smith, the panel emphasized that a non-repair action can succeed even where a negligent driver was the immediate cause of the accident so long as road conditions that would imperil ordinary drivers constitute a "but for" cause of the accident and posed an unreasonable safety risk to drivers who exercised reasonable care. In Chiocchio, the panel noted that a road authority's "duty does not extend to remedying conditions that pose a risk of harm only because of negligent driving." According to the panel, a driver who stops in a position where their view of oncoming traffic is obscured and does not stop again before entering the intersection falls well below the standard of an ordinary driver. Despite this apparent tension, both panels found that in roadway repair claims with respect to stop lines, the

question remains whether, in the absence of a clearly painted stop line, the intersection posed an unreasonable risk of harm for ordinary drivers exercising reasonable care who sometimes make mistakes.

Takeaways

Looking forward, municipalities should keep the following in mind:

- It remains that a road authority owes no duty to accommodate negligent drivers under s. 44 of the Municipal Act;
- A driver who fails to stop immediately before entering the intersection, and is thus not in compliance with section 136 of the HTA, does not immunize a road authority from a finding of liability;
- A road authority may be liable where a driver was negligent so long as the condition of the stop signs and road markings in whole or in part rendered the intersection unsafe for reasonable drivers;
- More specifically, a road authority cannot avoid liability by relying on s. 136 of the HTA (and presumably other sections) if the condition of the stop signs and road markings in whole or in part rendered the intersection unsafe for reasonable drivers; and
- Each intersection should be assessed and evaluated in light of all of the potential issues, such as gradient changes and obscured sight lines, to determine whether the cumulative effect of these factors is that the intersection is in a state of "non-repair."

In light of the Supreme Court's refusal to grant leave, there remains tension within the Court of Appeal's view of causation and the standard of maintenance for the reasonable driver in cases of road disrepair. It is not clear that a consistent approach to the reasonable driver and causation is being applied, although it seems that road authorities have been left on their own to sort through these issues in subsequent cases.

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