Municipality successful at trial after the plaintiffs failed to lead expert evidence on a road maintenance claim

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The Ontario Superior Court of Justice recently released its decision in *Valerio et al v. City of London et al,* 2025 ONSC 4332, dismissing the plaintiffs' action against a municipality and road contractor for damages caused when the undercarriage of the plaintiff's minivan hit an exposed water valve in the road within a construction zone.

The Court held that in the circumstances, expert evidence was required to establish the standard of care for road maintenance and the reasonably safe height of a water valve protruding from a road.

Background

On Aug. 7, 2013, the plaintiff, Joseph Valerio's (Mr. Valerio), was driving home with his parents in his minivan on Dundas Street, London, Ontario. The intersection of Dundas Street and Clarke Road was under construction and had been milled down. There were two water valves in the road which were ramped with asphalt and marked with fluorescent orange paint. As Mr. Valerio proceeded through the intersection, the undercarriage of his minivan struck a water valve, causing a "big bang" and his airbags to deploy.

Mr. Valerio and his parents commenced an action against the municipality and the road contractor for personal injuries sustained because of the accident. The plaintiffs argued that the road contractor breached the standard of care in negligence and the municipality breached the statutory standard of care under section 44(1) of the *Municipal Act*.

Evidence at trial

At trial, the plaintiffs did not lead any expert evidence on the standard of care. Specifically, they led no expert evidence on road maintenance (including expert evidence about the reasonably safe height of water valves or ramping) and no expert

evidence on road safety (including expert evidence about reasonable signage and marking of roadworks).

The plaintiffs argued that the Court should infer based on the circumstantial evidence that the water valve was unreasonably high. The presiding Judge disagreed and held that in their view, road maintenance is a technical occupation requiring professional experience and judgment. As such, the general rule, that the "content of the standard of a professional care will require expert evidence" applied in the circumstances.

Further, it was held that the two exceptions to the general rule did not apply to the action before the Court. Those exceptions being, (1) for non-technical matters within the knowledge and experience of the ordinary person; and (2) where the impugned conduct of the defendant is so egregious that it is obvious that their conduct has fallen below the standard of care, even without knowing precisely the parameters of that standard.

Here, there was nothing egregious about the defendants' conduct, nor did it obviously fall below the standard of care. Further, although the ordinary person can be expected to encounter road maintenance in one's daily commute, the milling and laying of the asphalt around water valves, the reasonably safe height of water valves, and reasonable signage and marking of same, is outside the ordinary person's knowledge.

The Court concluded that neither the claims against the road contractor nor the municipality attracted strict liability. As such, it was essential for the plaintiffs to establish the standard of care of each of the defendants through expert evidence and prove that the defendants breached it.

In the alternative, the Court found that the defendants met the standard of care in negligence and under the *Municipal Act* based on evidence led by the defendants.

Key takeaways

While at first instance this decision is helpful for defendant municipalities in the context of road maintenance claims, the facts of this case were unique. This decision is a cautionary reminder that care should be taken when considering the necessity of an expert report to establish the standard of care for each defendant in the circumstances of every case. This care should not only be taken by plaintiffs, but defendant municipalities as well when considering adducing expert evidence in the absence of same from the plaintiff.

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