Municipality relies on Minimum Maintenance Standards in successful defence of motor vehicle accident claim

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In the recently released decision *Beardwood et al. v The City of Hamilton,* 2022 ONSC 4030 (*Beardwood*), the Ontario Superior Court of Justice considered the statutory defences available to defendant municipalities in cases of accidents occurring on municipal roadways allegedly due to the state of the roadways.

What you need to know

- In *Beardwood* the plaintiff was involved in a single-vehicle motorcycle accident. The plaintiff was travelling at a low speed when he encountered a "bump" allegedly causing his front wheel to go into the air, and his subsequent fall from his motorcycle.
- The plaintiff introduced expert evidence, which provided two measurement estimates of the surface discontinuity, averaging approximately 4.5 cm.
- Under Section 44 of the *Municipal Act, 2001*, a municipality is required to keep a highway in a state of repair that is reasonable in the circumstances, including the character and location of the highway. However, a municipality is not liable for failing to keep a highway in a reasonable state of repair if it is able to make out one of the statutory defences under section 44(3):
    - That it did not know and could not reasonably have been expected to have known about the state of repair of the highway;
    - That it took reasonable steps to prevent the default from arising; or
    - That it met the Minimum Maintenance Standards (MMS) established by a Regulation to the *Municipal Act, 2001*.

The decision

The Court found that the intersection was not in a reasonable state of repair as the discontinuity created a risk of harm to an ordinary reasonable driver, like the plaintiff. The Court further found that causation was established in accepting that the plaintiff's contact with the discontinuity indeed caused the accident.

The Court, however, went on to consider the defences available to the municipality under the *Municipal Act,* and specifically whether the MMS had been met. Section 16 of the MMS provides that if a surface discontinuity on a roadway is less than or equal to 5 cm, it is deemed to be in a state of repair. The Court accepted the evidence that the surface discontinuity was at most 4.5 cm and therefore, the area was deemed to be in a state of repair. The action was dismissed.

Takeaways

This case provides a helpful reminder that section 44(3) of the *Municipal Act* and the MMS operate as defences, which come into consideration once a plaintiff meets their burden of establishing that the area was not in a state of repair. The decision also further underscores the importance of obtaining measurements of areas of alleged disrepair.

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