ONCA upholds liability finding against municipality in icy roadway case

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The Ontario Court of Appeal (ONCA) decision in *Wasylyk v. Simcoe (County)*, 2023 ONCA 781 has upheld a trial judge's finding of liability in a winter maintenance roadway case brought against the County of Simcoe (Simcoe). The plaintiff suffered catastrophic injuries amounting to an agreed upon $16 million dollars in damages.

Trial decision

The accident occurred when the plaintiff lost control of her vehicle while driving at night on a winter road, crossed the midline, and collided with oncoming traffic. There were heavy snow squalls and drifting snow in and around the day of the accident.

The trial judge found that the roadway was in a state of non-repair, which the Court defined as a state in which drivers, if exercising ordinary care, could not traverse safely. Patrollers identified drifting snow and icy spots during their patrols. Further, none of the statutory defences in s. 44(3) of the *Municipal Act, 2001* were found to benefit Simcoe. With respect to section 44(3)(a) and 44(3)(c), Simcoe was aware of the drifting snow hazards around the area of loss, and did not meet the MMS standards in place at the time which required icy roads to be treated within three hours of Simcoe becoming aware of their icy condition. With respect to section 44(3)(b), the court held that while Simcoe had "an effective system" for road patrolling, the snowplow operator failed to follow through with the applicable procedure. The Court was critical of a three-hour period during the snowplow operator's shift when the operator was at the yard and not out maintaining the roads.

Lastly, the court found no contributory negligence on the part of the plaintiff.

Court of Appeal decision

On appeal to the ONCA, Simcoe's appeal was dismissed on all grounds.

Simcoe argued that the trial judge failed to apply the proper legal test in determining whether the highway was in a state of disrepair. Simcoe noted that no other drivers around the plaintiff experienced difficulties traversing the roadway. The ONCA held that this was only one factor of the overall analysis, and there was ample evidence from emergency responders, other drivers, and Simcoe employees that the road at the time of the accident was icy and slippery, and the finding of a state of disrepair was upheld.

The ONCA was also satisfied that the trial judge's findings on causation were proper. Her factual findings inferred that it was the hazardous conditions of the road that cause the plaintiff to lose control of her vehicle. Lastly, the ONCA found no error in the trial judge's finding that the plaintiff was not contributorily negligent.

Takeaway

This case is a reminder that municipalities must ensure not only that internal procedures recognize and are aligned with the MMS, but that such procedures are followed through, in particular in heavy weather conditions requiring around the clock maintenance.

BLG has a robust municipal liability practice. For more information, please reach out to any of the key contacts listed below.

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