Certification motion dismissed in proposed roadway design class action in Ontario

July 25, 2022

In the recent decision of *Klassen v. City of Hamilton (2022 ONSC 3660)*, the Ontario Superior Court dismissed the motion to certify a class action relating to the design and construction of the Red Hill Valley Parkway (RHVP).

What you need to know

- The Plaintiffs purported to represent a class of individuals who experienced motor vehicle collisions on the RHVP since 2007.
- The claim alleged that the City had been negligent in designing, engineering, constructing and maintaining the RHVP.
- The claim also alleged that the City had failed to warn drivers sufficiently of allegedly unsafe conditions.

Court's decision

Justice Edwards' decision to dismiss the certification motion turned predominantly on a finding that a class proceeding was the not the preferable procedure to adjudicate the alleged claims. The preferability requirement, as stated by Justice Edwards, requires an assessment of whether a class proceeding is a fair and efficient way to advance a claim, having consideration for the three goals of class proceedings: judicial economy, access to justice and behaviour modification. Justice Edwards concluded that the proposed class proceeding would not save judicial resources. While acknowledging the presence of some limited common issues within the proposed class, the facts and circumstances of each collision vary. Justice Edwards found that for each class member, individual determinations would be required on the state of the RHVP at the time and location of the accident, possible statutory defences, and what the City knew about the RHVP. Overall, the individual issues were found to greatly outweigh any potential instances judicial economy.

In considering the goals of class proceedings, Justice Edwards found that "access to justice is not a significant concern in this case". The Court accepted the defendant's submission that alternatives to a class proceeding, including Statutory Accident Benefits and individual personal injury actions, were better suited to the circumstances. In terms

of behaviour modification, Justice Edwards concluded that the ongoing judicial inquiry was a much more powerful tool to effect change, if warranted.

Although the plaintiffs attempted to characterize their claims as being based in common questions of negligent design, manufacture and warning, the Court was unable to ignore the very individual and fact-specific issues in motor vehicle accident liability which would not advance the fundamental goals of class proceedings.

By

David Elman

Expertise

Disputes

BLG | Canada's Law Firm

As the largest, truly full-service Canadian law firm, Borden Ladner Gervais LLP (BLG) delivers practical legal advice for domestic and international clients across more practices and industries than any Canadian firm. With over 800 lawyers, intellectual property agents and other professionals, BLG serves the legal needs of businesses and institutions across Canada and beyond – from M&A and capital markets, to disputes, financing, and trademark & patent registration.

blg.com

BLG Offices

Calgary

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

The information contained herein is of a general nature and is not intended to constitute legal advice, a complete statement of the law, or an opinion on any subject. No one should act upon it or refrain from acting without a thorough examination of the law after the facts of a specific situation are considered. You are urged to consult your legal adviser in cases of specific questions or concerns. BLG does not warrant or guarantee the accuracy, currency or completeness of this publication. No part of this publication may be reproduced without prior written permission of Borden Ladner Gervais LLP. If this publication was sent to you by BLG and you do not wish to receive further publications from BLG, you may ask to remove your contact information from our mailing lists by emailing unsubscribe@blg.com or manage your subscription preferences at blg.com/MyPreferences. If you feel you have received this message in error please contact communications@blg.com. BLG's privacy policy for publications may be found at blg.com/en/privacy.

© 2026 Borden Ladner Gervais LLP. Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership.