Certification motion dismissed in proposed roadway design class action in Ontario

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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

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