

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

August 18, 2022

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.

By

[Natalie D. Kolos](#), [Zoe Aranha](#)

Expertise

[Disputes](#), [Municipal Liability](#)

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.