

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

18 août 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.

Par

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

Services

[Litiges, Responsabilité municipale](#)

BLG | Vos avocats au Canada

Borden Ladner Gervais S.E.N.C.R.L., S.R.L. (BLG) est le plus grand cabinet d'avocats canadien véritablement multiservices. À ce titre, il offre des conseils juridiques pratiques à des clients d'ici et d'ailleurs dans plus de domaines et de secteurs que tout autre cabinet canadien. Comptant plus de 725 avocats, agents de propriété intellectuelle et autres professionnels, BLG répond aux besoins juridiques d'entreprises et d'institutions au pays comme à l'étranger pour ce qui touche les fusions et acquisitions, les marchés financiers, les différends et le financement ou encore l'enregistrement de brevets et de marques de commerce.

blg.com

Bureaux BLG

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, rue De La Gauchetière Ouest
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

Les présents renseignements sont de nature générale et ne sauraient constituer un avis juridique, ni un énoncé complet de la législation pertinente, ni un avis sur un quelconque sujet. Personne ne devrait agir ou s'abstenir d'agir sur la foi de ceux-ci sans procéder à un examen approfondi du droit après avoir souposé les faits d'une situation précise. Nous vous recommandons de consulter votre conseiller juridique si vous avez des questions ou des préoccupations particulières. BLG ne garantit aucunement que la teneur de cette publication est exacte, à jour ou complète. Aucune partie de cette publication ne peut être reproduite sans l'autorisation écrite de Borden Ladner Gervais S.E.N.C.R.L., S.R.L. Si BLG vous a envoyé cette publication et que vous ne souhaitez plus la recevoir, vous pouvez demander à faire supprimer vos coordonnées de nos listes d'envoi en communiquant avec nous par courriel à desabonnement@blg.com ou en modifiant vos préférences d'abonnement dans blg.com/fr/about-us/subscribe. Si vous pensez avoir reçu le présent message par erreur, veuillez nous écrire à communications@blg.com. Pour consulter la politique de confidentialité de BLG relativement aux publications, rendez-vous sur blg.com/fr/ProtectionDesRenseignementsPersonnels.

© 2025 Borden Ladner Gervais S.E.N.C.R.L., S.R.L. Borden Ladner Gervais est une société à responsabilité limitée de l'Ontario.