

Claim Case Studies & Legislation

House et al v. Baird, Murray and Township of Wilmot, 2015 ONSC 198

Facts

On February 25, 2009 at around 9 PM, the plaintiff, while driving a vehicle registered to one of the passengers, along with two other passengers in the vehicle, lost control of the vehicle while travelling westbound on a Township road. This particular road had a relatively long downhill descent, a crest and then a further descent. The vehicle went out of control close to the crest, crossed into the eastbound lane and was struck by an oncoming vehicle.

The plaintiff brought an action against the owner of the vehicle, the Township of Wilmot as well as the driver of the oncoming vehicle that travelled in the eastbound lane. The plaintiff alleged that the owner of the vehicle failed to properly maintain the vehicle; the Township for failing to anticipate the formation of ice on the road; the oncoming driver for failing to avoid or reduce his speed to lessen the severity of the collision.

As a result of the collision the plaintiff, aged 17, sustained several injuries including a closed head injury. The owner of the vehicle as well as another passenger received serious injuries. The fourth passenger in the vehicle was killed.

Issues

1. Was the road in a state of disrepair?
2. Was the Township liable for the plaintiff's damages?

Legislation

Section 44 of the *Municipal Act*, 2001 provides for a cause of action against a municipality that fails to keep its highways (including roads) and bridges in a reasonable state of repair. The cause of action is in subsections (1) and (2) with defences for the municipality in subsection (3). It reads as follows:

"44. (1) The municipality that has jurisdiction over a highway or bridge shall keep it in a state of repair that is reasonable

in the circumstances, including the character and location of the highway or bridge. (2) A municipality that defaults in complying with subsection (1) is, subject to the *Negligence Act*, liable for all damages any person sustains because of the default. (3) Despite subsection (2), a municipality is not liable for failing to keep a highway or bridge in a reasonable state of repair if:

- It did not know and could not reasonably have been expected to have known about the state of repair of the highway or bridge;
- It took reasonable steps to prevent the default from arising; or
- At the time the cause of action arose, minimum standards established under subsection (4) applied to the highway or bridge and to the alleged default and those standards have been met."

Counsel for the plaintiff and the defendant municipality, as well as the expert witnesses called made reference to the Minimum Maintenance Standards for Municipal Highways (MMS) established as per the *Municipal Act* 2001. The Act states that a municipality is not liable for failing to keep a highway (road) in a reasonable state of repair if minimum standards established applied to the highway and those standards were met.

The road involved was deemed a Class 3 road, and according to the MMS in force at the time required routine patrolling 2 times every 7 days. The MMS also included the requirement that after the snow accumulation ended and after becoming aware that the depth of the snow was greater than 8 cm, to clear the snow accumulation to 8 cm, within 12 hours. The MMS also required that ice on a Class 3 roadway be treated within 8 hours after becoming aware that the roadway is icy.

Findings

Wilmot Township is a rural municipality having no roads classified higher than Class 3. The collision occurred outside the normal road department's time of operations. The Township's road's on-call person at the time of this collision was monitoring the weather and observed snowfall "a little after dinner" that melted on contact leaving the surface "slightly wet". He did not feel it necessary to call out any operator(s) or to patrol the roads. Soon after the accident when he was called to close the road he observed "heavy drizzling – not quite rain".

The other driver testified that he had no problem coming to a stop at a stop sign at the last intersection before the collision; he did find slush as he approached the accident scene but it was "not significant".

A regional road patroller testified that the road locations he patrolled that were located nearby around the time of the accident were found to be "track bare" or "bare and wet".

A Collision Reconstructionist with the police attributed this collision to "driver inexperience and road conditions". He also noted that the tires on the vehicle that the plaintiff was driving were found to be worn, mismatched and over-inflated.

No one was able to say with certainty that there was ice on the road at the specific point where the vehicle lost control.

Court's Ruling

The Court found that the Township had an "adequate system for call-out for winter maintenance of its roads" and was not required to "do a regular patrol for speculative purposes". The Court also found that the Township is a "lower-tier rural municipality that is not obliged to adhere to as high a standard as a regional municipality or a provincial ministry would be required to meet." The Court noted there was a lack of evidence to establish that the scene of the accident was an area of concern for the Township or that it was in a highly dangerous area. The Court determined no finding of liability against the Township and assessed a 50/50 liability split between the plaintiff and the owner of the vehicle that he was driving.

Lessons Learned

This claim happened in 2009, before the current version of the MMS was implemented (January 2013) and did not address the requirement for regular weather monitoring (3 times a day during the winter season from Oct. 1 to Apr. 30 and 1 time a day from May 1 to Sept. 30).

Even though this was a positive result for the municipality this ruling does remind us of the importance of performing the following winter road maintenance tasks:

- Monitor reliable weather internet resources such as Environment Canada, The Weather Network, etc. for current and forecasted weather and document them.
- Meet the patrolling, ice treatment and plowing obligations as per the MMS.
- Document all actions taken.
- Deploy equipment (plows, sanders, etc.) as soon there is a substantial probability of snow accumulation on roadways, ice formation on roadways or icy roadways. Substantial probability is defined in the MMS as a "significant likelihood considerably in excess of 51 per cent."
- Pre-treat sections of roads that are considered highly dangerous or prone to snow accumulation or icing.
- Keep all records of winter maintenance and patrolling.
- Review your Winter Maintenance Policy and update any changes.
- Train staff and third party contractors in your winter maintenance policies/procedures and required documentation.