

Monday, April 7, 2014

Minimum Maintenance Standards for Municipalities: Challenge Averted

The MMS has been the subject of attack by the plaintiff's Bar and this application was one attempt to obtain a Court decision on the enforceability of some of those provisions: **Silveira v. Ontario (Transportation), 2014 ONSC 65 (CanLII)**.

The MMS law sets out the legal responsibilities of municipalities for such issues as snow clearing, fixing potholes and other issues: **Minimum Maintenance Standards for Municipalities Act 2002 and 2010**.

In this application, the attack was on the ability of the municipality to use the MMS to defend against a [car accident](#) which occurred during the winter, in which snow and ice is alleged to have caused and/or contributed to the accident.

One can do no better than to quote Judge Boswell's introduction of this motion to explain the issue:

I. INTRODUCTION

[1] Ontario drivers know something about winter driving. It can be treacherous. Ontario drivers depend on municipal and provincial authorities to keep roadways clear and safe. Since at least 1877 the Municipal Act has imposed upon municipalities the obligation to keep roadways, streets and bridges in proper repair. Presently, s. 44(1) of the Municipal Act, 2001, S.O. 2001, c. 25, compels municipalities to keep highways and bridges under their jurisdiction in a state of repair that is reasonable in the circumstances.

[2] Sometimes, indeed one might suggest regularly, motor vehicle accidents happen. Sometimes those accidents involve serious personal injuries and sometimes a municipality is sued for alleged failure to keep a roadway under its jurisdiction in a reasonable state of repair.

[3] In August 2002, the Ontario government adopted a regulation to establish minimum standards for municipalities to follow in relation to the maintenance of roadways under their jurisdiction.¹ The regulations have the effect of providing a defence to a municipality to an allegation of negligent repair, where the minimum standards have been met.

Page | 2

[4] The applicants assert that the 2002 MMS are ultra vires their enabling legislation (the Municipal Act, 2001) and ask that sections 3, 4 and 5 of them be declared invalid and of no force and effect. The respondents, in a common voice, assert that the application is moot and ought to be struck out. The following reasons explain why I agree with the respondents.

For a number of reasons, as the application wound it's way through the system over several years, including the decision in a different case - the Ontario Court of Appeal 2011 decision of *Guiliani v Halton (Region)* - the specific issues in this application no longer were at issue in this case and the Court declined to hear the matter based on just the 'public interest' exception.

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