

Monday, March 10, 2014

## **Dutton Car Accident Due to Poorly Kept Road: \$950,000 Case Dismissed**

A good case for personal injury practitioners to review, as illustration of some of the complexities involved with claiming negligence (from a [motor vehicle accident](#)) against a municipality for failure to properly maintain their roads, including breaches of the Municipal Act, 2001 regulation, the Minimum Maintenance Standards for Municipal Highways: ***McLeod v. General Motors of Canada Limited et al., 2014 ONSC 134 (CanLII)***.

Justice Leach provides an extremely detailed and lengthy analysis of this action, in which a young adult female, alone in the car, drove off a quiet dirt and gravel road and suffered serious injuries as a result. The only issue for this 6 day Trial was liability, as damages and interest had been agreed to by the parties at \$950,000.

The road here had a number of small hills, so that for this accident, the oncoming vehicle (carrying a married couple) could see the plaintiff's car from approximately 1 km away, briefly seeing the plaintiff's headlights when she was at the crest of a hill, then not seeing her when she past that crest, then seeing her again when the plaintiff crested the next hill. As a result, the oncoming car slowed down to about 40-50 km/hr (speed limit was 80 km/hr) and also moved over to their side of the road to allow the plaintiff's car more room to pass.

The two cars crossed each other at the crest of a hill and this caused the plaintiff's car to eventually lose control and leave the roadway, become airborne and crash off to the side. Unfortunately, the plaintiff, coming home from a friend's social event that night, did not see the oncoming car at all prior to passing each other - i.e. a fact held to be inattentiveness by the Trial Judge.



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Further, in a detailed analysis of the accident reconstruction reports and opinions of the dualing liability engineering experts, the Judge found the plaintiff was driving 90-91 km/hr, far too fast to be reasonable in the circumstances.

This case is worth a close read by those practicing in the area.

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