



ALERT

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Frank v Central Elgin – A Favourable Winter Road Maintenance Decision of the Court of Appeal

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During the early morning rush hour on December 21, 2001 the Plaintiff (Frank) was on her way to work when she lost control of her vehicle while driving in the southbound lane of Highbury Avenue. She collided with an oncoming vehicle and suffered a serious head injury. The Plaintiff sued Central Elgin for negligence for failing to maintain Highbury Avenue in a reasonable state of repair. After a four day trial, the claim was dismissed by Hockin J. who found that Central Elgin had adequately salted Highbury Avenue shortly before the accident occurred, although light blowing snow had delayed the salt's effectiveness. He concluded that Central Elgin had met the applicable standard of care because it had done all that could reasonably be required of it.

The Plaintiff appealed that decision on the following grounds:

1. The trial judge erred in holding that the southbound lane of Highbury Avenue was adequately salted.
2. The road conditions on the southbound land of Highbury Avenue the morning of the accident were 'highly dangerous' and required Central Elgin to do more than it did.

The Court of Appeal upheld the trial decision, relying on Section 284(1) of the Municipal Act, R.S.O. 1990, c.M. 45.

The appeal decision states in paragraph 7 that "Judicial interpretation of s. 284 and similar statutory provisions has held that the Act does not impose on a municipality a duty to repair every adverse road condition. In the winter, for example, a municipality's failure to salt or sand its roads does not automatically expose it to civil liability. The driving public cannot expect municipalities to keep the roads free and clear of snow and ice at all times during the winter. Courts have recognized that although motorists ought to be kept reasonably safe during winter driving conditions, municipalities ought not to be turned into insurers of the safety of the driving public by imposing overly onerous maintenance obligations."

The appeal goes on to outline the 'critical steps that justify deference to the trial Judge's finding'. They are as follows:

- 1 Central Elgin's operations superintendent patrolled and inspected the roads very early in the morning on December 21, 2001;
- 2 He recognized the potential for icy conditions and called out the salt truck promptly;
- 3 He ordered that Highbury Avenue be salted first because it was a high priority road;

- 4 The operator assigned to salt Highbury Avenue salted it first before salting any other roads on his route;
- 5 By 7:00 am he had salted both the northbound and southbound lanes of Highbury Avenue;
- 6 He applied salt at a rate used by every municipality in Ontario and mandated by the Ontario Good Roads Association;
- 7 He planned to come back to Highbury Avenue to check on its condition after he had salted the other roads on his route. The accident took place before he could finish his route and return to Highbury Avenue.

The documentation provided to the court in this case allowed the judge to see precisely what time both the patrols and calls for winter equipment occurred. It was clear what equipment was used and there was a record of the amount of salt on the truck at the beginning of the route and at the end. The operator was also able to testify that he noticed snow drifting into the southbound lanes and he intended to return at the end of his route to check on the condition of the road once the salt had had a chance to work as it should.

It is important to note that this case **did not** consider the Minimum Maintenance Standards as the accident in issue occurred before they were in force. Having said that, this case could still be of some assistance to municipalities in defending snow and ice cases.

For a full copy of the Appeal, please go to www.checkpointontario.ca and navigate to the Roads and Highway section. The appeal will be listed under Winter Maintenance. Please note that you will need to register to the site to gain access.

If you are unable to access the attached link please do not hesitate to contact Shannon Devane, Director of Risk, Ontario Municipal Insurance Exchange either by phone 905 480 0060 ext 235 or email shannon@omex.org