

Supreme Court of Canada Dismisses Ministry's Application For Leave To Appeal Icy Bridge Deck Decision

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On March 14, 2002, the Supreme Court of Canada dismissed the application of the Ontario Ministry of Transportation and Communication for leave to appeal the Court of Appeal decision in *MacMillan v. Ontario*.

The *MacMillan* case involved a motor vehicle accident on an "icy bridge deck" which occurred at 8:00 a.m. on October 12, 1988 during unseasonably cold weather. The plaintiff lost control of her vehicle on the ice, causing her vehicle to skid, roll several times and strike another car. She suffered a brain injury which left her unemployable. At the time of the accident, the Ministry was still operating on a summer schedule for road maintenance, with shifts starting at 7:30 a.m. Its around-the-clock winter road maintenance schedule was to commence in November. At trial, the judge dismissed the action, finding that the road authority had no actual or constructive knowledge of the icy condition, and that the bridge in question did not present a special and highly dangerous situation requiring an added measure of attention on the part of the Ministry.

The Court of Appeal disagreed and allowed the plaintiff's appeal on the basis that the Ministry ought reasonably to have known of the real risk of preferential ice occurring within the patrol section where the accident occurred, and ought therefore to have known of a special and highly dangerous situation at the bridge that created a risk of serious and imminent harm to motorists. This in turn required a reasonable remedial response in discharging its statutory duty to keep the roadway in repair, such as an early morning inspection, which could have resulted in salting of the bridge and the avoidance of the accident. Since there was no such inspection, the Court of Appeal concluded that the road authority was in breach of its statutory duty of repair. The Ministry sought leave to appeal that decision to the Supreme Court of Canada, but the leave application was dismissed, with costs to the respondents. The plaintiff will therefore recover damages of approximately \$7 million including interest and costs.

MacMillan v. Ontario (1998), 64 O.T.C. 285 (S.C.J.); reversed, [2001] O.J. No. 1891 (C.A.)(QL); application for leave to appeal to S.C.C. dismissed March 14, 2002.

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