

COURT OF APPEAL FOR ONTARIO

RE: JENNIFER EVELYN JAMEUS, DELMORE LEON JAMEUS
and CYNTHIA MAE CASTON (Plaintiffs/Appellants – Jennifer
Evelyn Jameus and Cynthia Mae Caston) – and – TOWN OF
MIDLAND (Defendant/Respondent)

BEFORE: LASKIN, MacPHERSON and LANG JJ.A.

COUNSEL: Christopher I.R. Morrison and Lesley Van Wynsberghe
for the appellants

Steven Stieber
for the respondent

**HEARD &
RELEASED**

ORALLY: November 2, 2006

On appeal from the judgment of Madam Justice Margaret Eberhard of the
Superior Court of Justice dated April 3, 2006.

ENDORSEMENT

[1] The motion judge granted summary judgment on two bases: first, there was an absence of evidence showing that the road conditions caused the accident; and second, the Town had met its standard of care under the *Municipal Act*. We think that the motion judge erred in granting summary judgment on either basis.

[2] The Town, which had the onus on the motion, did not put causation in issue and led no evidence on causation. The letter from the Town's engineer to the plaintiff said that "I suspect that your vehicle slid on a glazed packed snow section". In the light of this letter, and the absence of any other evidence, the question of causation raises a genuine issue for trial.

[3] On the issue whether the Town met the standard of care required by the *Municipal Act*, as we view the record, the evidence is conflicting. The police report shows that the road was snow packed at the time of the accident. The meteorological reports show that for several days before the accident, there had been only one centimetre of new snow.

Thus, it would appear that the condition of the road at the time of the accident was contrary to the Town's own bare pavement policy.

[4] We have no direct evidence from the Town whether the salting, sanding and ploughing were appropriate. We have affidavit evidence from the plaintiff's expert that raises a genuine issue whether the Town met reasonable maintenance standards.

[5] The plaintiff suffered a serious injury and we think that her claim should be resolved at trial.

[6] Accordingly, the appeal is allowed, the summary judgment is set aside and the Town's motion for judgment is dismissed.

[7] The appellant is entitled to her costs of the appeal fixed in the amount of \$4,000, and her costs of the motion fixed in the amount of \$6,000, both amounts all inclusive.

"John Laskin J.A."

"J.C. MacPherson J.A."

"S.E. Lang J.A."