

# Court Recognizes Contractor's Obligation To Fund The Defence Of The Municipality Where Contractor Failed To Obtain Insurance

June 22, 2017

In the recent decision of [Bentley v Hastings \(County\) 2017 ONSC 2980](#), the Court dealt with motions in two separate actions, each of which raised identical issues related to (i) entitlement to damages arising from the failure to obtain insurance in favour of the co-defendant municipality party as required under the contract; (ii) the appropriate measure of damages; and (iii) entitlement to choice of counsel.

The plaintiffs in both actions were represented by the same lawyer. Each plaintiff sustained a slip and fall in the same parking lot, albeit on different dates. Each plaintiff sued the Corporation of the Town of Hastings, the Hastings Local Housing Corporation (collectively the "County") and the County's winter maintenance contractor, Steve Walt Property Maintenance (the "Contractor"). The Contractor's insurer, Economical Mutual Insurance Company (the "Insurer"), was brought in as a third party in both actions. Interestingly, the Contractor in the main action and the Insurer in the Third Party Claim were defended by the same counsel.

There was no dispute about the contract. The Contractor was contractually required to obtain third party liability insurance for itself and for the County as an additional insured under the same policy of insurance. The Contractor obtained the required coverage for itself but failed to obtain coverage for the County. Both the Contractor and the Insurer refused to defend the County in the main actions.

The Court had no difficulty finding that the Contractor breached the contract in failing to obtain insurance in favour of the County and that the County suffered damages as a result of this breach. The Court found that the appropriate measure of damages in this case was the payment of the County's past and future defence costs in the main action, which would have been covered had insurance been obtained on behalf of the County. The Court also found that the County was entitled to appoint and instruct counsel of its choice in the face of the conflicts of interest and the coverage issues between the parties. The Contractor was ordered to pay the County's past and ongoing costs.

This case adds to the recent jurisprudence confirming a municipality's rights under its contracts with winter maintenance contractors, and, importantly, a municipality's right to appoint and instruct counsel of its choosing in the presence of a conflict of interest.

By

[Edona C. Vila](#), [George R. Wray](#)

Expertise

[Insurance Claim Defence](#), [Municipal Liability](#)

---

## **BLG | Canada's Law Firm**

As the largest, truly full-service Canadian law firm, Borden Ladner Gervais LLP (BLG) delivers practical legal advice for domestic and international clients across more practices and industries than any Canadian firm. With over 725 lawyers, intellectual property agents and other professionals, BLG serves the legal needs of businesses and institutions across Canada and beyond – from M&A and capital markets, to disputes, financing, and trademark & patent registration.

[blg.com](http://blg.com)

### **BLG Offices**

#### **Calgary**

Centennial Place, East Tower  
520 3rd Avenue S.W.  
Calgary, AB, Canada  
T2P 0R3

T 403.232.9500  
F 403.266.1395

#### **Ottawa**

World Exchange Plaza  
100 Queen Street  
Ottawa, ON, Canada  
K1P 1J9

T 613.237.5160  
F 613.230.8842

#### **Vancouver**

1200 Waterfront Centre  
200 Burrard Street  
Vancouver, BC, Canada  
V7X 1T2

T 604.687.5744  
F 604.687.1415

#### **Montréal**

1000 De La Gauchetière Street West  
Suite 900  
Montréal, QC, Canada  
H3B 5H4

T 514.954.2555  
F 514.879.9015

#### **Toronto**

Bay Adelaide Centre, East Tower  
22 Adelaide Street West  
Toronto, ON, Canada  
M5H 4E3

T 416.367.6000  
F 416.367.6749

The information contained herein is of a general nature and is not intended to constitute legal advice, a complete statement of the law, or an opinion on any subject. No one should act upon it or refrain from acting without a thorough examination of the law after the facts of a specific situation are considered. You are urged to consult your legal adviser in cases of specific questions or concerns. BLG does not warrant or guarantee the accuracy, currency or completeness of this publication. No part of this publication may be reproduced without prior written permission of Borden Ladner Gervais LLP. If this publication was sent to you by BLG and you do not wish to receive further publications from BLG, you may ask to remove your contact information from our mailing lists by emailing [unsubscribe@blg.com](mailto:unsubscribe@blg.com) or manage your subscription preferences at [blg.com/MyPreferences](http://blg.com/MyPreferences). If you feel you have received this message in error please contact [communications@blg.com](mailto:communications@blg.com). BLG's privacy policy for publications may be found at [blg.com/en/privacy](http://blg.com/en/privacy).

© 2024 Borden Ladner Gervais LLP. Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership.