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BREAKING

FEATURED

Suburban exclusive: Montreal found at 'gross fault' in CSL Road pothole case

By Joel Goldenberg The Suburban May 23, 2019



The condition of Côte St. Luc Road was especially bad in 2017.

Joel Goldenberg Photo

Montreal was found in a May 10 Small Claims Court judgment to be at “gross fault” in terms of damages sustained to the vehicle of Côte St. Luc resident and lawyer Eric Choueke as a result of a “very large pothole” on the Montreal portion of Côte St. Luc Road.

The incident took place Jan. 30, 2017, a year when the pothole situation on the busy thoroughfare was especially bad, as personally experienced by this reporter. That year, Côte St. Luc Road was judged the fifth worst road in Montreal by the Canadian Automobile Association. Later in the year, the potholes were patched over, but the road remained bumpy.

As explained in the judgment of Judge Jeffrey Edwards, on that day, Choueke embarked on his daily routine of driving from Côte St. Luc, dropping off his children at school, and then heading towards his downtown Choueke Legal office. The vehicle in question, a BMW, is owned by the law firm.

“At 9:15 a.m. on that day, while driving on Côte-Saint-Luc Road at a normal speed, approximately at the corner of Grand Boulevard, [the plaintiff] states that his vehicle suddenly fell into a wide hole in the pavement surface of the street,” the court document says. “He refers to a ‘giant hole’ and a circular ‘crevasse’ in the road surface. The two front wheels fell first into the hole and sustained the principal impact. The whole car shook.

“A mechanic informed Mr. Choueke that the two front strut arms of the vehicle, which form part of its suspension system, were broken and had to be replaced,” the document adds. “The mechanic informed Mr. Choueke that immediate repairs were required and that the car could not be driven in its broken state. Mr. Choueke authorized the repair work for the vehicle.”

The cost of the repairs was \$1,218.28. The CSL resident also had to use the services of UBER, for which he paid \$43.75. He also claimed \$956.25 for “trouble, stress and loss of time caused by the incident and the repair to the vehicle.” The total Choueke claimed was \$2,218.28.

The resident filed a claim with the City of Montreal in February 2017, and it was rejected in June of that year. Choueke initiated his lawsuit in July.

The City of Montreal countered by citing the Cities and Towns Act, saying negligence would have to be proven — otherwise a city is not responsible.

Judge Edwards found that the plaintiff “has established the commission of a gross fault on the part of the city. The reasons cited:

- “The hole or the absence of pavement in the road that damaged the vehicle was exceptionally large — it resembled more of a crater in the road than a ‘standard’ pothole.”
- “No cones or barriers [were] placed by the city to warn drivers of the existence of the crater in the road surface or to warn them to navigate around it in order to avoid damage to their vehicles.”

- “The road in question... is a principal artery in the West End of Montreal for drivers and vehicular traffic. It is in constant use by drivers going to and from the City of Côte Saint-Luc, the Town of Montreal West, the Town of Hampstead and the City of Montreal’s Borough of Notre-Dame-de-Grâce/Côte-des-Neiges. The Courts have decided that the high volume use or strategic location of a road is a factor to be considered in the evaluation of whether a gross fault was committed by a municipality.”
- “The type of damage sustained by the suspension system of the vehicle objectively supports the excessive physical magnitude and dimension of the hole in the road in issue.”
- “Despite the continued existence of the hole, the City did not proceed to make any repairs.”



And, most significantly:

- “The City’s representative acknowledged that it had received, previous to the incident, recurrent calls regarding the condition of the pavement surface of Côte-Saint-Luc Road. However, the City chose not to make any proof regarding the nature or number of maintenance interventions deployed by the City with regard to the hole in question, nor efforts or work carried out to ensure the regular maintenance of the pavement surface on the road in question.”

In his decision, citing the car being a 2011 model and other factors, Judge Edwards awarded Choueke \$697.26 plus legal interest of five percent a year, and \$150 for legal costs.

“I think it was a fair judgment,” Choueke told *The Suburban*. “Côte St. Road is a major thoroughfare, and it’s a literal war zone. The City of Montreal should invest the proper amount of money to repair the street once and for all. It’s ridiculous.”

“And since the judgment, I popped a tire on Côte St. Luc Road in a new car on a pothole two weeks ago,” he pointed out, adding that this also took place on the Montreal portion, near Cavendish Blvd.

The resident said he is debating whether to sue Montreal again.

Work is expected to proceed in 2019 to repave sections of CSL Road.

joel@thesuburban.com

Joel Goldenberg