

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**B E T W E E N:**

**FRANK PLANTER**

Plaintiff

-and-

**GARETT DENISON and THE CITY OF LONDON**

Defendant

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**PRE-TRIAL CONFERENCE BRIEF OF THE DEFENDANT**

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**THE CITY OF LONDON BEARS NO LIABILITY FOR THE ACCIDENT**

1. The City of London admits that it received notice of the burned out crosswalk bulbs, but was unable to repair them before the accident occurred. The City of London admits it failed to meet the minimum maintenance standard for illuminated crosswalks that is dictated by O. Reg. 239/02 made under the *Municipal Act, 2001*. Regardless, The City of London argues that it still bears no liability for the plaintiff's injuries because the plaintiff has not proven that the burned out bulbs caused or materially contributed to his injuries.
2. The City of London submits that its failure to remedy the defect did not cause the motor vehicle accident. Mr. Denison, the driver, should have been aware that he was approaching a crosswalk, as the white and black "zebra" crossing was clearly visible on the road, had he been paying attention. Instead, Mr. Denison was distracted both by the fact that he might be late for work and because he dropped his wallet on the ground.
3. Mr. Planter will have to bear a significant amount of contributory negligence. By his own admission, he knew that the bulbs on the pedestrian crosswalk were not functioning,

yet he still decided to cross at that location in the dark of the pre-dawn morning. He failed to exercise usual care in crossing the street, as he clearly failed to see the approach of the lone headlight of Mr. Denison's truck.

4. The City of London notes that the plaintiff's engineering report indicates that the defendant, Mr. Denison, would have seen the plaintiff if he had been paying proper attention to the road. The City of London argues that its overarching duty to motorists and pedestrians is only to maintain highways in such a condition to allow person who show reasonable concern for their own safety and the safety of others to use them. The City therefore argues that the plaintiff's injuries were caused by his own reckless disregard for his own safety and by Mr. Denison's inattention to his driving.