

blackie mva

File No. C9610538

C A N A D A

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA

(BEFORE THE HONOURABLE JUDGE M.S. PUHACH)

RICHMOND, B.C.

1997 OCTOBER 03

BETWEEN:

JUDY BONN

CLAIMANT

AND:

CITY OF RICHMOND

RESPONDENT

PROCEEDINGS AT

(Reasons for Judgment)

APPEARANCES:

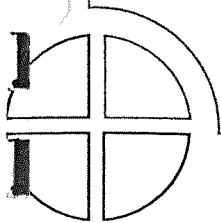
THE CLAIMANT
D. DUNCAN

not represented by counsel
for the Respondent

C. BOUST
P. CURRIE

Court Recorder
Transcriber

FIRST COPY



Judgment, (Puhach, M.S., P.C.J.)

1 THE COURT: This matter is for decision on today's
2 date. The claimant, unfortunately, was injured in
3 a motor vehicle accident when she drove her
4 vehicle on No. 2 Road bridge on February 24th,
5 1996, at approximately 5:45 a.m. The allegations
6 are that there was black ice on the bridge and
7 that is not disputed, with respect to the claim.
8 Unfortunately, Ms. Bonn suffered severe injuries
9 on that occasion.

10 The issue in the case is whether the
11 defendant, that is the defendant being the City of
12 Richmond, whether it has a duty to inspect and/or
13 anticipate black ice on the bridge in certain
14 weather conditions. In particular, whether on
15 this day, they had a duty, in order to make the
16 bridge safe for movement of vehicles, in view of
17 the facts that I have heard in this case.

18 Exhibit 6 of the material that was filed in
19 this court as an exhibit, was as follows:

20
21 "To Ms. Judy Bonn, dated July 28,
22 1997, from the lawyers, Alexander,
23 Holburn, Bowden and Lang. We are
24 writing to enclose a copy of the
25 City of Richmond's written policy
26 with respect to salting operations
27 on roadways which we will be relying
28 upon at the trial scheduled to
29 proceed on August 18, 1997."

30
31 That City of Richmond policy document, which
32 was filed as Exhibit 10, specifies the particular
33 provisions that the Court had to review. It's set
34 out as policy 7013, roadways, ice and snow
35 removal, adopted by council, December 22nd, 1980,
36 and amended May 27th, 1991. Policy 7013 states:

37
38 "It is council policy that a salt
39 mixture will be applied on specified
40 roadways to provide safe winter
41 driving conditions during adverse
42 weather. Major salting operations
43 will commence, 1) upon verification
44 of poor street conditions, as
45 determined by the duty superintendent.
46 2) upon request by the R.C.M.P.
47 3) pre-scheduled and response to weather

Judgment, (Puhach, M.S., P.C.J.)

1 forecasts. Program response time: As
2 it takes City forces approximately one
3 and a half hours to prepare and begin
4 salting on city streets with a
5 completion time of up to five hours,
6 depending on conditions, the following
7 priorities have been established:
8 1) all major arterial section line roads
9 and bus roads."

10
11 That is what No. 2 Road was, where the
12 accident occurred. I do not have to deal with the
13 other provisions on the priorities, but I do also
14 read the following:

15
16 "Section 4, snowplowing. Snowplowing
17 will only be done when salting is
18 ineffective."

19
20 On this particular day, there was no snow to
21 plow.

22
23 "5) Minor localized icing conditions.
24 Duty superintendent or foreman will
25 investigate and assess the conditions.
26 If salting is needed to improve the
27 road condition, the superintendent or
28 foreman may request barricade men to
29 spread the salt."

30
31 This accident, according to the evidence of
32 Ms. Bonn, occurred approximately 5:45 a.m. The
33 report that is filed as the Motor Vehicle report,
34 indicates that there was a call at 5:57 to report
35 the accident.

36 Ms. Bonn did a very thorough review of her
37 position, in respect to this case and relied, in
38 particular, on the closest case that might have
39 assisted her, when she referred to, as in her
40 memorandum, which was indicated to me in final
41 argument:

42
43 "I'd like to bring to your attention
44 the case of Montani versus Matthews,
45 an Ontario case. In this case, a
46 black ice on a bridge caused a car
47 accident. The Province of Ontario was

1 held liable, as it had the control and
2 responsibility for the bridge. The
3 trial judge ruled that the Ministry of
4 Transportation and Communication knew
5 or should have known that formation of
6 a black ice on bridge was virtual
7 reality. The judge concluded, in his
8 speech, that bridge constitutes a
9 special and highly dangerous situation.
10 The existence of special and highly
11 dangerous conditions triggers a special
12 duty on the Ministry's part. The judge
13 also stated that the history of the
14 bridge and the special and highly
15 dangerous situation and the Ministry's
16 failure to take the remedial steps of
17 an intervening salting, prior to the
18 accident, amounted to a breach of its
19 duty. Regardless that there is no
20 general duty on the Ministry to salt
21 and sand roads, to prevent or retard the
22 formation of ice conditions, I refer to
23 that judgment from the headnote, which
24 also spells out the determination of the
25 judge in this regard. The trial judge
26 found that the bridge had been free of
27 ice approximately thirty minutes prior
28 to the accident; however, at the time of
29 the accident, there was black ice on the
30 bridge and on the highway at both ends
31 of the bridge. The trial judge
32 determined that, having regard to the
33 history of the bridge, and the
34 particular conditions on the morning in
35 question, the Ministry knew or should
36 have known that the formation of black
37 ice on the bridge was a virtual
38 certainty. He, therefore, concluded
39 that the bridge constituted a special
40 and highly dangerous situation and the
41 Ministry's failure to take the remedial
42 step of an intervening salting, prior to
43 the accident, amounted to a breach of
44 its duty under Section 33.1 of the
45 Public Transportation and Highway
46 Improvement Act of Ontario. The trial
47 judge also found that the Ministry had

1 failed in its duty to ensure that the
2 roads were adequately monitored on the
3 morning of the accident, because the
4 patrol supervisor had been engaged in
5 other duties, rather than patrolling the
6 roads. The Ministry appealed, arguing
7 that the trial judge had erred in
8 imposing a standard of care that
9 required the Ministry, not only to
10 remedy ice conditions on highways, but
11 to prevent their very existence.
12 However, the appeal was dismissed by the
13 Ontario Court of Appeal. Therefore,
14 that trial judge's decision, on those
15 particular facts, is what the Court, in
16 this case, has to consider in part."
17

18 The unfortunate part is that the evidence
19 that was revealed by Richmond witnesses, namely,
20 the two that were called specifically, reviewed
21 the details of the policy. A Mr. Eric Gilfillen,
22 who gave overall evidence relating to the policy
23 that I have already read out and gave that
24 evidence under oath to this Court. In addition,
25 Leo Fermen was sworn, and he gave evidence
26 relating to the matter. His evidence is of
27 importance because, specifically, he would have
28 been the superintendent or foreman that would have
29 been responsible to deal with any of these
30 emergency situations at the time frame that this
31 case was involved in. He says that early that
32 morning, he was called to an area at No. 4 Road,
33 where there had been water on the road from some
34 accident where a fire hydrant apparently had been
35 struck, and there was some icing occurring as a
36 result of the fire hydrant. He had, that morning,
37 not received any reports of any icing on No. 2
38 Road bridge. There was no report by the R.C.M.P.
39 that there was any icing on No. 2 Road bridge.
40 That is important because of his overall duty to
41 make responsible decisions relating to whether
42 there should be some preventative measures
43 conducted by the Municipality, relating to what I
44 had read out in the policy statement, relating to
45 what I have read relating to the first priority,
46 all major arterial section line roads and bus
47 routes to be protected, in some way, by salting.

Judgment, (Puhach, M.S., P.C.J.)

1 Unfortunately, the decision that Ms. Bonn has
2 provided me, does not assist her in this case,
3 because of the Supreme Court of Canada decision
4 that was referred to me by counsel in this case,
5 namely Brown versus British Columbia Minister of
6 Transportation and Highways. In that decision,
7 given by Mr. Justice Corey, which was then
8 concurred with by several other judges, the
9 pertinent detail is this. A policy decision could
10 be made by a person at any level of authority, as
11 the decision as to the level of road maintenance
12 was one of policy -- that is what this was in
13 Richmond -- it could not be reviewed on a private
14 law standard of reasonableness, since the decision
15 was bonafide and was not so irrational that it
16 could not be a proper exercise of discretion, it
17 could not be attacked.

18 The foreman that I had mentioned, as he was
19 making his way from the incident at the particular
20 fire hydrant incident, determined that, yes,
21 salting should occur on the main arterial
22 highways. But, that was after the accident of Ms.
23 Bonn.

24 Therefore, with that provision, and I refer,
25 specifically, to the more succinct detail of what
26 the Court said, for the purposes of making certain
27 that this Court is reviewing the law, as it should
28 be doing, on these very technical subjects. The
29 Court said, at page 208:

30
31 "I should not leave this issue
32 without addressing the two bases
33 put forward by the appellant for
34 the interpretation and application
35 of Just."

36
37 Just was another case that had been ruled in
38 respect to this matter, this type of case.

39
40 "First, the appellant contended
41 that policy decisions must be
42 limited to so-called threshold
43 decisions. That is to say, broad
44 initial decisions, as to whether
45 something will or will not be
46 done. This would be contrary to
47 the principles set out in Just,

Judgment, (Puhach, M.S., P.C.J.)

1 referred to earlier. Therefore,
2 this submission cannot be accepted.
3 Policy decisions can be made by
4 persons at all levels of authority.
5 In determining whether an impugn
6 decision is one of policy, it is the
7 nature of the decision itself that
8 must be scrutinized, rather than the
9 position of the person who makes it.

10 The appellant next alleges that
11 the system itself was unreasonable.
12 As I have already said, this decision
13 was clearly one of policy. Such a
14 policy decision cannot be reviewed on
15 a private law standard of
16 reasonableness. Since no allegation
17 was made that the decision was not
18 bonafide, or was so irrational that
19 it could not constitute a proper
20 exercise of discretion, it cannot
21 be attacked."
22

23 In this case, Richmond had a policy. Was it
24 reasonable? I find it was. Therefore, in these
25 circumstances, unfortunately to Ms. Bonn, who was
26 the only accident on that particular bridge, at
27 that time. No previous details reported that
28 there was salting conditions that were required, I
29 am not able to accede to her claim in this case.

30 I further should refer to the monthly
31 meteorological summary that was also introduced by
32 the Municipality, to make certain that they were
33 showing the Court, as I understood it, on how
34 their actions were being formulated. In that
35 Exhibit 11, there is nothing in the material on
36 the temperature forecast that would have indicated
37 some emergency necessity to salt that particular
38 bridge before the accident of Ms. Bonn.

39 I, therefore, dismiss Ms. Bonn's case. I
40 commend Ms. Bonn for her very thorough review. I
41 really thought she might be a lawyer when she gave
42 this detail here and supplied me with these case
43 authorities.

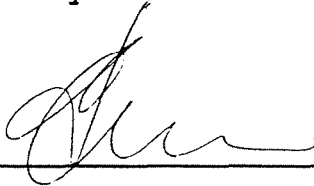
44 However, your injuries were sustained. I
45 hope I hear properly that you are back to skiing,
46 and therefore, I wish you well in that regard,
47 because that's a great sport. However, with

Judgment, (Puhach, M.S., P.C.J.)

1 respect to your injuries, I cannot award anything
2 in your favour. I dismiss your claim.
3 I hope what I have said was reasonably clear.
4 Now, were there any costs that I was supposed to
5 review for Richmond, with respect to this case?
6 Or is Richmond foregoing any costs relating to
7 this claim?
8 MS. DUNCAN: Your Honour, we have just the regular
9 filing costs that would have been on that.
10 THE COURT: I suppose that tax payers who are paying
11 their money into Richmond, and you are one of the
12 tax payers, and other tax payers, and justifiably,
13 Richmond has the right to ask for that cost which
14 I am awarding. Which I think is --
15 MS. DUNCAN: I am not sure, Your Honour, sorry. It
16 would be on the statement of reply, actually.
17 THE COURT: Well, I am sure that you can work that
18 exact sum out. I must get on with the rest of the
19 list because I have two matters for the morning.
20 One I am still trying to complete. I have two
21 other matters listed this afternoon, which I am
22 not going to be able to complete. But I must get
23 on. That is all that I will say with respect to
24 this case. Ms. Bonn?
25 THE CLAIMANT: Just to clarify the costs of -- just the
26 filing costs of Richmond.
27 THE COURT: How much money?
28 MS. DUNCAN: I don't have the amount with me, Your
29 Honour.
30 THE COURT: Please check with the registry.
31 MS. DUNCAN: Sorry. We can work it out together.
32 THE COURT: It appears that counsel does not have it,
33 which I am surprised.
34 MS. DUNCAN: I'm sorry.
35 THE COURT: I haven't got time to look at all the
36 pleadings to determine it. I am certain you will
37 get the proper statement --
38 MS. DUNCAN: We can work it out.
39 THE COURT: -- from Richmond as to that small amount of
40 their filing costs. Have a good day.

41
42 (PROCEEDINGS CONCLUDED)
43
44
45
46
47

I hereby certify the foregoing to be a true and accurate transcript of the evidence recorded on a sound recording apparatus, transcribed to the best of my skill and ability.



P. Currie