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**SCD 793
Revelstoke Registry**

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA

HELD AT REVELSTOKE: SMALL CLAIM

BETWEEN:

PHYLLIS MATTILA

**Revelstoke
OCT 26 1993
Court Registry**

CLAIMANT

AND:

CITY OF REVELSTOKE

DEFENDANT

**BEFORE HIS HONOUR
JUDGE D.B. OVEREND**

**) MONDAY, THE 8TH DAY OF
)
) SEPTEMBER, A.D. 1993**

REASONS FOR JUDGMENT

The claimant seeks damages for injuries received by her as a result of a fall in the shower area of the defendant's swimming pool in Revelstoke, British Columbia. There are two issues in this trial. The main issue is whether the defendant took reasonable care in the circumstances to make the premises safe for users such as the claimant. If the defendant is liable the second issue is what is the measure of damages necessary to compensate the claimant for her injuries.

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The facts are as follows:

The claimant is a 67 year old woman who attended the defendants' pool in the evening hours of the 30th July, 1992. This was the first and only occasion she had used this facility, after using the hot pool she left to go to the change room and the shower area. As she stepped into the shower she slipped, fell and received her injuries. As she was about to enter the shower she recognized the floor was wet and was taking care.

Another user of the facility Narinder Gosal was in the shower at the time the complainant fell. Miss Gosal indicated that she found the floor wet and slippery and that she put her hand on the wall to ensure that she did not fall. She told the lifeguard who was working in the area that the floor was slippery but acknowledges that the comment may not have been heard by the employee of the defendant. Sue Cameron is a frequent user of the facility who has said that she has herself slipped in the shower area but never fallen. She never expressed any concern to the defendant. She observed that floor mats were installed in the shower shortly after the complainant's fall.

The shower area, as well as the pool in general is subject to a regular maintenance regime put in place by the facility manager. Part of the maintenance procedure with respect to the shower is painting with a rubberized paint known as Chlorubite. In 1992 prior to the pool opening toward the end of May the floor in the

shower had been painted with that paint. Shortly after the pool opening the Parks and Recreation co-ordinator Mr. Chell received a complaint that the mens shower was quite slippery. As a result of that he asked Karen Scott, the pool manager, to repaint the floor of both men's and women's showers. On repainting Miss. Scott added an unspecified amount of grit to the paint but indicated that it was done in accordance with instructions from the distributor. She said that after painting the traction in the shower area was improved. She and other employees tested the floor of the shower for slipperiness and she concluded that it was safe.

The shower area is approximately 8' x 10', there is a 3" step down from the level of the change room to the level of the shower and the floor slopes away from the entrance toward the centre of the shower for drainage purposes. There was at the time that Mrs. Mattila suffered her injuries no signs indicating that the floor would be wet or slippery. Subsequent to the 30th July a cautionary sign has been placed at the entrance to the shower to warn users that the conditions may be wet and slippery. Miss. Scott was asked to describe the change room and shower room area. She made no reference to hand rails or other means of support to protect against possible falls in the shower and from that I infer that no such accessories were available.

The matting observed by Miss. Cameron was in fact installed by the defendant shortly after the complainant's fall but removed within a brief period of time

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mainly because of the defendant's concern for hygiene standards which it must meet.

As indicated above there is a daily regime of maintenance followed by the defendants staff which are enumerated at tab 5 in Exhibit 1. Since 1985 the defendant has kept a record of activity at the pool and for the 7 years leading to the date of the accident there were approximately 32 - 35,000 users per season. During that period of time there was no "slip and fall" complaint other than that of a little boy who fell while running around in the change room. The pool is open to all members of the public and there are programs in place for persons from 18 months to adult.

The complainant says that the defendant has not met the standard of care required of it as set out at the commencement of this judgment. The defendant's response is that there have been 250,000 users of this facility since 1985 and that as this is the first "slip and fall" complaint that that in itself indicates that the defendant has met a reasonable standard of care in the circumstances.

The City of Revelstoke relies on the case of Langille and the Regional District of Kootenay Boundary which is a case on its facts substantially similar to the matter with which I am dealing. There are however some differences. In this case the claimant was stepping from a level to a sloping floor, the surface of the shower is approximately 3" below the surface of the change room in general and Mrs. Mattila, unlike Ms. Langille, was a first time user of the facility. In addition to the factual

differences there is a significant and determining legal difference. At the time Langille was decided there was a duty on occupiers to protect users from unusual dangers the existence of which the occupier knew or ought to have known. That is no longer the law since the decision of the Supreme Court of Canada in **Malcolm and Waldick**. The duty of the occupier is no longer to protect against unusual dangers but to take reasonable care in the circumstance to make the premises safe. The circumstance here that militates against a finding that the defendant met that obligation is the fact that this pool and its facilities was open to users of all ages. Clearly a facility which is open to seniors must recognize that additional steps may be required to make premises reasonably safe for older members of the community. The requirements differ from those needed to protect younger members. In the circumstances of this case there was clearly an obligation on the defendant to warn users that there was a 3" step down from the level of the change room floor to the level of the shower floor that the shower floor was slightly sloped and that it might be slippery. While users of the facility would be expected to recognize that the floor of a shower would be wet it does not follow necessarily that it will be slippery to the extent that by merely stepping on it one might lose ones balance. As was disclosed in the evidence there are now none slip surfaces available for use in showers and other bathing facilities. I accept the explanation of the defendant's that because of the strong disinfectants used in their public facility that that type of surface is not suitable for use in their shower room. That does not absolve them from warning members of the public that the floor in the shower might be slippery. I find the defendant liable.

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With respect to the injuries, Mrs. Mattila suffered bruising to her right palm, swelling and gross bruising of the left hand and a haematoma to the back of her head. The fall and the striking of her head caused a whiplash type injury to her neck. Mrs. Mattila underwent a number of physiotherapy treatments for her wrist and was re-examined by her physician Dr. McKnight on the 21st April, 1993. At that time she was still experiencing symptoms of aching and pain in her left wrist and weakness in her left wrist. She was also experiencing occasional headaches, Dr. McKnight expected full recovery within a couple of months of that examination.

Counsel have provided me with a number of cases involving similar injuries. Each of these cases must be decided on its own facts and I have decided that a sum of \$7,500 (seven thousand five hundred dollars) reasonably compensates the complainant for the injuries suffered by her. She is also entitled to the sum of \$100.00 (one hundred dollars) special damages. There will be court order interest on the judgment from the 30th July, 1992 plus costs.



D.B. OVEREND, PCJ