

22901
Richmond Registry

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA

BETWEEN:

SALWA MOHMED

CLAIMANT

AND:

THE CITY OF RICHMOND

DEFENDANT

**REASONS FOR JUDGMENT
OF
THE HONOURABLE JUDGE ROMILLY**

COPY

Appearing on her own behalf:

The Claimant

Counsel for the Defendant:

E. Toews, L. Woo

Place of Hearing:

Richmond, B.C.

Date of Judgment:

September 22, 2011

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[1] THE COURT: I don't think there's any doubt that the claimant was injured as a result of a rise in the pavement where she was walking on her way to catch a bus. The City of Richmond has a policy that they will remedy if they find it to be a hazard after someone has reported or complained about the hazard. It is not in dispute that a hazard was subsequently discovered after the claimant's injury and so the issue is not whether or not there was a hazard, the issue is whether or not there was any negligence because that hazard existed.

[2] I think that it would be rather remiss of me, given the cases that have been provided which are completely on point, *Gaw v. Porte Industries* where the plaintiff tripped and fell in a hole in a municipal boulevard owned by the Township of Richmond. At the time, Richmond had a complaints-based policy similar to the policy in this case. If they received a complaint, they would inspect and fix the problem but they would not undertake routine inspection or maintenance. The court determined that the township decision to not inspect boulevards and to respond only to complaints, due to manpower and budgetary constraints, was a policy decision and accordingly Richmond owed no duty of care to the plaintiff.

[3] I am bound by decisions such as that, and also by decisions of *Einarson v. The City of Richmond*. There the plaintiff stumbled on an uneven joint between two concrete slabs on the sidewalk owned by the City of Richmond. Similar to the present case, the city had a complaints-based policy with respect to the maintenance of sidewalk and the court held that the city's policy to only investigate complaints regarding sidewalks was reasonable, and accordingly the court

dismissed the plaintiff's case. The two citations for the *Gaw* case is 1993 Can LII 206, a decision of the B.C. Supreme Court. The other decision, *Einarson v. City of Richmond* is 1998 at B.C.J. 2103, another decision of the B.C. Supreme Court.

[4] Another case that is obviously relevant is the ***Oser v. City of Nelson*** 1997 CanLII 1388, another decision of the B.C. Supreme Court, which says that no inference of irrationality or unreasonableness is warranted from the mere fact that there were no scheduled inspections. It strikes me that these cases fall squarely on the situation we have before us here and I cannot go against those decisions and I have no alternative but to dismiss the plaintiff's claim.

(REASONS FOR JUDGMENT CONCLUDED)