

[1] The Defendant, Columbia Shuswap Regional District (the "Regional District") seeks an order as a defendant and third party dismissing the plaintiff's claim. The third party, Norma Pasechnik doing business as S & P Salvage ("S & P Salvage") seeks a similar order, that is, that the claim against it by the defendant, Regional District, be dismissed, regardless of the result of the application of the Regional District so that S & P Salvage can be released as a third party in these proceedings. These applications concern the issue of liability only.

[2] The Plaintiff, Mr. Thiessen, sues for damages arising from injuries he suffered when he fell, on June 23, 2000, into a metal refuse bin located at a refuse transfer station (the "Transfer Station") at the Salmon Arm Landfill (the "Landfill"). Mr. Thiessen was then 62 years of age. He was 5' 6" or 5' 8" in height and weighed 180 lbs. The landfill is located in the Columbia Shuswap Regional District. The Regional District is the owner of the Landfill and Transfer Station. At the time of this accident, the Landfill, including the Transfer Station, was maintained and operated by the third party, S & P Salvage.

[3] The Regional District submits that Mr. Thiessen's claim has not been made out against it or S & P Salvage on any of

the grounds alleged and should be dismissed against both. Further the Regional District seeks an order, in those circumstances, that Mr. Thiessen pay the costs of S & P Salvage. Alternately, the Regional District claims that if Mr. Thiessen's injuries were caused by the negligence of S & P Salvage that the Regional District has a full defence pursuant to s.5(1) of the **Occupiers Liability Act** R.S.B.C. 1996, Chap. 337 and therefore Mr. Thiessen's claim should be dismissed as against the Regional District.

[4] Section 5 of the **Act** reads as follows:

5(1) Despite section 3(1), if damage is caused by the negligence of an independent contractor engaged by the occupier, the occupier is not on that account liable under this Act if, in all the circumstances,

(a) the occupier exercised reasonable care in the selection and supervision of the independent contractor, and

(b) it was reasonable that the work that the independent contractor was engaged to do should have been undertaken.

...

[5] On June 23, 2000 Mr. Thiessen went to the Landfill to dispose of some household refuse. He proceeded to the weigh scale shack, his vehicle was weighed and he paid a fee. After disposing of his household refuse into the refuse bin, he was engaged in closing the tailgate of his pick-up truck when he

lost his balance and fell into the bin sustaining serious injuries.

[6] The Landfill which is located near Salmon Arm, B.C., was previously owned and operated by the District of Salmon Arm from 1974 to 1991. In 1991 the Regional District acquired the Landfill and has operated it since. The Regional District, at the time of acquisition, decided to review the design and operation of the Landfill. After doing so, the Transfer Station was constructed. Before this, refuse was disposed of at the Landfill by customers, directly on to the open landfill face. The Transfer Station facility, when built, included large transfer bins into which customers would dump their refuse, and those transfer bins would, from time to time, be removed by landfill staff and dumped at appropriate locations in the Landfill.

[7] After discussion with an environmental consulting firm, the Regional District decided to construct the Transfer Station. Construction was completed in the spring of 1999. The nature of the Transfer Station permitted the segregation of various types of waste. The "bin" system promoted the use of recycling and compost areas which were located near the Transfer Station, and allowed for the disposal of certain wastes such as metals, wood, household waste and brush, into

separate bins. When full, the bins were removed by vehicle and emptied into particular segregated areas of the Landfill or recycled. The Regional District had concluded, at the time of deciding to construct the Transfer Station, that the use of same would be a more economic and efficient means of disposing of refuse, maximize the capacity of the Landfill site, and reduce the overall capital cost of acquiring new landfill space.

[8] At the time of designing the Transfer Station, the Regional District considered issues pertaining to safety at the Transfer Station. A number of warning signs were in place at the time of the accident. The signs were two foot by one and a half foot in size. Two were located on a chain link fence at the unloading area near the transfer bins and one was attached to the side of the scale shack which all vehicles passed by on their way into the Landfill. The wording was as follows:

WARNING
Use Caution When Unloading

We Are Not Responsible for Damages Caused
By You
You Are Responsible For Your Own Safety
Turn off Engine
Children & Pets Should Remain in the Vehicle

[9] Below the top two lines of these signs there was the image of a pick-up truck with a person falling from the back of the pick-up truck box.

[10] The top of the transfer bins extend approximately twelve to eighteen inches above the grade of the unloading dock. The transfer bins are painted a bright blue colour which contrast with the edge of the loading dock. The transfer bins are rectangular in shape. The bins are eight feet high, eight feet wide and twenty-two feet long. Metal guardrails are in place on the short sides of the bins, and a metal tubular rail is in place at approximately seven feet above the docking surface beside that part of the transfer bin closest to where customers unload their vehicles.

[11] Over time it was noted by the Regional District that the majority of customers brought waste materials to the site using pick-up trucks or utility trailers.

[12] Mr. Thiessen had been using the Transfer Station since it opened for business in the spring of 1999. His family used the facility once every two weeks, and he had disposed of refuse there a dozen times before this accident. He was familiar with the ramp leading to the unloading area where the metal refuse bins (the Transfer Station) are located.

[13] Mr. Thiessen said that there was nothing unusual or out of the ordinary at the Transfer Station on the day of the accident. On all other occasions he had used his 1997 GMC pick-up truck with a canopy over the cargo box to deliver refuse to the Transfer Station, and that was the vehicle he used on the day of the accident.

[14] Mr. Thiessen said that on occasions before the accident his practice was to drive up the ramp, stop and then back up towards the refuse bin, stopping four or five feet from the edge. He said he did this to avoid the risk of falling into the bin. Mr. Thiessen was aware of the warning signs at the Transfer Station, although he could not recall having seen the image of the man falling off the back of the pick-up truck depicted on the signs. He agreed that this sign represented a warning of a danger which he was already aware of, that is, the potential for injury if someone fell off the back of their pick-up truck at that location.

[15] On the day of the accident, Mr. Thiessen arrived at the Landfill site, stopped at the scale shack and then proceeded up the ramp of the Transfer Station, made a half turn, stopped and then backed up toward the transfer bin. However, instead of stopping four to five feet from the edge of the bin, as was his habit, he stopped his truck much closer to the bin. He

estimated one to one and a half feet between the edge of the bin and the rear of his truck.

[16] When Mr. Thiessen had brought his vehicle to a stop, he walked to the rear of his vehicle, unlatched and lifted the canopy lid, dropped the tailgate and climbed into the vehicle and then threw his refuse into the transfer bin. He then jumped from the back of the vehicle onto the ground, off to the side of the vehicle. He did not jump off the back of the vehicle. He then attempted to close the tailgate walking from one end of the tailgate to the other. His evidence was that "I slipped or lost my balance" and he said he fell backward into the bin. He was then engaged in attempting to close the tailgate. When he lost his balance, the tailgate fell open. As he was losing his balance, he stepped backward "and tripped on the edge of the bin" and then fell into the bin. He described this in paragraph 17 of his affidavit as follows:

As I raised the tailgate, I lost my balance or slipped on something and in trying to regain my balance or footing, I stepped back, tripping on the edge of the bin, causing me to fall backwards into the bin.

[17] Mr. Thiessen sets out in his Statement of Claim that he fell because he slipped due to the slippery nature or condition of the ground, or on some materials left in that

area by a prior user, or he tripped over a concrete curb adjacent to the bin. Mr. Thiessen, through counsel, conceded that there was no concrete curb in the area of the bin. There was some evidence in photographs taken by the Regional District employee, John Janzen, on the day of the accident, of the presence of material or refuse or debris on the landing adjacent to the bin. Mr. Janzen was called from his office in Salmon Arm to the Landfill after this accident. He received that call just after 11 a.m., and arrived at the Landfill at 11:17 a.m. Emergency vehicles arrived after him. He observed Mr. Thiessen being removed from the bin by emergency personnel. He was taken to hospital by ambulance.

[18] Mr. Janzen cannot say when the photographs were taken, other than it was on the day of the accident. One of those photographs shows debris of some kind adjacent to the bin. While Mr. Thiessen, in his Statement of Claim, says that "he either slipped on the ground in front of the bin due to its slippery nature or condition, or slipped on some material left on the ground by a prior user of the facility", I am not satisfied on a balance of probabilities that this material, or refuse, was slippery, nor that it caused or contributed to Mr. Thiessen losing his balance and falling.

[19] Jason Taylor, an employee of a commercial refuse gathering company, arrived at the Landfill shortly after the accident, but could not recall seeing any debris around the area of the bin. He was a member of the Salmon Arm rescue unit and had Level I First Aid training. He attended regularly at the Landfill as part of his employment and to drop off his own household garbage and was therefore familiar with the refuse bins. When he arrived at the Landfill on June 23, 2002 he observed Mr. Thiessen in the bottom of the bin, but was unable to extricate him without help from the emergency crews who arrived shortly thereafter. He could not recall seeing any debris around the area of the bin on that date and he described the Landfill, and particularly this Transfer Station, as being clean and orderly.

[20] I have concluded that little turns upon whether the photographs of debris in the area of the bin represent the condition of that area at the time of this incident. As I have said, Mr. Thiessen has not satisfied me, on a balance of probabilities, that the presence of debris or material on the ground in front of the bin contributed to or caused his fall.

[21] Carl Hayes, an employee of S & P Salvage, whose duty it was to clean up any debris in the vicinity of the Transfer Station, inspected the entire area at approximately 10 a.m.,

when the transfer bins were emptied. He said there was no debris lying near any of the transfer bins. This inspection took place before Mr. Thiessen's accident. He stated that Mr. Thiessen was the first person to dump refuse into this bin after it had been emptied. I am unable to resolve the conflicting evidence as to the presence of debris on the landing in front of the bin (that is, the evidence of Taylor and Hayes on the one hand and the photographs on the other) but nothing turns on that as I have concluded that whatever debris was present did not cause or contribute to Mr. Thiessen's fall into the bin.

[22] I am satisfied that the issues raised in this application are dealt with appropriately under Rule 18A.

THE ALLEGATION THAT THE DESIGN OF THE TRANSFER STATION CAUSED OR CONTRIBUTED TO MR. THIESSEN'S INJURIES

[23] To address the issue of faulty design which is alleged to have occurred in a number of different ways in paragraph 8 of the Statement of Claim I reproduce paragraph 8 in its entirety:

The Plaintiff's injuries were the direct result of the negligence of the Defendant, its servants or agents and consisted of one or more of the following:

- a) designing and constructing the premises in such a fashion that they were inherently dangerous;

- b) designing and constructing the premises in such a fashion so as to constitute a hidden danger, generally to users of any age and physical condition and particularly, to users of an age and physical condition of the Plaintiff;
- c) failing to take reasonable care to ensure that the Plaintiff would be reasonably safe in using the premises for their intended purpose;
- d) exposing the Plaintiff to risk of injury in using the premises from its unsafe design, construction or condition of which the Defendant knew or ought to have known;
- e) failing to take any or any reasonable care to prevent injury or damage to the Plaintiff from unusual dangers on the premises of which the Defendant knew or ought to have known;
- f) failing to install railings or some other similar barrier to prevent the Plaintiff from falling into said bin or to assist him in regaining his footing or balance, upon losing same for any reason, so as to avoid such a fall or to lessen the seriousness of the injuries from such a fall;
- g) failing to have in place a reasonable system of inspection to ensure that the ground in front of the bin was not slippery or did not become slippery due to the elements or the deposit of slippery material by other users of the premises or, in the alternative, not following such a procedure or ensuring that its agents or servants followed such a procedure;
- h) failing to alert or warn the Plaintiff of the danger produced by the design and layout of the premises;
- i) further particulars of negligence as they become known to the Plaintiff upon an Examination for Discovery of the Defendant, its agents or servants.

[24] Dr. Robert D. Cameron, a professional engineer, prepared a report for the Regional District in February 2002 concerning the design of the Regional District's Transfer Station. He holds Masters and Doctorate degrees in sanitary and civil

engineering. He has been involved, over a number of years, consulting on solid waste matters including the design and evaluation of many landfill and transfer stations. Mr. Thiessen objects to the introduction of Dr. Cameron's opinion claiming that it usurps the function of the court by stating an opinion on the ultimate issue before the court, that is, whether the safety features of the Columbia Shuswap Regional District Transfer Station were reasonable considering all of the complexities of safety feature design for transfer stations. I agree with that submission. That is an issue to be resolved by the court.

[25] Despite the argument that Dr. Cameron's concluding opinion usurps the role of the Court I have found his comparisons with other landfills and transfer stations, and specifications concerning each, to be useful. I accept certain other opinions expressed by Dr. Cameron in his report, to which I will refer specifically.

[26] Dr. Cameron summarizes safety features and activities at five major landfill transfer stations in British Columbia. These are located in the Capital Regional District, Alberni-Clayoquot Regional District, City of Kelowna, District of Mission and the City of Vancouver (Burns Bog). In addition he

examined nine other such operations in British Columbia, two in Alberta and three in Washington State.

[27] Dr. Cameron considered the design of a protective system across the front of an open top container and in doing so referred to several factors which he concluded were of significance. These factors included:

- Safety,
- Convenience to the public under all weather conditions,
- Site cleanliness,
- Available staff,
- Whether garbage is to be dropped off directly from the deck of a pickup or truck or trailer or dropped into the container from the ground surface,
- The type of vehicle being unloaded and,
- The height, strength and fitness of the individual unloading.

[28] As a result of Dr. Cameron's survey of the aforementioned Transfer Stations he concluded as follows:

- (a) There are many different approaches taken to transfer station configuration and safety features;
- (b) Transfer stations come in many sizes and are capable of handling a variety of refuse disposal volumes;
- (c) There are no uniform standards for safety features;
- (d) When approached critically, a scenario can be constructed wherein practically every so-called "safety feature" has a possible negative or unsafe result;

- (e) When transfer stations are designed in such a way that refuse cannot be conveniently disposed of they tend to be strewn with litter; and
- (f) That in designing transfer stations without exception, reliance has been placed upon the individual to exercise caution and prudence when using the facility. In his opinion none of the transfer station designs that he studied could ensure that an accident would not occur.

[29] Dr. Cameron concluded that several factors must be taken into account in the design of a transfer station including safety, convenience, cleanliness, resources available to the operator, a consideration of the type of activity anticipated as well as an anticipation of the physical characteristics of the users.

[30] Further, Dr. Cameron was of the opinion that the design of the transfer station ought to include a consideration of the type of vehicle most commonly operated by users of that facility. The information he gathered led to the conclusion that the majority of vehicles used were of a type which would be backed up to the dumping area. This vehicle he found to be the pickup truck and he was of the opinion therefore that in designing curbs and barriers in the area of the transfer bin the most significant vehicle to consider was the pickup truck recognizing however a broad range of dimensions represented by the variety of pickup trucks in use.

[31] At page 25 of Dr. Cameron's report of February 2002 he said:

There is unlikely to be an ideal solution to the location of either external curbs or a single horizontal guardrail across the front of an open top container. Virtually any height of bar will have some advantages and some disadvantages depending upon the vehicle being used and the size and flexibility of the person delivering the garbage.

When planning a station, the designer must consider the potential for a person to fall into a container. He must also think about the possibility of other injuries. These would include muscle and back injuries from lifting a load and twisting and bending in order to maneuver around curbs and bars in front of the container.

[32] Dr. Cameron summarized what he described as several safety features of the Columbia Shuswap Regional District's transfer station at page 26 of his report. They are as follows:

(a) Containers projecting above the ground surface by either 12" or 17". These provide a visual warning of a drop-off to anyone walking forward towards the container.

(b) The containers provide a barrier preventing vehicles from backing into the container.

(c) The narrowness of the top edge rail of the container acting as a deterrent to standing on it.

(d) A rope stretched between the end posts in front of the container space when a container is full or has been removed.

- (e) A horizontal pipe guardrail mounted above the container edge and across the lip of the retaining wall.
- (f) A sponge rubber pad wrapped around the horizontal pipe bar guardrail.
- (g) A yellow diagonal strip around the black sponge rubber pad.
- (h) Reflective tape on the vertical posts at the end of each container.
- (i) A double bar guardrail at the end of each container.
- (j) Warning signs at the scale house and at the container site.
- (k) Pictorial warning signs showing the potential for falling from a vehicle.

[33] S & P Salvage had two employees at the Landfill, a scale house operator and another person responsible for the operation of the Transfer Station, the transfer equipment and the Landfill and its equipment.

[34] I am satisfied that I can rely upon Dr. Cameron's description of the physical layout at the defendant Regional District's Landfill and his description of the physical nature of the other nineteen landfill sites in British Columbia, Alberta and Washington State. In reaching that conclusion, I have considered as well the evidence of the plaintiff's engineer, Gerald D. Sdoutz as outlined in his report.

[35] While Cameron and Sdoutz express conflicting opinions on the ultimate issue there is common ground in their reports and these are summarized in the written submissions made on behalf of the Regional District and I repeat them, as follows:

- (a) There are no industry standards for the design of Transfer Stations and safety features which may be utilized.
- (b) The design of transfer stations involves the balancing of a number of factors which include function, safety, convenience and cost.
- (c) Most, if not all, safety features suggested create other hazards and risks.
- (d) In transfer station design it is appropriate to consider a variety of hazards and dangers which may arise for the user which include not only the risk of falling into a transfer bin, but also the risk of physical injury while unloading refuse into the bin.
- (e) Suggested options as safety features such as moveable guardrails, offset curbs and covered transfer bins themselves raise potential risks.

[36] The appropriate design of a transfer bin involves a balancing between safety and functionality. Having considered the evidence relating to this Transfer Station (bin) as to its purpose and its safety features, in the context of the evidence of the design of several other landfills and transfer stations in British Columbia, Alberta and Washington State, as detailed in Dr. Cameron's report, I have reached the conclusion that the design and construction of the Regional District's Transfer Station meets the standard of care required in the circumstances and did not cause or contribute to Mr. Thiessen's injuries.

THE ALLEGATION OF NEGLIGENCE AGAINST THE REGIONAL DISTRICT AND S & P SALVAGE

[37] I have concluded that Mr. Thiessen sustained these injuries entirely as the result of his conduct on that day. He was familiar with the transfer bin and the area around it having dropped off refuse from his pick-up truck at the Transfer Bin on approximately twelve occasions prior to June 23, 2000. Before dumping the refuse into the bin he realized that he had backed his truck to a position where it was too close to the bin. After dumping the refuse into the bin, he considered moving his truck forward before closing the tailgate, but did not do so. He had the opportunity to observe the ground in front of the bin and the bin as he drove

into the area, as he backed up his vehicle, as he opened the tailgate and again as he deposited his refuse into the bin. He was aware of the physical characteristics of the bin, before this accident, from previous attendances including the fact that the edge of the bin was twelve to seventeen inches higher than the landing area where he stopped his pick-up truck, the presence of the seven foot high, horizontal pipe, running lengthwise across the twenty-two foot face of the bin, and knew of course, that the transfer bin was open. He had ample opportunity to observe these conditions. There were no hidden dangers. His previous practice had been to stop his truck at a point where the rear of the truck was four to five feet from the near edge of the bin. Unfortunately for Mr. Thiessen his fall into the bin is solely the result of his inattention that day.

OCCUPIERS LIABILITY ACT

[38] Mr. Thiessen abandoned his argument that the Regional District did not make a reasonable selection of S & P Salvage to be the operator of the facility. In view of my finding that Mr. Thiessen's carelessness alone caused his fall into the bin, there is no issue remaining as to whether the Regional District reasonably supervised the operator, S & P Salvage. In view of my conclusion, Mr. Thiessen's claim under

the *Occupiers Liability Act* fails. In the circumstances the plaintiff's claim that Landfill staffing by S & P Salvage contributed to Mr. Thiessen's injury must fail as well.

[39] The Regional District will recover its costs at Scale 3 from Mr. Thiessen. The third party, S & P Salvage, is also entitled to its costs at Scale 3 from Mr. Thiessen as S & P Salvage was joined in this action by the Regional District as part of its defence to the allegation that Mr. Thiessen had slipped or lost his balance because of the presence of debris and/or slippery material on the landing near the transfer bin.

"R.B. Hunter, J."
The Honourable Mr. Justice R.B. Hunter