



Civil Resolution Tribunal

Date Issued: August 9, 2023

File: SC-2022-006561

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Cockburn v. City of Richmond*, 2023 BCCRT 669

B E T W E E N :

ALISON COCKBURN

APPLICANT

A N D :

CITY OF RICHMOND

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about responsibility for wet paint on a street transferring onto a car. The applicant, Alison Cockburn, says the respondent, City of Richmond (City), was negligent because it failed to warn drivers about the paint or remove it. Ms. Cockburn claims \$400 as the estimated amount to remove the paint from her cars' wheels, wheel wells, and other areas.

2. The City denies being negligent. It says that it did not cause the spill and it first learned of the spill from Ms. Cockburn. It says that in these circumstances it did not breach the standard of care.
3. Ms. Cockburn represents herself. Samantha Boyce, a lawyer, represents the City.
4. For the reasons that follow, I dismiss Ms. Cockburn's claim.

JURISDICTION AND PROCEDURE

5. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). Section 2 of the CRTA states that the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT must apply principles of law and fairness, and recognize any relationships between the dispute's parties that will likely continue after the CRT process has ended.
6. Section 39 of the CRTA says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice.
7. Section 42 of the CRTA says the CRT may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
8. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the CRT considers appropriate.

ISSUE

9. The issue in this dispute is whether the City was negligent, and if so, what remedy is appropriate.

BACKGROUND, EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, Ms. Cockburn as the applicant must prove her claims on a balance of probabilities. This means more likely than not. I have read all the parties' submissions and evidence but refer only to the evidence and argument that I find relevant to provide context for my decision.
11. Ms. Cockburn filed a claim with the City's law department on April 13, 2022. I find her form accurately documents what happened as nothing contradicts it. On April 6, 2022 at 6:30 p.m., Ms. Cockburn was driving her car on Granville Avenue and Railway Avenue in Richmond, BC. She drove over wet white paint. There were no witnesses and no construction work present at the time. Ms. Cockburn wrote that the City was responsible because the paint was all over the road and there were no warnings posted about it.
12. A June 20, 2022 estimate from Applewood Mitsubishi Richmond includes photos of the paint on the road and the car. Presumably Ms. Cockburn provided the photos to the estimator. The estimator said it would cost \$400 plus tax to remove paint from the right front and rear tires, wheel wells, and other areas.

Was the City negligent?

13. Ms. Cockburn alleges negligence. To prove negligence, Ms. Cockburn must show that 1) the City owed her a duty of care, 2) the City breached the standard of care, 3) she sustained a loss, and 4) the City's breach caused that loss. See *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27 at paragraph 3.
14. Public authorities like the City do not owe a duty of care to public users of its property if its actions were based upon a policy decision. As a general rule, budgetary

allotments for departments are policy decisions. An exception exists if the decision was made in bad faith or was so irrational that it was not a proper exercise of discretion. See *Lowe v. Sidney (Town of)*, 2020 BCSC 335 at paragraphs 23 to 28.

15. Public authorities can be liable for operational decisions under the test from *Mustapha*, cited above. Operational decision decisions are those considering the implementation and performance of the formulated policies. The standard of care is one of reasonableness and not perfection. See *Lowe*, cited above.
16. The City says its system of inspections and maintenance and its actions in following those practices were reasonable. So, I find it argues that its policy decisions were made in good faith and rationally, and that its operational decisions were also reasonable.
17. As evidence, the City provided a statement from BG, a supervisor for the City's Roads and Construction Department. BG noted they had worked for the City for over 30 years, of which 26 involved roads and construction. So, I find BG is qualified to discuss the City's policies and practices in this dispute.
18. BG said that the City maintains its road consistent with a documented called Policy 7012 – Road Maintenance (Policy 7012). Policy 7012 says that the City uses a complaints-based system. For spills on the road like this one, complaints can include notification by the Richmond RCMP or the Fire Department. The City also provides an app called "Richmond Works" and a 24-hour emergency telephone line for citizens to report road issues.
19. BG explained that the City uses a complaints-based road maintenance policy because hazards like spills are sporadic and unpredictable. BG says the Public Work's Department's staff time and budgetary resources are used to respond to possible emergency issues and focus on conducting repairs rather than proactive inspections for emergency issues.
20. BG said that the City did not know about the spill until well after Ms. Cockburn drove through it. BG said the City first received notice of the paint spill from Ms. Cockburn's

April 2022 claim form. BG confirmed with staff that the City 1) was not painting in the area at the time, 2) had not received any complaints about spills in the area in the days around Ms. Cockburn's incident, and 3) had no work order records showing teams responding to a spill in that area around that time. BG also says that by the time the City was advised of the spill, the paint had dried, so it did not take any further action.

21. I find BG's statement is supported by 1) a copy of Policy 7012, 2) the City's website pages about reporting road hazards and problems, and 3) the City's internal emails from July and August 2022 confirming the City was not painting lines in that area at the time of the incident.
22. With that in mind, I first consider whether the City owed Ms. Cockburn a duty of care. I find it did not because its actions were in keeping with its policy. BG's evidence shows that, for budgetary and other reasons, the City's policy excludes regular inspection of its roads. So, I find the City's use of a complaints-based system and lack of regular inspections are consistent with the policy.
23. I find the situation here is similar to that in *Oser v. Nelson (City)*, 1997 CanLII 1388 (BCSC). In that case, the defendant's maintenance policy at the time did not include a schedule of inspection of sidewalks and roads. The court said it was not unreasonable to refrain from inspecting sidewalks if there was a bona fide policy decision made that certain hazards fall below a threshold established due to budgetary or manpower considerations. The court held that without evidence that clearly dangerous situations were being ignored or that the aforementioned threshold was irresponsibly high or arbitrary, the court should not conclude the defendant was irrational or unreasonable from a lack of scheduled inspections. The court said to conclude otherwise would turn the defendant into an insurer, which is not the defendant's purpose.
24. Ms. Cockburn did not provide any evidence to show that the City's policy decision was irrational, unreasonable, or otherwise made in bad faith. So, I find it did not owe a duty of care. So, I dismiss Ms. Cockburn's claim for this reason.

25. In addition to that, I find there is no evidence that the City breached the standard of care in connection with any operational decisions. For example, there is no indication the City ignored any complaints or that it caused the paint spill through any action or inaction. I would dismiss Ms. Cockburn's claim for this reason as well.

26. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. I dismiss Ms. Cockburn's claim for reimbursement of CRT fees. The parties did not claim any specific dispute-related expenses.

ORDER

27. I dismiss Ms. Cockburn's claims and this dispute.

David Jiang, Tribunal Member