

# BRIEFING NOTE

## **B.C. Court Clarifies Standard of Care of Contractor Performing Work on Public Roadway- *Richmond v. Channa et al*, 2014 BCSC 1764**

When ongoing construction impedes roadside signage, it can impact the analysis of liability when a collision occurs between motor vehicles. In this case, the construction defendants were held 75% liable for a motor vehicle accident after their fencing obstructed the permanent stop sign and their temporary signage was held to be deficient by the Court.

This case will be of interest to Municipalities, Local Governments, construction companies and their insurers.

### **Facts:**

Two lawsuits were heard together relating to a car accident at the intersection of East Whalley Ring Road and 107A Avenue in Surrey, British Columbia on November 21, 2008. Mr. Richmond was travelling north on Ring Road. He had the right of way through the intersection and was the dominant driver. Ms. Channa, was travelling west on 107A. She was supposed to stop at the intersection, but there was ongoing construction of a condominium project adjacent to the intersection, with a construction fence obscuring the stop sign. The defendant construction company “Tien Shier” had attached a temporary stop sign on the construction fence to warn drivers travelling west on 107A to stop before entering the intersection. The temporary sign was a flag person’s “paddle” sign which was stuck in the fence and secured with a wire. Ms. Channa claimed to not see the temporary stop sign. She did not stop before entering the intersection and her vehicle collided with Mr. Richmond’s vehicle.

Tien Shier had obtained a Traffic Obstruction Permit from the City, which required that it follow the B.C. Traffic Control Manual for Work on Roadways (the “Manual”).

Mr. Richmond sued Ms. Channa and the Tien Shier Defendants, while Ms. Channa sued Mr. Richmond and the Tien Shier Defendants.

### **The Court’s Decision:**

One of the key issues for the Court to decide was the appropriate standard of care on the Tien Shier construction defendants.

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Tien Shier relied on an expert report by an accident reconstruction engineer that opined that the two vehicles were visible to each other for 2 to 2.9 seconds before impact, which should have allowed them to take evasive action. Tien Shier's position was that both Mr. Richmond and Ms. Channa failed to exercise reasonable care when approaching the intersection and were at fault for the accident. It relied on previous decisions in which the dominant driver, like Mr. Richmond, had an opportunity to avoid the accident and was found to be contributorily negligent.

The Court found that the accident reconstruction evidence was of no assistance as it relied on inaccurate assumptions including the location and construction of the fence and the size of the temporary stop sign.

The court adopted the following statement of Madam Justice Balance in *Van Tent v. Abbotsford (City)*, (25 May 2012), Vancouver M060300 (BCSC), aff'd 2013 BCCA 236, when considering the relevance of the Manual's requirements to the standard of care required:

*"In this case, the standard of care is greatly informed, although not dictated, by the collection of uniform traffic control standards detailed in the Manual. .... The applicable standards endorsed in the Manual accord with common sense and the conduct expected of a prudent contractor in the circumstances in relation to the task of ensuring the safety of the users of the road and work crews during times of construction and maintenance."*

The Court was also troubled by the evidence of Tien Shier's safety officer who installed the temporary stop sign as this employee did not have any understanding or awareness of the Manual and its requirements. The Court held that the size and placement of the temporary stop sign was wholly inadequate and did not meet the minimum standards set out in the Manual, which included, that the sign ought to have been attached to a post or portable mount, and be mounted at approximately the same height and in approximately the same position as for permanent installations. With respect to Ms. Channa's negligence, the Court found that she bore some responsibility for the accident as she did not see the temporary stop sign, orange safety barrels near the construction site, nor did she see Mr. Richmond's vehicle approaching from the left. She should have taken greater care when driving through a construction zone with obstructed visibility.

The Court apportioned liability 75% against Tien Shier and 25% against Ms. Channa.



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