

How A Telephone Pole Can Be Responsible For A Car Crash

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One thing that I find irritating as a personal injury lawyer is when cases with merit are mis-reported by the media and spun as 'frivolous lawsuits'.

Yes there are frivolous lawsuits out there. Yes some of the facts behind such cases are, to say the least, embarrassing for the profession. But there are many cases with merit that at quick glance can appear frivolous but with deeper digging simply are not so.

Reasons for judgement in such a case were released today by the BC Court of Appeal. In this case the Plaintiff suffered serious injuries when struck by a motor vehicle while crossing a marked cross-walk. The trial court found that the District of Campbell River and the Telus Corporation were each 20% at fault for this crash for the negligent placement of a utility pole. How can a utility pole be at fault for a crash between a motorist and a pedestrian? I could see this getting spun the wrong way so I thought I would take the first crack at reporting this case.

The facts of the case are well summarized in paragraphs 6-7 of the reasons for judgment. I reproduce these below:

[6] *Around 9:00 p.m. on 3 January 2003, in Campbell River, Robert Simpson was walking home from his job as a pharmacist. It was dark and raining. Mr. Simpson, who was wearing dark clothing and carrying an umbrella, stepped into a marked crosswalk from the south side of a wooden utility pole and was struck by a southbound pick-up truck driven by Mr. Baechler.*

[7] *Mr. Simpson's injuries were serious: they included a fracture of both knees that required surgery and will require future surgical attention, a fractured pelvis, an abrasion to the forehead, and a moderate closed head injury that has impaired Mr. Simpson's functional capacity*

A Claim was made against the driver of the vehicle, the City and the telephone Company (who were co-owners of the pole). The Claim against the City and the utility company were that they placed the pole in a hazardous place in relationship to the road and the pedestrian crossing. Frivolous? Consider these facts that the Court of Appeal reviewed in upholding the trial judge's finding that the City and the telephone company were partially to blame for this crash:

[12] *The utility pole was embedded in the sidewalk on the northwest corner of the intersection. Its near edge was about 14.6 inches from the curb. Telus Corporation, part owner of the utility pole, had installed a plastic pilaster on the westerly aspect of the pole, to protect some cables. With the pilaster, the pole was about 18.9 inches wide at eye level and 23.6 inches wide at its base. (BC Hydro was co-owner of the utility pole. Mr. Simpson's action against BC Hydro settled and was dismissed by consent).*

[13] *The pole had not always been embedded in the sidewalk. It was originally west of the sidewalk, but in the process of widening Dogwood Street in the 1980s the pole's base was incorporated into the sidewalk.*

[14] *In 1996, Campbell River, the RCMP and the Insurance Corporation of British Columbia identified Dogwood Street between 11th and 13th Avenues as accident prone and problematic with respect to traffic operations. An engineering firm studied the corridor, found that the pole obscured pedestrians from the view of southbound drivers, and recommended (among other things) the relocation of the utility pole.*

[15] *In 1997, Campbell River authorized relocation of the pole. BC Hydro agreed. Telus Corporation was opposed, apparently because its cables were an impediment. All of the other recommended improvements to the intersection were made, but the pole remained where it had been.*

[16] *The location of the utility pole was a continuing safety concern for Campbell River. It was recognized as a safety hazard by the City's engineering services manager. In 2001, a second safety review of the Dogwood corridor found that the Dogwood Street and 12th Avenue intersection had a low accident frequency and severity history, but that rear-end collisions occurred in the southbound lanes with "relatively high" "pedestrian involvement". A new plan to modify the corridor was approved.*

[17] *The trial judge held that the T intersection at 12th Avenue and Dogwood Street had "long been considered dangerous among Campbell River residents (para. 6). He also found that Mr. Baechler was familiar with the intersection (para. 40) and with its "dangerous nature" (para. 23).*

[18] *In 2003, after the accident involving Mr. Simpson and Mr. Baechler, the utility pole was relocated about 3 metres away and the other Telus equipment reinstalled. The cost of about \$3,000 was shared by Telus, BC Hydro, and Campbell River. The obstruction to visibility was eliminated.*

[19] *Embedded in the sidewalk as the utility pole remained at 9:00 p.m. on the night of 3 January 2003, when Mr. Baechler was driving home after dinner with some friends, and Mr. Simpson was walking home after work, the pole continued to obscure the view of pedestrians on its south side looking north for vehicles and the view of southbound drivers looking for pedestrians on the northwest corner of the intersection.*

In upholding the liability of the City and the Telephone Company the court gave the following reasons:

[52] *There was ample evidence to support the finding that the pole was a contributing cause of the accident. There was evidence that the pole presented a hazard known to both Telus and Campbell River that they had failed to remove. The learned trial judge found that had the pole not obstructed his view, Mr. Simpson would have been able to see and would have seen Mr. Baechler's vehicle approaching. Telus and Campbell River have not established any error with respect to that factual finding. Mr. Simpson's failure to see oncoming traffic when he had the opportunity to do so does not render "irrelevant" the fact of his view's being obstructed by the hazardous utility pole as he waited to cross the street. I would not disturb the finding of the trial judge that the utility pole was a cause of the accident.*

When frivolous lawsuits are reported the cases are worth taking a detailed look at. In this case there was compelling pre accident evidence that the pole "obscured pedestrians from view of drivers" and that this created a hazard with "relatively high" "pedestrian involvement" yet to save about \$3,000 this known hazard was not moved!

Don't always believe the headlines that summarize lengthy legal proceedings in a sound bite. Surly there are frivolous cases out there but decisions such as this one show that things are not always as they first appear. This case also illustrates that the discovery powers given to litigants in the BC Supreme Court can go a long way in uncovering blameworthy conduct which is not so apparent at first glance.