



Case Commentary: *Parsons v. Finch* [2001] B.C.J. No 2732 (B.C.S.C.): Determining the Liability of a Municipal Government for Failure to Inspect

Grant H. Mayovsky
February 6, 2002

This decision pertains to the summary judgment application of the City of Richmond to have the plaintiff's claim in negligence against the City dismissed.

The Plaintiffs, Mr. and Mrs. Parsons, had decided to build their own house on a piece of land they owned. Mr. Parsons designed the house and acted as the general contractor for the project. When the Parsons applied to the City for a building permit, the by-law inspector noted that the soil conditions for the property were poorly suited to the construction of building foundations. The matter was passed on to the code engineer for the City and the code engineer requested that the Parsons provide a geotechnical soils investigation report and foundation design. The Parsons had the required report prepared by a professional engineer and the City took no issue with the content of the report and as a result, a building permit was issued and the house was built. Unfortunately, the settlement of the house exceeded one foot and as a result the Parson's suffered consequential damages.

The City of Richmond did not employ a geotechnical engineer. The practice of the City was to use a geology surface map to identify sites of proposed buildings where the soil conditions were poor. In these cases, the owner would have to do as the Parsons did, and obtain their own geotechnical engineering analysis of the soil and submit it to the City. The code engineer



BORDEN
LADNER
GERVAIS

would then review the report to ensure that it appeared to address the questions that needed to be answered.

In the Parson's case, the City's code engineer was not qualified as a geotechnical engineer and he did not inspect the soil conditions at the property, nor form any opinion about them. However, his evidence was that the soils report had covered all the necessary issues that had to be addressed, namely:

- the types of subsurface soils;
- the bearing capacity of the soil;
- the expected total and differential settlement;
- whether the construction could be on fill; and
- how the soil should be prepared for the foundation.

Therefore, as a qualified engineer had prepared the report, from the code engineer's point of view, the application was in order and the building permit could be granted.

Having found that the City owed the Parsons a duty of care, the Court applied the reasoning in *Just v. B.C.* (1989), 41 B.C.L.R. (2d) 350, in order to determine whether there were any considerations which ought to have negated the City's duty of care. On this point the Court held:

"Where the defendant is a municipal government and the alleged negligence is grounded in a failure to inspect, it must be determined whether the failure resulted from a true 'policy' decision or one which was merely 'operational'. The latter may attract tort liability; the former will not."

In applying this principle, the Plaintiff's claim against the City was dismissed. The Court found that it was an economic policy decision of the City not to hire its own geotechnical engineer to provide soil reports and inspections.



On this basis, the City's code engineer was found to have a very limited operational mandate:

“... although Richmond owed a duty of care to Mr. and Mrs. Parsons, the scope of that duty was limited. Richmond owed a duty to ensure that, before a building permit was issued, the City was presented with a report prepared by a licensed and insured geotechnical engineer which appeared to address the question of poor soil conditions. Defects in the report which were, or should be, apparent on its face to a person lacking any geotechnical engineering training or experience should be identified by Richmond's code engineer. A failure to identify such a defect might ground a finding of negligence against the City. Defects which, because of their technical nature, could only be recognized by those with geotechnical expertise, or defects which could be identified only by a chain of inquiry reaching back behind the report to the preparatory work upon which the geotechnical expert relied, are not defects which the City has a duty to identify and address.

This decision is particularly pertinent in light of the increasing governmental trend in Canada to privatize and delegate responsibilities. The future may find that municipal governments may delegate large areas of their past mandates and responsibilities to outside professionals. It will be the role of future courts to decide how they may want to limit the principle in *Parsons* in these situations.