Date of Release: December 4, 1991 No. S2566
Duncan Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:	)	
	)	
ELIZABETH MARY PASTUCK	)	
	)	REASONS FOR JUDGMENT
PLAINTIFF	)	
	)	OF THE HONOURABLE
AND:	)	
	)	MR. JUSTICE MURPHY
THE VILLAGE OF LAKE COWICHAN	)	
	)	
DEFENDANT	)	

Donald E. Taylor — counsel for the plaintiff
David G. Perry — counsel for the defendant
Heard in Victoria, B.C. — Sept. 11, 12, 13, and Nov. 25, 1991

The 42-year old plaintiff claims damages from the defendant Village for injuries she sustained in the early morning of February 23, 1990, when she slipped and fell in snow or ice and seriously injured her right ankle.

North Shore Road runs west and east. Park Road runs into North Shore Road from the southwest. In addition to this, Park Road is slightly lower than North Shore Road so that there is a slight decline from North Shore Road to Park Road.

Up until 1988 North Shore Road was part of the provincial roadway system and it was maintained by the provincial government. In that year the provincial government gave the road to the Village

which agreed to take it over on condition that the provincial government pave an additional ten feet on the south side of North Shore Road. At that time the paved portion of the roadway on the north side was ten feet in width. The provincial government paved a further ten feet to the south and extended the paving around the corner into Park Road. Prior to that, the entire area on the south side of North Shore Road consisted of gravel extending around the corner until it met the asphalt on Park Road.

On completion of the paving, the sidewalk on Park Road abutted the asphalt. There were no curbs, which meant a pedestrian would have to step up or down when approaching or leaving the sidewalk. The Village removed a 5 ft. chunk or slab of the sidewalk and filled the area in with gravel.

It will be readily apparent that when it rains or snow melts, the water runs down from North Shore Road at the intersection into Park Road. A grassy shallow ditch runs along the northwest side of Park Road, between the asphalt and the sidewalk to a drain further along Park Road. The plaintiff's house is on the north side of North Shore Road, directly opposite the end of the sidewalk on Park Road.

It had snowed several days before the plaintiff's fall. The Village caused all of the roadways to be ploughed. It sanded and salted the main roads and the side streets approaching the main

roads on a slope. The Village also cleared all sidewalks including the sidewalk mentioned above and, in addition, placed salt on sidewalks in the main commercial centre of the Village. The areas outside of the main commercial area were not salted or sanded. The area of North Shore Road and Park Road is not within that commercial area and consequently neither the sidewalks nor the roadways were salted.

The person who did plough the area in question was not called as a witness by the Village. Mr. Miller, the Public Works superintendent who at the time was the Public Works foreman, indicated that the method of ploughing would be to proceed in a easterly direction along North Shore Road and to drop the snow from the blade as the plough approached the sidewalk area at the corner, so that by the time the plough reached the intersection of Park Road beyond the grassy ditch it could turn and proceed southwest along Park Road. At that point there would be no snow on the blade but as the plough proceeded along the snow would pile up on the blade and then be pushed to the side of the road.

The result was that there would be some snow in front of the end of the sidewalk at North Shore Road and none adjacent to the commencement of the sidewalk on Park Road. As the plough moved further down Park Road and picked up snow the snow would then be pushed to the side. This would leave an opening not immediately in front of the sidewalk for anyone crossing North Shore Road to reach

the sidewalk from the plaintiff's house, but to that person's left. In other words the person would either have to climb over the snowbank or walk around to the left and approach the sidewalk from there.

In 1991 the Village had sufficient funds in its treasury to complete the restoration program begun by the Provincial Government along North Shore Road. The area which formerly consisted of gravel in front of the end of the sidewalk had asphalt applied. In addition, a catch basin was installed to the right of the sidewalk (as one crosses North Shore Road as the plaintiff did) with a pipe underneath it to catch the water coming from North Shore Road and funnel it into the grassy ditch and along to the drain on Park Road. The catch basin and pipe of course were not there at the time of the fall.

Following the snowfall and the ploughing, temperatures rose during the day and the snow melted. The water from the melted snowbank along the south side of North Shore Road ran down around the corner onto Park Road and, as well, into the ditch running along the sidewalk on Park Road. As the temperatures dropped below freezing at night the running water gradually slowed and stopped and created black ice on the roadway.

On the morning in question the plaintiff was assisting her son to deliver his newspapers. She left her house at approximately

6.45 a.m. when the roads were still icy. She delivered one paper. She then proceeded directly across North Shore Road intending to continue down the sidewalk on Park Road to deliver a paper several yards further along. She said she climbed over one snow bank, the height of which she was unable to estimate but said that she was able to step over it. She stepped over another snowbank, lost her footing and fell. Her cries for help were heard by two of her neighbours, Mrs. Duffill and Mrs. Simison, who came to her assistance.

The plaintiff has lived in the Village of Lake Cowichan for a number of years and would be well aware of the method of ploughing the streets following a snowfall and that it would create conditions of black ice in asphalt areas no longer covered by snow, when conditions of alternate freezing at night and thawing in the daytime pertained. She said that there was ice on the sidewalks on the roadway outside her home in previous winters, and that she made no complaint to the authorities. Her footwear that day consisted of high top runners. She testified that they had very good tread -they were heavier and more durable than others.

Aside from the fact that the plaintiff and the two ladies who assisted her described the morning as being extremely cold, which in itself would be indicative of conditions of black ice and icy snow, the evidence as to the location of the windrows or piles of snow in the area where the plaintiff fell is unsatisfactory. I do

not say this by way of criticism, as none of the people involved that morning would have had it in mind that they would be called upon two years later to give evidence about the road conditions. When reviewing these conditions whatever they may have been, it must be borne in mind that the plaintiff had already delivered one of the papers so that she would be aware, generally speaking, of the prevailing hazardous surface.

Photographs that were introduced into evidence were taken at the time when there was no snow on the roadway. There are no photographs of the area in question showing the actual condition of the area at the time of the accident. It is therefore somewhat difficult to visualize the conditions of the area from the photographs without the addition of snow and ice. In addition to this, I am unable to pinpoint with any degree of accuracy the exact area in which the plaintiff fell, except to say that she had obviously not reached the sidewalk. It is also difficult to say whether she fell in the area from which the end of the sidewalk had been removed.

My notes of the plaintiff's testimony indicated that she said there was snow on the ground; it was packed, icy snow; and that a few days had elapsed since the last snowfall. She couldn't remember if there was any ice at the corner. She agreed that when the snow melts during the day, ice forms overnight along Park Road, and that this was the situation in the area of the accident. She

said there was snow lying around, there was snow and ice everywhere, and that there was snow piled along Park Road and North Shore Road and that the snow came to a "V". She said there were two piles of snow. She said North Shore Road was icy, but that she was very careful as she crossed over. The road slopes down to Park Road, and everything was icy. She said a pile of snow came out from the sidewalk area onto the middle of Park Road.

Mrs. Duffill, one of the persons who attended on the plaintiff after she fell, has lived on North Shore Road for twenty-one years. She said snow was piled along the side of North Shore Road and Park Road, and that it was piled at the corner of the sidewalk. She said one couldn't really get to the sidewalk, one had to climb a bank of snow to get to the sidewalk. She could not say how high the bank of snow was. She said that a Dr. Tisdale arrived and that he was sliding as he was trying to get to the plaintiff. She said that it was very black ice in the area where the plaintiff was lying, and that she knew ice was there because the day before she had had to climb over the bank of snow and could see that it was icy. She said she could not see gravel because there was snow piled up. She said there was no gravel in the area of the sidewalk before the snow fell. She said there was no gravel on the road, otherwise she would have walked on it. She said they were always throwing gravel around, but there was none thrown around that year, but she didn't complain to the Village. She stated the day before she had climbed over the snowbank on North Shore Road and walked on

the grassy area adjoining the sidewalk to her right on Park Road because the sidewalk was slippery.

Mrs. Simison, the other neighbour who attended on the plaintiff, said the plaintiff was sitting with her legs extended towards the sidewalk. She said the plaintiff was located in the gravel area between the sidewalk and the asphalt area. She said there was a large pile of snow 3 ft. high to the right of the sidewalk as one walks towards the sidewalk. She said there wasn't a long line of snow at all. She said she did not remember any snow on Park Road. She said there was ice on the road to the left of the sidewalk and down Park Road. She described the pile of snow as being 2-1/2 ft. to 3 ft. high. She referred to the doctor arriving, but said nothing about any difficulty he experienced.

Mrs. Simison said that she only recalled one pile of snow to the right of the snowbank as one crosses North Shore Road from north to south. Mrs. Duffill said the snowbank extended only part-way across the front of the sidewalk, whereas the plaintiff said it extended across the sidewalk and into Park Road. Mrs. Simison said that the plaintiff was located in the gravel area between the sidewalk and the asphalt, whereas Mrs. Duffill said that it was very black ice in the area where the plaintiff was lying. This would indicate to me that she was in the asphalt portion of the roadway, and not the gravel portion.

I find that the plaintiff knew that the streets were icy, whether from snow or black ice is difficult to tell; that she crossed North Shore Road from north to south in line with the end of the sidewalk on Park Road, intending to walk down the sidewalk to deliver the paper. There were two banks of snow in front of her of a height that she was able to step over. She stepped over the first and then over the second. It was this second manoeuvre that caused her to slip on the icy conditions caused by alternate thawing and freezing, and she fell injuring her ankle. If she had walked around to her left or approached the sidewalk in an area which was free from snow, she would have been in an area of black ice as testified to by Mrs. Duffill, but certainly not any more dangerous than the area in which she crossed North Shore Road, except for the fact that she would have been walking on a slight downward slope. However, the Village is not responsible for the geographic area or the slopes and contours in which the Village is located.

Even if asphalt had been placed over the area in question, this would still not have prevented snow melting in front of the sidewalk from gathering on the asphalt surface and freezing at night with the drop in temperature. Circumstances involving high temperatures during the day causing the snow to melt and below freezing temperatures at night, causing water to freeze, is something that no governing body can prevent.

There is no evidence of any complaints in the past when similar conditions existed in the area. Mrs. Simison testified that because she was concerned for an elderly gentleman who walked his dog in the area, she telephoned the Village and told them that the plaintiff had fallen. Later on that same day she noticed a woman, presumably an employee of the Village, putting a sand and salt mixture on the area.

The Village did provide additional salting in all areas of the Village and on side streets approaching main roads on a slope. However, the slope in the area of Park Road and North Shore Road is of such small magnitude that it would not have caught the attention of the Village authorities.

As part of his submissions, Mr. Taylor, counsel for the plaintiff, submits that the Occupiers Liability Act (R.S.B.C. 1979, c. 303) applies and therefore the Village owes to the plaintiff the duty as therein set out. He submits that the area in question where the plaintiff fell is a street crossing and not within the exemption provision of the Act. Section 8 reads:

Crown bound

8. (1) Except as otherwise provided in subsection (2), the Crown and its agencies are bound by this Act.
(2) Notwithstanding subsection (1), this Act does not apply to the Crown in right of the Province or in right of Canada or to a municipality where the Crown or the municipality is the

> occupier of a public highway or public road or a road under the Forest Act or the Private Roads Act, 1963, or to an industrial road as defined in the Highway (Industrial) Act."

He refers to the decision of the Honourable Judge Cooper (now Mr. Justice Cooper) in Thorimbert v. The Corporation of the City of Trail (Rossland Registry, File No. S000241, October 12, 1988). Cooper, J. held that a municipal sidewalk does not fall within the term "public highway or public road" and that the exemption in s. 8 of the Act does not apply.

Mr. Taylor points out that under s. 649, Part 16, of the Municipal Act, R.S.B.C. 1979, chapter 290, "sidewalk" is defined as including "...a footway and a street crossing". He submits that as the sidewalk on Park Road was ploughed, this was an invitation to pedestrians to use the sidewalk. The plaintiff, when crossing from her home on North Shore Road to the sidewalk on Park Road, was on a street crossing and hence on a sidewalk within the meaning of the Municipal Act. I do not think it is that simple. The question is, what is a street crossing as that term is used in the Municipal Act. That question has been the subject of several decisions in the past.

In the Supreme Court of Canada in The Corporation of the City of Kingston v. Drennan (1897) 27 S.C.R. 46, and the Ontario Court of Appeal in Ince v. City of Toronto (1900) 27 O.A.R. 410; (190l)

31 S.C.R. 323, a crossing was held to be a sidewalk. In a later decision, Morrison v. The City of Hamilton [1939] O.R. 349, Robertson, C.J.O. held that the crossing in that case was not a sidewalk within the meaning of s. 480 of the Ontario Municipal Act. Section 480 (1) requires the municipality to keep every highway in repair, and that in the case of default, the corporation is liable for damages sustained by any person by reason of such default. Section 480 (4) provides that no action shall be brought for the recovery of such damages unless notice in writing of the claim has been served within ten days (in certain cases seven days) after the happening of the injury. Section 480 (5) provides that failure to give notice, except where injury is caused by snow or ice upon a sidewalk, is not a bar to an action if the Court is of the opinion that the municipality is not prejudiced. In Morrison, the plaintiff had fallen on a crossing in the City of Hamilton, which was alleged to be out of repair. The required notice had not been given.

One of the issues before the Appeal Court of Ontario in Morrison was the contention of the City of Hamilton, the appellant, that the crossing in question was a sidewalk and that there was no power to relieve against the failure to give notice. At pps. 351, 352, Robertson, C.J.O. stated:

> Appellant relies upon the decision of the Supreme Court of Canada in City of Kingston v. Drennan (1897), 27 S.C.R. 46, and also upon the case of Ince v. City of Toronto (1900), 27 O.A.R. 410; (1901), 31 S.C.R. 323. In the former case the municipality had built a

> granolithic crossing in line with the sidewalk on each side of Princess Street, on which the accident occurred. The surface of the crossing was on a level with the sidewalk, except that the crossing sloped down from the centre on either side, no doubt to facilitate vehicles in getting over it. The crossing was, however, placed there for the use of pedestrians and not as any part of a surface covering of the roadway. Whether there was any surface covering on the roadway does not appear from the record, but there probably was none, for the sidewalks proper are constantly referred to as "the pavement on Princess Street." In the Supreme Court of Canada this crossing was held to be a sidewalk. I think the decision, however, is a decision upon the circumstances of that case and has reference only to crossings constructed for the special use of foot passengers walking up and down the street on which they are laid.
>
> The crossing which was in question in the case of Ince v. Toronto, supra, was also a crossing specially laid for the use of pedestrians. The judgments do not describe its particular character, but a reference to the record shows that the crossing was specially laid as a crossing for pedestrians. It is spoken of as "a stone and scoria brick crossing". It was put down some time before, and independently of, the asphalt pavement which covered the roadway. This case simply followed the case of City of Kingston v. Drennen (1897), 27 S.C.R. 46, in so far as it held that the crossing in question was a sidewalk within the meaning of the statute.
>
> The crossing here is of an entirely different nature. It is simply that part of the ordinary roadway for vehicular traffic which lies between the ends of the concrete sidewalk on the west side of John Street at its intersection with Main Street at this point. The pavement is of asphalt, with the centre portio, where there are street car tracks, filled in with stone setts. There is also, near the place where respondent fell, a small section paved with brick, where there is a grating for surface drainage. In every respect the crossing is part of the roadway and there is nothing whatever to distinguish it as set apart for the use of pedestrians.

In Ransome v. City of Woodstock (1968) 3 D.L.R. (3d) 507 (Ontario High Court), another failure to give notice situation, Pennell, J. was asked to determine a preliminary point of law. The

question was whether the notice provisions relating to repairs to a highway as defined in the Municipal Act, R.S.O. 1960, c. 249, included a sidewalk. At p. 508 Pennell, J. stated:

> Counsel for the plaintiff sought assistance from the judgment in the case of Morrison v. City of Hamilton, [1939] O.R. 349, [1939] 3 D.L.R. 159, and the observations of the Court as to the distinction between a "sidewalk" and a street crossing. In the course of his judgment, Robertson, C.J.O., examined the decisions in two other cases, namely City of Kingston v. Drennan (1897), 27 S.C.R. 46, and Ince v. City of Toronto (1900), 27 O.A.R. 410; affirmed (1901), 31 S.C.R. 323.
>
> I do not read the judgment in Morrison v. City of Hamilton, supra, as I gather that the learned counsel for the plaintiff does. In my respectful opinion, the conclusion to be drawn from the judgment is that it is always a question of fact having regard to the nature of the crossing whether it is or is not a sidewalk within the meaning of the section. It seems to me, with respect, that it is a necessary inference from the judgment in the Morrison v. City of Hamilton case that a sidewalk is that portion of the street set apart for the use of pedestrians.
>
> It is not without its importance to notice how consistently this meaning has been maintained throughout the Municipal Act. By way of illustration, I refer to s. 459 (1) (e):
>
> 459. (1) The council of every municipality may pass by-laws,
> (e) for setting apart and laying out such parts as may be deemed expedient of any highway for the purpose of carriage ways, boulevards and sidewalks, and for beautifying the same, and making regulations for their protection;
>
> The same meaning is to be inferred from the language of s. 377, para. 54, thus expressed:
>
> 377. By-laws may be passed by the councils of all municipalities:
> 54. For prohibiting carriages, wagons, bicycles, sleighs and other vehicles

> and conveyances of every description ... being upon, or being used ... along or upon, any sidewalk ... used by or set apart for the use of pedestrians and forming part of any highway or bridge ...
>
> In my respectful opinion, in determining the question before the Court, I have to collect the meaning not merely from the words of the particular section, but also from a comparison of its several sections.
>
> I am, therefore, of the opinion that, assuming the plaintiff proves all of the facts alleged in paras. 1 through 6 of the statement of claim, the action is still barred by s. 443 (2) of the Municipal Act.

In other words, he found that a sidewalk was included in the term "highway" as used in the Act.

Section 649 of the British Columbia Municipal Act referred to by Mr. Taylor is the first section under Part 16 headed "Local Improvements Division (1) - General" of the Act. It provides:-

> **Interpretation**
> **649.** In this Division ...
> "sidewalk" includes a footway and a street crossing;

Section 651 provides:-

> (1) The following works may be undertaken by bylaw by the council of a city, town or district municipality on the initiative of the council, or by petition, as local improvements: ...
>
> (e) constructing a curbing or a sidewalk in, on or along a street, including retaining walls incidental to it;

Section 650 provides:

> **650.** The council, by bylaw adopted with the assent of the electors and the approval of the minister, may provide that all or any words which may be undertaken as local improvements and not otherwise.

"Work undertaken" is defined in s. 649 to mean "a work undertaken as a local improvement". Section 668 (1) of the Municipal Act provides:-

> **668.** (1) After a work undertaken has been completed, it shall during its lifetime be kept in repair by and at the expense of the municipality.

There is no evidence that work was ever undertaken as a local improvement with respect to the area on North Shore Road which was traversed by the plaintiff. Consequently, the inclusion of a "street crossing" in the definition "sidewalk" does not apply. With respect to the area in question, therefore, I adopt the words of Robertson, C.J.O. in Morrison in the last paragraph quoted from his Judgment referred to previously.

Section 668 (2) provides:

> **668.** (2) Nothing in this Division relieves the municipality from any duty or obligation to which it is subject, either at common law or under this Act or otherwise, to keep in repair the highways under its jurisdiction, or impairs or prejudicially affects the rights of any person who is

> injured by reason of the failure of the municipality to discharge that duty or obligation.

Subsection (2) simply means that nothing set out in that Division of the Act (local improvements) derogates from the duty or obligation of a municipality at common law or under the Act or otherwise to keep in repair the highways under its jurisdictions. Counsel have not indicated to me any other section in the Act that would have application, consequently, I look to the common law. To state that this area of the law is fraught with difficulty is to state the obvious.

In this area of the law, Courts will not review negligence with respect to policy matters, whereas it will with respect to the implementation or operation of that policy, provided the authorities exercise of discretion in formulating the policy was done in good faith. The ordinary principles of negligence, however, are applicable with respect to the operational stages of that policy: (Just v. R. in Right of British Columbia (1990), 41 B.C.L.R. (2d) 350 (S.C.C.).

In Just, a boulder above the highway rolled down and struck a car injuring one of the occupants and killing the other. It was held at trial and affirmed by the British Columbia Court of Appeal that the Crown's system of inspection fell within the area of policy and did not need to be reviewed by the Court. However, Cory, J. in the Supreme Court of Canada, held that the manner in

which the Crown's inspection system was carried out fell clearly within the operational phase. This decision appears to have narrowed or reduced the policy aspects to decision whether to do something or not. The carrying out of that policy falls into the operational phase notwithstanding that the carrying out of the operation may in itself involve policy decisions involving budgetary and other restraints or other discretionary matters. The dividing line between the two is often very difficult but in the operational aspect, the Court is entitled to consider financial and other constraints under which the government body operates.

The foregoing analysis with respect to Just is a paraphrase of pps. 195 and 196 of Tort Law by Lewis Klar which, I think, correctly reflects the approach to be taken in situations involving government bodies.

I consider that the defendant made two policy decisions with respect to the area in which the plaintiff fell. The first was to do something about the "step" created by the edge of the end of the sidewalk being higher than the asphalt paving of the provincial government. The funds available and how it was carried out as previously described constituted the operational aspect of this activity based on the decision in Just.

I cannot conclude that the actions of the Village in removing a slab or chunk of the sidewalk and filling in the area with gravel

so as to create a gradual transition between the sidewalk and the asphalt was negligent. Mr. Taylor suggested to Mr. Miller in cross-examination that the action of water running around the corner from North Shore Road to Park Road over a period of time would wash the gravel away. Mr. Miller conceded that it would, but that it would have been filled in from time to time. There is no evidence that it was in fact filled in, nor for that matter that it wasn't. Furthermore, there was no evidence as to the effect of the snowfall and subsequent ploughing and the alternate freezing and thawing had on it. I can't determine what part the presence or absence, or partial absence, of gravel fill in the area played on the plaintiff's fall. As previously mentioned, it's not even clear from the evidence where the plaintiff fell.

The second policy decision was the decision to plough the streets and sidewalks. Funds for this purpose were provided for in the budget. Based on the availability of these funds, the Village carried out ploughing and the salting and sanding in the manner previously described. I do not find that the Village was negligent in the implementation of the program that it adopted. It is not unusual that the downtown area or commercial section or core of a city is completely cleared of snow as in this case, and that outlying areas, as in this case, were not and that no sanding or salting program is carried out in the outlying areas. It is not unusual to find programs of this nature in even the most affluent of towns or cities.

The other facet of the implementation of the program was the manner in which the streets were ploughed. In this respect, Mr. Taylor submits that I should draw an adverse inference in the fact that the person who ploughed the area in question and who is still an employee of the Village was not called as a witness. I decline to draw any adverse inference in this respect, as that person would be unable to give any evidence as to the condition of the streets at the time the accident occurred. From the evidence that there was snow in front of the edge of the sidewalk on Park Road, I infer that the plough operated in the manner described by Mr. Miller. As mentioned previously, the effect of that is to leave some snow piled in front of the edge of the sidewalk so that anyone crossing North Shore Road towards the sidewalk as the plaintiff did, would have to step over the pile created by the snowplough. However, entry to the sidewalk could be gained by walking around and walking in at an angle. If the plough lifted its blade prior to reaching the sidewalk and dropped the snow, it would then have to proceed around the turn without picking up snow, which would leave an area of snow on the highway. On the other hand, by proceeding directly across the entrance to the sidewalk, dropping the snow and making a right angle turn to proceed along Park Road as mentioned, there is snow on the blade to begin with and it gradually piles up and leaves an area for entrance to the sidewalk and also clears all the snow from the highway. I cannot conclude that there is anything negligent in that operation. The Village ploughed the streets in this area and as well cleared the sidewalks. In situations such as

this, it is not unusual for pedestrians to have to deviate from the normal paths in crossing the street or to step over piled snow, which is what the plaintiff did in this case.

The ploughing of the highway by the Village causing snow to be piled along the edge of the roadway, combined with alternate freezing at night and thawing during the day causing icy snow on the flat surface of the road or black ice to form in areas where the roadway has been completely cleared, produces hazardous conditions over the width and breadth of the entire roadway. Even a sidewalk which has been cleared of snow, is hazardous during freezing temperatures. The only way the Village could prevent the resultant conditions as described to the highway would be to clear the snow off completely and dispose of it, as it apparently does in the commercial areas. However, the fact that the Village, in this case with a population of approximately 22,000 and a somewhat limited budget for snow, and considering all of the other budgetary expenses it has to meet, cannot be said to be negligent with respect to its snow removal operations when it confines total removal to the core or downtown centre, or to put it another way, to the more heavily populated or travelled areas.

I have no doubt that the slope of the road downwards from North Shore Road to Park Road, coupled with icy snow and ice, contributed to her fall. However, differing contours in roadways in any city or town are not uncommon. The evidence is that no-one

had ever complained to the Village prior to this accident of that area of the roadway being particularly hazardous when it snows followed by a freeze.

As previously mentioned, I cannot conclude from the evidence before me that there was any negligence on the part of the Village, in ploughing the roads and clearing the sidewalks bearing in mind budgetary restraints in the implementation of the extent of ploughing and salting in the Village on both the streets and the sidewalks, or the method of ploughing followed in that area of the Village where the plaintiff was injured.

The plaintiff's action is dismissed. The Village is entitled to its costs on Scale 3 if it insists on collecting same.

"K.C. Murphy, J."

December 3, 1991
Victoria, British Columbia