

SMALL CLAIMS DIVISION

FILE NO: SCA 1428

PORT ALBERNI

OCT 19 1990

REGISTRY

BETWEEN

ANNIE C. HARRINGTON

AND

THE CITY OF PORT ALBERNI

BEFORE HIS HONOUR JUDGE

ON THE 14th DAY OF

W.E. MACLEOD

JUNE, 1990

REASONS FOR JUDGMENT

The Plaintiff Annie Harrington claims damages for injuries sustained from a fall on a sidewalk. The incident happened November 2, 1988 as stated in the claim, she "tripped over a disruption on the City sidewalk". As a result of the fall, the Plaintiff sustained injuries to the left wrist. The Plaintiff has lived at 3752 Wallace Street for a number of years and it appears she and others would walk the sidewalk regularly.

The Plaintiff attended to Dr. Muellenberg on October 27, 1988 and he was advised by the Plaintiff that she had fallen on the sidewalk the day before. X-rays were taken.

On January 12, 1989, the Plaintiff gave notice under Section 755 of the Municipal Act of the injuries and incident in question. The Plaintiff was unrepresented and not aware of the limitations until shortly before service of the notice. Counsel for the Defendant made application for dismissal of the claim stating Section 755 notice requirements had not been met. I dismissed the application and the trial took place.

As a result of the notice of January 12, 1989, the Defendant responded to the notice and inspected the sidewalk of 3880 Wallace Street and found "two minor spots and a crack in front of 3880 Wallace Street." The spots and crack were filled with repair compound.

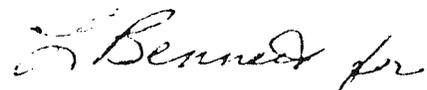
The sidewalk in question runs from 10th Avenue to 21st Street and according to the notice by the Plaintiff is "in poor shape". The Plaintiff was an experienced walker and had used the sidewalk numerous times and would be aware of the driveways crossing the sidewalk as well as the state of the sidewalk.

If the sidewalk was in the disrepair as alleged, then regular users would be taking greater care while walking. If that is the case, I can only conclude the Plaintiff was taking a proper lookout while walking the area.

This was an unfortunate incident resulting in serious injury. From the evidence I am unable to hold the Defendant liable.

ACTION DISMISSED.

DATED 19th day of October, 1990.



W. E. Macleod, P.C.J.