

Court of Appeal for British Columbia

ORAL REASONS FOR JUDGMENT:

Before:

The Honourable Mr. Justice Carrothers	November 22, 1994
The Honourable Mr. Justice Gibbs	
The Honourable Mr. Justice Finch	Vancouver, B.C.

BETWEEN:

JACQUELINE PEARSON

PLAINTIFF
(RESPONDENT)

AND:

CORPORATION OF THE DISTRICT OF MAPLE RIDGE

DEFENDANT
(APPELLANT)

P.G. Altridge	appearing for the Appellant
T. Watkins	appearing for the Respondent

- 1 **FINCH, J.A.:** The plaintiff, a 66 year old woman, was injured on 12 April 1991 when she fell on a public sidewalk in Maple Ridge, British Columbia. She alleged the cause of her fall to be one of several traffic cones which lay on the sidewalk in a haphazard fashion obstructing passage on approximately one-half the width of the sidewalk.

2 The plaintiff was aware of the presence of the cones but in passing among them or by them she apparently stepped on one or tripped over one, causing her to fall. The learned trial judge found that the traffic cones were the property of the defendant Municipality. He found that the cones had been thrown or strewn on the sidewalk by an employee of the Municipality. He found that the presence of the cones on the sidewalk constituted a breach of the defendant's duties under s.3(1) of the *Occupiers Liability Act*, R.S.B.C. 1979, c.303. So he held the defendant Municipality to be liable.

3 The trial judge also found the plaintiff to be contributorily negligent in failing to exercise proper care for her own safety. He apportioned fault 60 percent against the Municipality and 40 percent against the plaintiff.

4 The defendant says that the learned trial judge erred in three respects. First it says he erred in finding as a fact that the defendant was responsible for the placement of the traffic warning cones. Secondly, the defendant says the judge erred in finding that the placement of a traffic warning cones, seen by the plaintiff, and blocking only half of the sidewalk, constituted a breach of the provisions of the *Occupiers Liability Act*. Thirdly, the defendant says that if it is liable for the placement of the

warning cones the judge erred in apportioning only 40 percent of the fault to the plaintiff.

5 In presenting this appeal, counsel for the defendant said that it raised an important question of principle. In my respectful view all three of the questions raised and argued by the defendant are questions of fact. The issue of fact as to whose cones they were was found against the defendant. The trial judge drew an inference that they were the defendant's cones because the defendant was doing work in the vicinity.

6 The trial judge found that the defendant was negligent in leaving those cones on the sidewalk so as to obstruct about one-half of the sidewalk, or put another way that the defendant was in breach of his duty under the *Act*. And as I have said, he apportioned liability. In my view, those are all questions of fact for which there was evidence, or at least there was evidence that would permit the learned trial judge to draw inferences that would enable him to make those conclusions. I can see no basis upon which I would be prepared to interfere with those findings.

CARROTHERS, J.A.: I agree.

GIBBS, J.A.: I agree.

CARROTHERS, J.A.: The appeal is dismissed.

"The Honourable Mr. Justice Finch"