

**Allen v. Frith**, [1941] 1 D.L.R. 53 (Man. C.A.);

**Clarke (H.F.) Ltd. v. Thermidaire Corp.** (1973), 33 D.L.R.(3d) 13 (Ont. C.A.); and

**Peter Pan Drive-In Ltd. v. Flambro Realty Ltd.** (1978), 93 D.L.R.(3d) 221 (Ont. H.C.)

Jodie Mable Ruth Reimer  
(plaintiff) v. The Rural  
Municipality of Ste. Anne and  
the Government of Manitoba  
(defendants)  
(Suit No. CI 91-01-59247)

**Indexed As: Reimer v. Ste. Anne  
(Rural Municipality) et al.**

Manitoba Court of Queen's Bench  
Jewers, J.  
August 15, 1994.

#### Summary:

The plaintiff was injured when the car she was driving struck a depression in a municipal road. She sued the municipality for damages, claiming the municipality was negligent in failing to properly maintain and repair the road.

The Manitoba Court of Queen's Bench dismissed the action.

#### Municipal Law - Topic 1805

Liability of municipalities - Negligence - Standard of care - Maintenance of streets and highways - A 26 year old mother was injured when the car she was driving struck a depression in a municipal road - She claimed that the municipality was negligent in failing to keep the road in good repair, post signs and inspect the road - The municipality did not know of the depression prior to the accident and

repaired it immediately after being notified - The municipality had a system of regularly grading the roads every ten days - The Manitoba Court of Queen's Bench held that the municipality was not negligent - The municipality rectified the problem quickly and effectively after notification and it had a regular system of grading and inspection that was not obviously inadequate - See paragraphs 3 to 16.

#### Cases Noticed:

**Brown v. British Columbia (Minister of Transportation and Highways)**, [1994] 1 S.C.R. 420; 164 N.R. 161; 42 B.C.A.C. 1; 67 W.A.C. 1, refd to. [para. 17].

#### Counsel:

J.I. Harasym, for the plaintiff;  
M.G. Finlayson, for the defendant the Rural Municipality of Ste. Anne.

This case was heard before Jewers, J., of the Manitoba Court of Queen's Bench, who delivered the following judgment on August 15, 1994.

[1] **Jewers, J.:** The plaintiff was injured when a car she was driving struck a depression in a municipal road in the defendant municipality, the Rural Municipality of Ste. Anne. She claims that the municipality was negligent in failing to keep the road in good repair, in failing to post signs that it was not in good repair, and in failing to adequately inspect the road to insure that it was in good repair. The defendant municipality denies these allegations.

[2] The only issue in the case is the liability of the municipality. Damages have been agreed upon. The action as against the defendant, the Government of Manitoba has been discontinued.

[3] The accident occurred on June 12, 1990

at about 9:45 p.m. The weather conditions were cloudy and dry. It was just starting to get dark.

[4] It happened on Municipal Road #37 north. The road is basically a trail made out of sand underneath and gravel over the top. It is a fairly heavily travelled road, used by gravel trucks and other traffic.

[5] The plaintiff, aged 26, resides in La-Broquerie and is a homemaker with three children and one expected. She was driving her Volkswagen Jetta along the road. She was the sole occupant of the car. She was travelling at a speed of 70 kilometres per hour, and understood that the speed limit was 90 kilometres per hour. She was very familiar with the road, having travelled it many times. She had just been to visit her mother-in-law, who lived nearby, and was on her way home. Suddenly she came upon a depression in the road which gave the car and her a rather severe jolt, resulting in personal injuries. She was able to continue her journey and drive the car home.

[6] The plaintiff alleges that the municipality failed to properly maintain and repair the road.

[7] There was no evidence as to precisely when the depression developed in the road. There was no evidence that any responsible official in the municipality knew of the depression prior to the evening of June 12, 1990. Mr. Barkman was called as a witness. He is the municipal counsellor for the ward in which the road is situated, and is responsible for looking after road maintenance in his ward. He said that he had no knowledge of the depression before the accident. He said that he did remember having received a phone call from somebody, either the night of the accident or the following morning, to notify him of the problem. I have no reason

not to accept - and I do accept - Mr. Barkman's evidence in this regard. Mr. Stanley Reimer, the plaintiff's husband, said that he telephoned Mr. Barkman the morning after the accident to tell him of the depression. The evidence is not clear as to whether Mr. Barkman was notified of the problem before Mr. Reimer's phone call. In any event, I find that Mr. Barkman knew about it no earlier than the previous evening. Mr. Barkman responded immediately and arranged for the depression to be repaired at once. This was done.

[8] I am not able to find that the municipality was negligent in failing to properly maintain and repair the road. There was no evidence that Mr. Barkman or any other responsible official in the municipality knew of the problem prior to the accident, and the evidence was that as soon as Mr. Barkman learned of the depression, the municipality rectified it quickly and effectively.

[9] The plaintiff further alleges that the municipality was negligent in failing to post warnings and signs about the depression. Since there was no evidence that the municipality knew of the condition, I find that this ground of negligence has not been proved.

[10] The plaintiff further alleges that the municipality did not have a proper and adequate system of inspection which would have enabled them to have learned of the depression in a timely way.

[11] The parties were agreed on the following: There are 3,810 persons living in the municipality; the municipality contains 265 miles of gravel roads; it spends about \$200,000 annually on the roads covering wages of two grader operators; the operation and maintenance of two graders; the contracting out of oiling, gravel hauling and

grass trim on the shoulders.

[12] The municipality has a system of regularly grading the roads every ten days.

[13] The municipal records show that the road was graded on June 1, June 4 and June 5. Mr. Barkman testified - and I accept - that, judging by the number of hours spent, the entire ward would have been graded between June 1 and June 4, and the road in question could have been graded as late as on June 5 prior to the accident. The records do not show which specific roads or parts of roads or areas were graded. They merely give the hours worked for the entire municipality.

[14] I would infer that the roads would be automatically inspected as they were being graded.

[15] Counsel for the plaintiff submits that the municipality should have been inspecting the roads more frequently than once every ten days. However, as counsel for the defendant observes, there was no evidence called as to what would have been a reasonable frequency and standard of inspection. There was no evidence of what other municipalities of comparable size did in this regard. The municipality did have 265 miles of roads to cover with two graders and two grader operators. If they had more graders and more operators perhaps they could have done better. But that would have been at taxpayers' expense, and the municipality was already spending \$200,000 annually on the roads.

[16] I am just not able to say, on the evidence presented to the court, that under all the circumstances, including the number and lengths of the roads to be covered and the money available to do it, the system of inspection was inappropriate or unreasonable or careless. The fact remains that there was

a regular system of inspection which was not obviously inadequate.

[17] Counsel for the defendant submits that his client's inspection system was really a matter of municipal policy and as such, beyond review or criticism by the courts, citing the recent decision of the Supreme Court of Canada in **Brown v. British Columbia**, [1994] 1 S.C.R. 420; 164 N.R. 161; 42 B.C.A.C. 1; 67 W.A.C. 1. However, because of my conclusion that no negligence has been proved against the defendant, it is not necessary for me to consider this further issue.

[18] In the result, the plaintiff's claim against the defendant municipality is dismissed with costs, if asked for.

Action dismissed.

Editor: Janette Blue/ham

Gary John Chalkley (applicant) v.  
Shona Chalkley (respondent)  
(Suit No. FD 94-01-38095)

**Indexed As: Chalkley v. Chalkley**

Manitoba Court of Queen's Bench  
Family Division  
Winnipeg Centre  
Goodman, J.  
August 25, 1994.

**Summary:**

A couple married in August 1990. The mother had a child by a previous relationship who was adopted by the father. In November 1990, they moved to England where a second child was born. The couple separated in 1994. The wife moved to Canada with the children. The husband applied for the return of the children to England under the Convention on the Civil