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## The Quebec Municipal Code and the degree of duty of a municipal corporation for the maintenance of its sidewalks in winter : Evolution in law \*

"One detects a tendency to be over-exacting with respect to the city ; to minimize if not to destroy completely the need for prudence on the part of the pedestrian and to exaggerate the city's role to the point of making it insurer of its pedestrians."

Thus wrote Mr. Justice Casey while dissenting in *Cité de Montréal v. Chapleau*<sup>1</sup> and thus he presents the argument that the municipal corporation cannot be expected to exercise "absolute" maintenance over its sidewalks during our northern, and after very inclement winters.

We have taken this dissent, as well as that of M. le juge Bissonnette in the same case, as being symptomatic of the evolution of thinking regarding municipal responsibility. Since *Chouinard v. City of Montreal*<sup>2</sup> in 1955 and in particular since the above dissents in *Cité de Montréal v. Chapleau* in 1960, there seems to be a more liberal jurisprudential interpretation of the "duty" of municipal corporations for the maintenance of their sidewalks in winter.

All authors are not unanimous in praise of this trend. The argument contrary to that of Casey J. is presented by Gertrude Wasserman<sup>3</sup> who, while discussing the obligation of a municipal corporation to act with dispatch in maintaining its sidewalks states that "the conclusion is inescapable that the term "dispatch" is being interpreted by the courts in a liberal fashion, in favour of the municipal corporations."<sup>4</sup> Wasserman is of the opinion that "From an ethical, as well as a legal viewpoint there is no sound basis for giving to a municipal corporation a privileged position as against the individual citizen."<sup>5</sup>

With all due respect, it is here submitted that the question is not of a privileged position for the municipality vis-à-vis the individual. Both from the viewpoint of recent interpretation of actionable negligence as well as from that of the exigencies of modern municipal administration, an overly severe interpretation of the municipal corporation's responsibility is unrealistic. Our thesis then is this : (1) that the court's attitude toward the municipal corporation's responsibility in the area under discussion is becoming more liberal, and (2) that this change is a realistic one. Our method of approach will be in Part I to trace the evolution of thinking in law, doctrine and jurisprudence before the Casey dissent and in Part II to analyze current jurisprudential thinking in the light of our thesis. It should be emphasized that we employ the dissent in *Cité de*

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<sup>1</sup> [1960] B.R. 1096 at p. 1101; see especially TASCHEREAU, J., in *Paquin v. La Cité de Verdun*, [1961] S.C.R. 100, at p. 102.

<sup>2</sup> [1955] B.R. 170.

<sup>3</sup> "The Responsibility of Municipal Corporations in the Province of Quebec for Sidewalks under their Control: a Critique", [1957] *R. du B.* 72.

<sup>4</sup> *Ibid.*, at p. 81.

<sup>5</sup> *Ibid.*, at p. 95.

*Montréal v. Chapleau* merely as an example realizing full well that there have been concurring decisions before 1960 and contrary decisions subsequently. Finally, we include consideration of the *Cities and Towns Act* and various charters with accompanying jurisprudence — for to trace any trend, a global view of municipal responsibility must be taken.

## PART I

### Responsability of Municipal Corporations, the Source and Evolution

#### Par. 1 - In Law

The basic texts of law governing our topic of discussion are arts. 453 and 478 al. 3 of the *Municipal Code*. Under the terms of the former article, every municipal corporation is bound to have the sidewalks (as well as roads, bridges and water-courses) under its control maintained in the condition required by law, by the procès-verbaux, by the by-laws and also by the deeds of agreement which govern them. It is further responsible for all damages resulting from the non-execution of such procès-verbaux, by-laws, deeds of agreement or provisions of law. To be considered also is art. 478 al. 3 *M.C.* which reads as follows :

“Les trottoirs doivent être également tenus en bon ordre, sans trous, ni embarras ou obstructions quelconques, et avec garde-fous aux endroits dangereux.”

A similar disposition appears in the *Cities and Towns Act* at art. 429 par. 20 and the principle is carried into the various individual city charters.

At this point, some orientation is required. There are two positions taken concerning arts. 453 and 478 al. 3 *M.C.* The first, suggested by Tellier<sup>6</sup> states that the words “dans l'état requis par la loi” refers to art. 478 al. 3. Hence, in the situation where there is no by-law concerning the clearing of snow, the municipality is still responsible for the safety of its sidewalks. The second position, supported in *Corporation du Village de Thurso v. Chartrand*<sup>7</sup> is that a municipal corporation under the regime of the *Municipal Code* is not obligated to pass by-laws concerning the clearing of snow from its sidewalks and if there is no such by-law the municipality cannot be held responsible. The decision in *Thurso v. Chartrand* has been somewhat challenged by a recent case, *La Corporation Municipale de Notre-Dame-du-Sacré-Cœur d'Issoudun v. Merina Desrochers-Olivier*<sup>8</sup> in which the Court of Appeal states that with or without a by-law the safety of its sidewalks and streets cannot be completely ignored by a municipal corporation. Let us continue for the moment then to consider the obligation created by arts. 453 and 478 al. 3 *M.C.*

Nadeau<sup>9</sup> and Wasserman<sup>10</sup> point out the obligation established of arts. 453 and 478 al. 3 *M.C.* was modified in 1935 by a text of law found in the *Municipal Code* at art. 453a (S.Q. 1935, c. 147) and in the *Cities and Towns Act* at art. 622 par. 7 (R.S.Q. 1941 c. 233) and which reads as follows :

“Nonobstant toute loi générale ou spéciale, aucune corporation municipale ne peut être tenue responsable des dommages résultant d'un accident dont

<sup>6</sup> *Code municipal*, p. 239.

<sup>7</sup> [1960] B.R. 1.

<sup>8</sup> [1968] B.R. 24.

<sup>9</sup> *Traité de Droit civil du Québec*, vol. 8, Montréal, Wilson et Lafleur, 1949, at p. 82.

<sup>10</sup> *Loc. cit. supra*, note 3.

une personne est victime, sur les trottoirs, rues ou chemins, en raison de la neige ou de la glace à moins que le réclamant n'établisse que ledit accident a été causé par négligence ou faute de ladite corporation, le tribunal devant tenir compte des conditions climatériques."

Hence, as Nadeau remarks, since 1935, "on ne peut admettre comme on l'avait fait parfois avant une sorte de présomption de faute" against the municipal corporation. Tellier states it this way, "L'art. 453a n'a été édicté que pour restreindre la responsabilité des corporations municipales et non l'accroître. Selon les dispositions de cet article le tribunal doit, dans le cas d'accident dont une personne est victime 'sur les trottoirs, rues ou chemins en raison de la neige ou de la glace' tenir compte des conditions climatériques, mais ces dispositions ne s'appliquent qu'aux accidents causés 'par négligence ou faute de la corporation' — *Corporation de Saint-Marc-des-Carrières v. Dussault*, [1958] B.R. 576."<sup>11</sup>

Here, then, in law is a movement toward alleviating the heavy responsibility of the municipal corporation. Such is the law, yet it does not tell us what degree of care is required. It is doctrine and especially jurisprudence which breathes life into a text of law through interpretation and so really to determine if there is an evolution taking place in our subject of study, we must look to the authors and courts of law. How do they interpret the condition "par négligence ou faute de la corporation" ?

## Par. 2 – In Doctrine

From the general point of view, Dwight Arven Jones in his work *Negligence of Municipal Corporations* points out that there are almost as many definitions of negligence as there have been writers on the subject. As his definition he offers: "A breach of the duty to exercise care, by which the one to whom the duty is owing suffers damage justly attributable to the breach of duty."<sup>12</sup> From this, the author establishes three essential features of actionable negligence:

- (i) a breach of the duty to exercise care;
- (ii) damage to the one to whom the duty is owing; and
- (iii) a causal connection between the breach of duty and the damage that makes the one justly responsible to the other.

In the province of Ontario it has been the law since 1894 that to be liable for injuries caused by ice and snow a municipality has to have been grossly negligent.<sup>13</sup> MacFee Rogers admits that the term "gross negligence" is not "susceptible of definition."<sup>14</sup> What can be said is that the standard of gross negligence required to establish liability in this instance is not the same as that required in a prosecution for criminal negligence.<sup>15</sup> All the circumstances surrounding a sidewalk case must be considered and as Rogers states, "It is a practical impossibility that all the relevant circumstances affecting the character or degree of the negligence involved should be the same in any two cases that may arise."<sup>16</sup>

In this province, as Wasserman points out, the liability of the municipal corporations arises from the *droit commun*, holding a person responsible for the damage caused

<sup>11</sup> TELLIER, *op. cit. supra*, note 6, p. 297.

<sup>12</sup> D. A. JONES, *Negligence of Municipal Corporations*, New York, Baker, Voorkis & Co., 1892, p. 3.

<sup>13</sup> I. MacFee ROGERS, *The Law of Municipal Corporations*, vol. 2, Toronto, Carswell Co. Ltd., 1959, p. 1157.

<sup>14</sup> *Ibid.*

<sup>15</sup> *Ibid.*, p. 1158.

<sup>16</sup> *Ibid.*

to another by this fault. Savatier defines fault as, "l'inexécution d'un devoir que l'agent pouvait connaître et observer."<sup>17</sup> He continues :

"L'analyse de toute faute y découvre deux traits constitutifs, indispensables à la possibilité pour l'agent, d'observer son devoir : la conséquence illicite de l'attitude fautive devait être 1) prévisible, 2) évitable."<sup>18</sup>

What is this "duty" or "devoir" of which our authors speak ? Even at the time of Jones' writing, the end of the last century, it was well established that the criterion for the duty to be exercised was "reasonable care". "To determine whether this duty has been discharged", writes Jones, "the conduct of the person before the court is often compared with the conduct of an ordinary prudent man, under similar circumstances."<sup>19</sup> This is quite simply the test known among the ancient Romans as *diligens paterfamilias* or *bonus paterfamilias* usually described in English law as "the reasonable man" and in French law as "bon père de famille". Implicit in this type of test is the consideration of the particular circumstances. "From what has been said, it appears that the care one is required to exercise is wholly relative, and that the circumstances must in each case show what the duty was in that particular case."<sup>20</sup>

Of course all this pertains directly to the responsibility of a municipal corporation for the removal of snow and ice from its sidewalks. To establish that responsibility, the particular facts must be examined. Writes Jones :

"It is important to observe that the foundation of the action against the municipality is neglect of duty by the authorities. To establish this the facts of the particular case presented must be examined in order that it may appear from them that the care and conduct of the authorities with reference to those facts was not reasonable."<sup>21</sup>

It is this degree of neglect of duty which is under examination here. In analyzing the doctrine whether it be Jones writing in 1892, Jean Lebrun<sup>22</sup> in 1940 or Ian MacFree Rogers<sup>23</sup> in 1959, we notice that the basic principles have changed little.

However, we do find a few adjustments to modern exigencies. One example is the warning given over the radio that conditions are poor. Does this exonerate the municipality ? M. Jean Lebrun writes, "Nos temps modernes semblent justifier ces procédés, car à l'impossible nul n'est tenu. Toutefois, une cité ne pourrait s'exonérer en temps normal ordinaire de toute responsabilité, en laissant tous les risques aux victimes éventuelles, sous prétexte qu'elle aurait donné cet avis."<sup>24</sup>

What is interesting is to see how the law and these principles we have just outlined are applied to each set of facts. It is in jurisprudence that we discover some guidelines to the "degree of duty" required of the municipal corporation. It is here also that we find a certain evolution.

### Par. 3 - Evolving jurisprudence before 1960

If we glance briefly at the jurisprudence prior to 1935 and the legislative changes already discussed (*i.e.* art. 453 al. 3 *M.C.*), we see a definite severity toward the municipality.

<sup>17</sup> *Traité de la responsabilité civile*, vol. 1, 2<sup>nd</sup> ed., 1951, p. 5.

<sup>18</sup> *Ibid.*, p. 206.

<sup>19</sup> JONES, *op. cit. supra*, note 12, pp. 11-12.

<sup>20</sup> *Ibid.*, p. 11.

<sup>21</sup> *Ibid.*, p. 197.

<sup>22</sup> "Des accidents du trottoir", 43 *R. du N.* 353.

<sup>23</sup> *Op. cit. supra*, note 13.

<sup>24</sup> *LEBRUN, loc. cit. supra*, note 22, p. 355.

In *Beauchamp v. Cité de Montréal*<sup>25</sup> it was decided that the municipal corporation had employed an insufficient number of men to spread sand and ashes, and in addition, had employed persons with limited experience in this type of work — hence it was responsible for the ensuing accident. One cannot help wondering if the court was not being somewhat strict in its requirement here for experienced personnel and its affirmation that sanding at the corners and near the churches was not sufficient. In *Cité de Montréal v. Tremblay*<sup>26</sup> Greenshields J. threw the burden of proof on the city saying “the appelant, the City of Montreal must exculpate itself.” Finally, Létourneau J. in *Cité de Montréal v. Turgeon*<sup>27</sup> stated concerning the defense presented by a corporation,

“La corporation ne saurait pouvoir se justifier en disant seulement qu'elle a fait ce qu'elle a cru suffisant, ou même qu'elle a généralement fait répandre du sable sur le trottoir. Il lui faut en outre, établir que l'endroit précis où s'est produit l'accident a été véritablement recouvert de sable comme le reste du trottoir.”

It is submitted that this sort of requirement is not in the spirit of current jurisprudence.

By 1945, however, the situation was beginning to change. Bissonnette J. in *Naginska v. City of Outremont*<sup>28</sup> concluded that on the basis of art. 622 par. 7 of the *Cities and Towns Act* the victim had recourse in virtue of the droit commun, art. 1053 C.C., placing the burden of proof of fault on the person seeking compensation. Barclay J. agreed. Galipeault J. was not prepared to commit himself, “j'ai l'impression qu'assez récemment, certaines décisions de nos tribunaux n'ont pas donné à la clause toute la portée qu'elle comporte.”<sup>28a</sup>

By 1955, the trend seems to be well established in favour of the municipal corporation. As an example, let us consider the judgment of the Court of Appeal in *Chouinard v. Cité de Montréal*.<sup>29</sup> The facts are these: the sidewalk where the victim fell was icy and dangerous. That fact was established beyond all doubt. Defendant city contended that the interval between the time when icy condition became known (around noon, when rain began to fall) and the occurrence of the accident (about 3:00 p.m. of the same day) was very short, that instructions were given at 1:00 p.m. to sand the sidewalks, and that in consequence, the city was not negligent. The Court of Appeal agreed. Wasserman disputes this decision saying that inadequate manpower was supplied. She also disagrees with the Court of Appeal which seemed to consider a sudden change in weather as in the nature of case fortuit. Writes Wasserman, “Municipa Corporations should anticipate such sudden changes and have remedial measures available for instant implementation.”<sup>30</sup> She supports this view with a judgment from *Lemieux v. Corporation du Village de Val-Brillant*<sup>31</sup> reading “Les municipalités doivent tenir compte des moyens que suggère l'expérience passée, de la suffisance ou l'insuffisance de la main-d'œuvre” and similar views pronounced in *Léger v. City of Montreal*<sup>32</sup>, “Les brusques changements de température, qui ne sont pas extraordinaire dans notre pays, ne peuvent constituer un cas de force majeure; la Cité de Montréal

<sup>25</sup> (1926) 41 B.R. 46.

<sup>26</sup> (1926) 40 B.R. 232.

<sup>27</sup> (1934) 56 B.R. 348, at p. 350.

<sup>28</sup> [1945] B.R. 495.

<sup>28a</sup> *Ibidem*, at 500.

<sup>29</sup> [1955] B.R. 170.

<sup>30</sup> WASSERMAN, *loc. cit. supra*, note 3, p. 80.

<sup>31</sup> (1927) 33 R.J. 325.

<sup>32</sup> (1928) 34 R.L. 28.

doit être prête à y faire face.”<sup>33</sup> First, the two decisions cited date 1927 and 1928 respectively and hence as we have pointed out fall under a jurisprudential thinking which is not completely applicable today. Second, in the case of change of weather, it would seem to us that not only the municipality but also the pedestrian should “tenir compte des moyens que suggère l’expérience passée” in using the sidewalks. After all, even small municipal corporations governed by the *Municipal Code* have administrative and personnel problems in maintaining sidewalks which the pedestrian has not in using them. Let us examine how the courts have responded most recently to the question of degree of duty.

## PART II

### Responsability of Municipal Corporations, the Present Position

We feel it here worthwhile to reproduce a section of Mr. Justice Casey’s dissent<sup>34</sup> as it is our point of departure for this section of the paper. The learned judge says :

“But the duty to maintain is not absolute. The City is not responsible simply because the poor condition of a particular bit or stretch of sidewalk causes someone to fall. In a climate such as ours, it is physically impossible to preserve during the winter months the walking conditions that are obtained in summer and we cannot completely remove the risks that are inherent in the winter use of sidewalks. Pedestrians must assume the risks that will always be present and that are normal to the season.

It must also be borne in mind that the city cannot be expected to attend to every inch of its sidewalks at the same time. One cannot ignore the fact that Montreal is a huge city and the most that one can ask is that the city maintain an organization that is reasonable in size and that is capable of discharging this duty of maintenance in an efficient manner.

This necessarily leaves those in charge with a certain amount of discretion. They must be free to choose when and where to start and what to do and so long as they exercise this discretion in a reasonable manner, and here the test is the need of the public at large and not that of a particular individual, there can be no fault, from this quarter at least, on the part of the city.

Finally, it is not necessary that the steps taken be effective, or, indeed, that the city move at all. If in following the dictates of experience the city chooses to do something that fails to prevent accidents or if having regard to the conditions then obtaining it is decided that nothing usefull can be done, there still will be no fault.”

We are able to trace the principles laid down in this dissent in subsequent jurisprudence and thereby ascertain to some extent the modern jurisprudential tendencies.

#### Par. 1 – The duty to maintain is not absolute

M. le juge Bissonnette dissenting in the same case reiterates his words of a previous case.<sup>35</sup>

“Mais comme l’obligation de celle-ci [corporation municipale] n’est pas absolue, qu’elle n’est que relative, le tribunal doit apprécier cette faute ou

<sup>33</sup> Compare these decisions with Ontario jurisprudence, e.g.: *Ince v. Toronto*, (1901) 31 S.C.R. 323 where it was decided that a municipality which has employed the ordinary methods to prevent injuries occurring on icy streets should not be held liable where, owing to the severe inclemency of the weather, such methods have proved ineffectual.

<sup>34</sup> *Cité de Montréal v. Chapleau*, [1960] B.R. 1096, at p. 1100.

<sup>35</sup> *Cité de Sherbrooke v. Dubreuil*, [1950] R.L. 388, at p. 396.

négligence en tenant compte des conditions climatiques que cette corporation avait à affronter avant et au moment de l'accident."

M. le juge Galipeault in *Corporation du Village de Thurso v. Chartrand*<sup>36</sup> points out the problem small municipalities have under art. 478 al. 3 M.C. :

"On voit que le législateur n'est pas allé bien loin lorsqu'il s'agit des trottoirs. Evidemment, il n'a pu ne pas songer aux campagnes particulièrement à nos saisons d'hiver et à l'obligation d'entretien si lourde qu'elle serait dans la plupart des cas d'une exécution impossible pour ceux chargés de faire l'enlèvement de la neige, y épandre du sable, des cendres ou autres matières destinées à assurer la commodité et la sécurité des usagers."

In *Garberi v. Cité de Montréal*<sup>37</sup> plaintiff fell on a sidewalk made slippery by melted snow and water turning to ice as the sun went down. The employees of the city had sanded earlier that day. The Cour of Appeal stated :

"In a country such as ours, where the temperatures vary greatly, sudden dangers can be created by changing weather. So long as the city proved that it exercised reasonable care and took the precautions that a prudent person would take, the action could not succeed."

In *La Cité de Lauzon v. Dulac*<sup>37a</sup> the majority felt that particular conditions were most important in estimating the municipality's responsibility.

"Il n'est pas possible de poser une règle absolue établissant ou rejetant la responsabilité d'une corporation municipale qui ne sable pas la chaussée de ses rues. Les conditions particulières de la rue, l'importance de la circulation qu'on y trouve, la connaissance par la corporation municipale d'un état dangereux les conditions climatiques que mentionne particulièrement la loi et auxquelles elle soumet la responsabilité, peuvent être des éléments qui, dans certains cas établiront la faute et, dans d'autres, la rejeteront."

In this case ice had temporarily formed and the court found that the municipality could not be expected to guard against all exigencies. M. le juge Rivard said :

"Dans les circonstances révélées par la preuve, la chaussée de la rue Ville-neuve était accidentellement et temporairement recouverte de glace. Je ne crois pas qu'il y ait eu négligence de la part de la Cité de Lauzon de ne pas avoir prévu cette situation temporaire et accidentelle. A cette époque de l'année, je n'imposerais pas aux municipalités l'obligation de sabler, tous les soirs, les rues d'où la neige a disparu et qui sont accidentellement et temporairement recouvertes de glace."<sup>37b</sup>

Hence we see that the courts are tending towards a liberal attitude in their assessment of the corporation's responsibility. One might think that Taschereau J. was understating the situation when he said, "ce que l'on exige des municipalités, ce n'est pas un standard de perfection."<sup>38</sup>

## Par. 2 – The pedestrian assumes a risk

In line with its current leniency toward the corporation, jurisprudence considers whether the victim accepted a risk. In *City of Montreal v. Leckner*<sup>39</sup> it was decided that the victim knew of the snowstorm, the work facing the city crews and the

<sup>36</sup> [1960] B.R. 1, at p. 4.

<sup>37</sup> [1961] S.C.R. 408.

<sup>37a</sup> [1963] B.R. 27.

<sup>37b</sup> *Ibidem*, at 34.

<sup>38</sup> *Paquin v. Cité de Verdun*, [1962] S.C.R. 100, at p. 102.

<sup>39</sup> [1961] B.R. 80, at p. 102.



generally poor conditions and hence "while she was not obliged to remain in her home she should have known of and must have accepted the risks of using the sidewalks before they had been cleared."

Likewise Taschereau J. brings in this element in *Paquin v. Cité de Verdun*<sup>40</sup> while stating :

"De plus, l'appelante savait que la rue était glissante et s'y est aventurée quand même, avec des chaussures dont les semelles de cuir n'offraient aucune sécurité et augmentaient au contraire les risques d'accidents qui existaient déjà."

Finally, if the pedestrian has an alternate route yet picks the dangerous one, the city is not responsible. There is no *lien de droit* between the fall and the presence of ice on the sidewalk.<sup>41</sup>

On this subject the Quebec Court of Appeal pronounced recently in *Decoste v. La Corporation de la paroisse de Saint-Eustache* :

"Supposez que la défenderesse fut en faute pour avoir tardé d'enlever la neige amoncelée devant la demeure de la demanderesse, cela ne suffirait pas pour engager sa responsabilité : il faudrait encore qu'il y eut un lien de causalité directe entre cette faute et l'accident. Or, ce lien fait défaut. L'amoncellement de neige a été l'occasion de l'accident mais la cause directe de celui-ci, ce fut l'imprudence de la demanderesse qui, au lieu de prendre un chemin où elle aurait pu circuler en toute sécurité, s'est risquée à franchir un obstacle dont elle eût dû savoir qu'il présentait des dangers, surtout pour une personne de son âge.

*La demanderesse a donc été victime de son imprudence et elle doit en supporter les conséquences.*"<sup>41a</sup>

However the municipality must provide some safe route :

"Or l'obligation de maintenir un passage pour la traversée de la chaussée comporte celle de l'entretenir de manière que les piétons puissent y circuler sans encombre. Si cette obligation n'est pas remplie et qu'en s'écartant du passage pour contourner un obstacle qui s'y trouve un piéton subisse, comme en l'espèce, un dommage résultant du mauvais état de la chaussée qu'il a ainsi empruntée, la responsabilité de la municipalité est engagée."<sup>41b</sup>

### Par. 3 - Test-need of the public at large

The test in assessing maintenance operations is now taken to be the need of the public at large and not that of a particular individual. What this means simply is that

<sup>40</sup> [1962] S.C.R. 100, at p. 102.

<sup>41</sup> *Québec v. Laflamme*, [1965] B.R. 671.

<sup>41a</sup> [1968] B.R. 623 at 624 (our italics). In Ontario jurisprudence we find that method of clearing which may make a place dangerous for a time while work is in progress is not in itself evidence of gross negligence where an accident happens to a passerby who crosses before the removal is completed, *Lyons v. Ottawa*, 61 O.L.R. 405; [1928] 1 D.L.R. 171. However, if the removal of the snow leaves a dangerous and uneven surface, there may be liability; *Seames v. Belleville*, (1917) 12 O.W.N. 414.

<sup>41b</sup> *Ville de Montréal v. Satow*, [1968] B.R. 734, PRATTE J. at 735-736. See also *Corporation municipale de Notre-Dame-du-Sacré-Cœur d'Issoudin v. Oliver*, [1968] B.R. 24, especially OWEN J., at page 36: "In my opinion the fact that plaintiff attempted to cross the street which she knew to be slippery does not, in the circumstances of the present case, relieve the municipality from its responsibility for failing to apply sand or to provide otherwise a safe passage for pedestrians on the main street in front of the parish church. The municipality had an obligation to maintain, in a safe condition for pedestrians, a passage across the street where plaintiff fell, and its failure to do so was the sole determining cause of plaintiff's fall".

faced with a storm or changing weather, those in charge of maintenance can use their discretion as to how to proceed.

And understanding of the overall problems of a municipality was evident in *City of Montreal v. Leckner* : <sup>42</sup>

"The Court of Appeal declares that it is common knowledge that heavy snowstorms cripple traffic and the closer the storm is to the beginning of the season, the greater the number of persons who are caught unprepared and who thereby render the city's work heavier and more troublesome. As it was the very first snowstorm of the season, it was unreasonable to exact that the city cope with the problems it presented and attend to the side streets within the relatively short time that here elapsed."

In a similar sense Taschereau J. declared in *Paquin v. Cité de Verdun* : <sup>43</sup>

"Comme cette cour a eu l'occasion de le dire dans *Garberi v. La Cité de Montréal*,<sup>43a</sup> la vigilance simultanée de tous les moments, dans tous les endroits de leur territoire, serait imposer aux municipalités une obligation déraisonnable."

And again in *Martel v. City of Montreal* : <sup>44</sup>

"The court agrees with [the trial judge] that the defendant has not been proved negligent in this instance. It cannot be expected to have an employee standing by every foot of its sidewalks seeing that sand which may have blown or swept away is replaced."

We see then in these decisions an appreciation of the purely practical problems facing a municipality no matter how large or small.

#### Par. 4 - Not necessary that the steps taken be effective

As has been pointed out in the first part of this paper, the obligation of the municipal corporation is to act "reasonably" or "en bon père de famille" in its efforts to clear its sidewalks of ice and snow. Hence as Casey J. infers, this is not an obligation of results but merely of means. Thus Taschereau J. speaking for the majority in *Paquin v. Cité de Verdun* <sup>45</sup> says :

"Lorsque la municipalité fera preuve de soin et de diligence raisonnables, lorsqu'elle prend les précautions que prendraient des personnes prudentes dans des circonstances identiques, elle ne peut être recherchée devant les tribunaux civils." <sup>46</sup>

### Conclusion

We have dealt with a very nebulous aspect of municipal law — that of degree of responsibility. Certain particular questions have had to be omitted such as those of the liability of the obutting owner or the requirement of preliminary notice. Further-

<sup>42</sup> [1961] B.R. 80.

<sup>43</sup> [1962] S.C.R. 100, at p. 102.

<sup>43a</sup> [1961] S.C.R. 408.

<sup>44</sup> [1964] B.R. 333.

<sup>45</sup> [1962] S.C.R. 100. See also *Cité de Lauzon v. Dulac*, [1963] B.R. 27.

<sup>46</sup> In *common law* jurisprudence we find this idea as well. For example, if an adequate system of regular inspection and sanding has been established the corporation may be held to have discharged its duty even though an accident has occurred: *Waller v. St. Boniface*, [1935] 2 W.W.R. 578; [1935] 4 D.L.R. 135 (Man.). See also *Harper v. Prescott*, [1940] S.C.R. 688; [1940] 4 D.L.R. 225. *Palmer v. Toronto*, (1916) 38 O.L.R. 20; 32 D.L.R. 541.

more, to assess any real trend developing, a general view of the problem seemed more practical ; a view restricted only to the *Municipal Code* too narrow. For law cannot be divided into watertight compartments and it evolves generally speaking as a whole. In this whole, we see a certain orientation in favour of the municipality, a change in the situation of which Casey J. complains at the outset of this paper that the trend had been, "to exaggerate the city's role to the point of making it insurer of its pedestrians."<sup>47</sup> However, the purpose of law is to serve the society and render it as equitable as possible for all. We in no way claim that the trend traced is of an absolute nature and that the courts have gradually become staunch protectors of the municipality. The rule is always common sense and fairness, and we feel that this is the best criterion to apply, for example, in the debate surrounding the necessity of a by-law under the *Municipal Code*. Two cases already cited illustrate well the court's concern with both parties ; *Thurso v. Chartrand*,<sup>47a</sup> pointing out the difficulties faced by municipalities and *Corporation Municipale de Notre-Dame-du-Sacré-Cœur d'Issoudun v. Merina Desrochers-Olivier*<sup>47b</sup> announcing that whether there be a by-law or not, the municipality must act "en -bon père de famille" and cannot leave its sidewalks or streets in a treacherous condition. As proof that the court continues to consider both sides in a sidewalk case, let us here conclude with the words of M. le juge Brossard in the case of *Dame Merina Desrochers-Olivier* :

"Dans la cause actuelle, la municipalité appelante a par une incurie injustifiable, rétrograde, mesquine et antisociale, volontairement créé, dans ses rues, une situation dangereuse pour les piétons appelés à les utiliser ; sa conduite fut, à mon avis, nettement fautive ; l'accident qui s'est produit en fut le résultat direct."<sup>48</sup>

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Jean POTVIN \*

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<sup>47</sup> *Cité de Montréal v. Campleau*, [1960] B.R. 1096 at 1101. It is a generally accepted doctrine in the United States that a municipality is not an insurer against sidewalk accidents. E. MCQUILLAN, *The Law of Municipal Corporations*, vol. 19, 3<sup>rd</sup> edition, Callaghan & Co., Mudelein, Ill., at p. 229.

<sup>47a</sup> *Supra*, note 7.

<sup>47b</sup> *Supra*, note 8.

<sup>48</sup> [1968] B.R. 24, at p. 27-28. See also for example, *Cité de Québec v. Lachance et Normand*, [1969] B.R. 196, and *Cité de Québec v. Duchesneau et Pomerleau*, [1969] B.R. 196.

\* Licencié en droit.