

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

Oral Reasons for Judgment  
Mr. Justice Thackray  
Pronounced in Chambers  
March 22, 1996

BETWEEN:

**OKANAGAN NORTH GROWERS COOPERATIVE**

PLAINTIFF

AND:

**WINFIELD FIRE PROTECTION DISTRICT,  
THE CORPORATION OF THE CITY OF KELOWNA,  
OYAMA FIRE PROTECTION DISTRICT and  
THE REGIONAL DISTRICT OF CENTRAL OKANAGAN**

DEFENDANTS

Paul McDonnell  
Frank R. Scordo

appearing for the Plaintiff  
appearing for the Defendant,  
Regional District of Central Okanagan

1 **THE COURT:** This is an 18A application by the defendant, the  
Regional District of Central Okanagan. It asks that the  
plaintiff's claim be struck out against it.

2 The statement of claim only pleads indirectly against  
this defendant. The statement of claim in paragraph nine says that  
the Regional District was responsible for the "operation" of the  
Carr's (phonetic) Landing Fire Department. The paragraph 12(2)  
says that the Carr's Landing Fire Department was negligent in a  
number of ways. It would seem that those ways can be divided into

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two categories. One is the question of planning, presumably between areas or districts or municipalities, and the other then is the actual steps taken by the Carr's Landing Fire Department.

3           There is no evidence in front of me as to the negligence of the fire department in fighting the fire.

4           It seems that the main contention in this case is that the defendant Regional District should have had a plan in place to respond to this fire. It is all very well to suggest that they should have had a plan in place, but what is going to have to be shown in the lawsuit is that they had an obligation to have a plan in place, and then that they failed to fulfill it.

5           What I do have before me is a copy of what is called a "mutual aid agreement", annexed to an affidavit of Mr. Jewsda (phonetic), who is the chief of the Carr's Landing Volunteer Fire Department, and a member of the committee that was discussing a plan that was to be arrived at as to how these districts would cooperate and how they would cover each other's disasters. The mutual aid agreement simply provides in paragraph four:

The parties agree to consult on a regular basis through their chief fire officials on the best ways to achieve the optimum deployment of emergency resources to control disasters within the region.

6           There is no pleading that this defendant failed to consult, nor of course is there any evidence. Indeed, the evidence seems to be that consultations were going on and they were working towards an agreement.

7           Mr. Jewsda was apparently examined for discovery and I am told that when he was asked what was in place regarding coverage for these disasters, replied something to the effect that that was part of the "work in progress".

8           Mr. McDonnell on behalf of the plaintiff says that the court should not decide this matter because he has not yet obtained a copy of the final agreement that was reached. However, it is conceded that the agreement was not in place at the time of this fire. I have difficulty in seeing how that would be relevant. Mr. McDonnell's answer to that is it would show the direction that the parties were going in coming to an agreement. It may do, but of course there would be speculation in even that. At the time of this fire the direction they were going might have been very different than the final agreement.

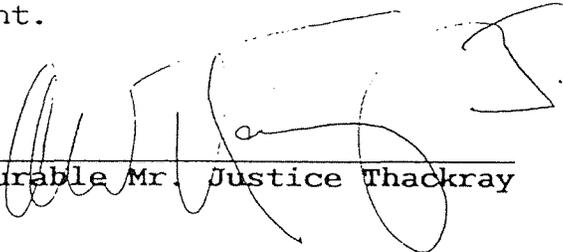
9           In any event, I cannot see any liability upon this defendant arising out of the agreement that entered into to consult on a regular basis.

10           The allegations then against the Carr's Landing for which  
Mr. McDonnell says the region is liable, and I am not going to  
decide on that, but the allegations against the Carr's Landing Fire  
Department are that it failed to design a reasonable and proper  
pre-fire plan, etc. The direction of the claim is against the  
region for not coming up with a pre-fire plan, yet it is pleaded  
against the Carr's Landing Fire Department.

11           Even if the allegation is made against the Carr's Landing  
Fire Department, and even if the Carr's Landing Fire Department  
failed to design a reasonable and proper pre-fire plan, the  
plaintiff could only succeed if they could show that the Carrs'  
Landing Fire Department had an obligation. There is no evidence in  
front of me that they have an obligation to come up with such a  
plan. This case, in my opinion, has no chance whatsoever of being  
successful at trial, and it would be totally inappropriate to allow  
it to proceed further.

12           The action against the Regional District is dismissed.

13           Costs will be to the defendant.

  
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The Honourable Mr. Justice Thackray