IN THE SUPREME COURT OF BRITISH COLUMBIA

Date of Release: August 12, 1993

ACTION NO. C896630
VANCOUVER REGISTRY

BETWEEN:

MARY JOSEPHINE BAYUS and DON BAYUS

PLAINTIFFS

AND:

CITY OF COQUITLAM and BRITISH COLUMBIA TELEPHONE COMPANY

DEFENDANTS

REASONS FOR JUDGMENT

OF THE HONOURABLE

MR. JUSTICE MELNICK

ACTION NO. A893431
VANCOUVER REGISTRY

BETWEEN:

LLOYD DALE QUINN and DENICE LYNN QUINN

PLAINTIFFS

AND:

CITY OF COQUITLAM and BRITISH COLUMBIA TELEPHONE COMPANY

DEFENDANTS

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DATES AND PLACE OF TRIAL: - NOVEMBER 16 - 20, 23 - 26, 1992
JUNE 1 - 4, 1993

VANCOUVER, B. C.

On July 5, 1989, Lloyd and Denice Quinn were tenants of Don and Mary Bayus in a duplex at 1287 Hachey Avenue, Coquitlam, B.C. Mary Bayus owned the duplex located at 1287 - 1289 Hachey Avenue. On that date, the duplex was substantially damaged by fire and the Plaintiffs suffered losses. The quantum of damages of Mr. and Mrs. Bayus have been agreed upon. That of Mr. and Mrs. Quinn has not and must be assessed.

At issue is the extent to which the City of Coquitlam ("Coquitlam") may be responsible for a portion of those damages due to the delay of its Fire Department in responding to the fire once it was contacted. Coquitlam has conceded its Fire Department delayed in placing effective water on the fire for approximately 3 to 4 minutes. However, it denies that this delay gave rise to any loss. Also at issue is the extent to which British Columbia Telephone Company ("B.C. Tel") owed a duty of care to the Quinns and the Bayuses to relay a telephone call, placed by Lloyd Quinn to a B.C. Tel operator, to the Coquitlam Fire Department. B.C. Tel has argued that there is no evidence to support a finding of negligence on its part for either delay in relaying the call or in forwarding it to an incorrect agency.

It will be convenient to deal with the claims against B.C. Tel and Coquitlam individually.

I. THE CALL TO B.C. TEL:

Mr. and Mrs. Quinn lived in the west half of the duplex at 1287 - 1289 Hachey Avenue. Mrs. Quinn's son, Calvin Glada, and Mr. Quinn's son, Bradley Quinn, lived with them. On July 5, 1989, Mrs. Quinn's mother, Dolores Glada, Mrs. Quinn's sister Joyce Glada and Mrs. Quinn's daughter Krystal were visiting with them.

On July 5, 1989, Mrs. Quinn, Mrs. Glada, Bradley and Krystal arrived home at approximately 11:40 to 11:45 a.m. Mrs. Quinn began to make lunch. Mr. Quinn was working elsewhere in Coquitlam, painting a home. His worksite was approximately a 10 minute drive from his home.

Mrs. Quinn said that Mr. Quinn telephoned her at approximately 11:55 a.m. to say that he would be home for lunch. Mr. Quinn said that he telephoned around 11:50 a.m. Mr. Quinn does not wear a watch and approximates times. I found Mr. Quinn's recollection of times unreliable. I therefore conclude that Mr. Quinn telephoned Mrs. Quinn to advise of his impending return home for lunch at approximately 11:55 a.m.

Mrs. Quinn stated that her husband arrived home at 12:05 p.m. That approximately accorded with Mr. Quinn's own recollection, although he thought he may have arrived 5 minutes later. Mrs. Glada recollected that he came home at approximately 12:15 p.m.

Given the distance he had to drive and the fact that he cleaned up before driving home, I am satisfied that it was probably approximately 12:15 p.m. when Mr. Quinn returned to 1287 Hachey.

At that time, all members of the extended family were within the Quinn duplex except Calvin, who had not yet returned home. The living area of each duplex was located on the second floor. The ground floor of each unit was taken up with carport, storage and utility areas. To the rear of 1289 Hachey was the living quarters of other tenants who were absent on that date. Balconies ran across the entire front (south) of the second story of each unit above the carports.

While Mrs. Quinn continued with her luncheon preparations, the adults conversed in the kitchen and the children played in a bedroom. As the children were getting rambunctious, they were asked to play outside. Bradley, then 9 years old, was asked by Mrs. Quinn to get their dog Brandie, who had followed the children outside. When Bradley went to retrieve the dog from the carport of 1289 Hachey, he saw a small fire at the rear of the carport behind a vehicle that was being worked on. This area contained a work bench, a lawn mower, a plastic container of gasoline, and a number of other materials.

Bradley reported the fire to his sister who in turn called to Mrs. Quinn that there was a "fire in the tire". That neither child

had actually determined that the fire was in a tire is of no consequence. It was Mr. Quinn's recollection that he heard Krystal's report of the fire at approximately 12:20 p.m. Mrs. Quinn put the time of his subsequent telephone call to the B.C. Tel operator at approximately 12:15 to 12:20 p.m. The resident of the adjoining unit, Mr. David Oxley, who was alerted about the fire by Mrs. Quinn, recalled seeing Mr. Quinn speaking on a portable telephone at about 12:25 p.m. Thus I conclude that the fire was discovered, and a telephone call initiated by Mr. Quinn, in the time frame of approximately 12:20 to 12:25 p.m.

When Mrs. Quinn came outside their home to investigate the children's report of a fire, she called to Mr. Quinn who, by then, had come out onto their balcony. Joyce Glada stated that Mr. Quinn on learning the report of the fire said, "Let's get out of here". Mrs. Quinn stated that after she had received Mr. Quinn's earlier telephone call, she had replaced the portable telephone in its base. This telephone was the only one in their residence and was in the living room with a current telephone book beside it. The inside cover of the telephone directory was entitled Emergency Page. The upper half of the page was taken up with a table detailing Fire, Police and Ambulance telephone numbers for a number of municipalities serviced by that telephone directory. The third line of that table contained the emergency numbers for Coquitlam District (as it was then known). It would have taken a matter of

seconds for Mr. Quinn to have ascertained the correct number for the Coquitlam Fire Department.

After listing a number of other emergency telephone numbers, that page of the telephone directory provided:

> or dial "O" for Operator.
>
> Give the Operator the AREA NAME where help is needed.
> If you cannot stay at the telephone tell the Operator the exact LOCATION of the emergency.

However, Mr. Quinn did not look in the telephone book. He took the portable telephone and, as he proceeded down the stairs, he dialled 9-1-1. At that time, Coquitlam was not served by the 911 emergency service. Mr. Quinn received a recorded message from B.C. Tel advising that 911 was not a working number. Subsequently, Mr. Quinn dialled O and reached a B.C. Tel operator.

In a written statement given August 8, 1989, Mr. Quinn indicated that he had asked the B.C. Tel operator to connect him with the Coquitlam Fire Department because he had to report a house fire at 1287 Hachey. In her evidence at trial, Mrs. Quinn stated that she heard Mr. Quinn say words to the effect that they needed fire trucks to come right away as there was a fire at 1287 Hachey. In his direct evidence, Mr. Quinn said that he told the operator that they had an emergency at 1287 Hachey. He repeated this statement during cross-examination by Mr. Hudson. He said he

described Hachey as being "off Marmot". He initially stated that he had asked if the operator would send the Fire Department and then indicated that he had asked the operator to connect him with the Fire Department.

The next day, during the course of examination by Mr. Whitworth, Mr. Quinn volunteered that he wished to amend his evidence given on direct, stating that he then recollected that he had in fact asked the operator to send the Coquitlam Fire Department.

Mr. Quinn stated that he had then heard the operator asking another person if they had a direct line to the Fire Department. He stated that another woman then came on the phone and asked him if he had an emergency at Hachey Avenue, mispronouncing the name of the street. He corrected her, she again mispronounced it, and he stated it again. In cross-examination, Mr. Quinn stated that he was connected to the second operator within 5 seconds.

Mr. Quinn had walked out of the duplex while talking on the telephone. Mr. Quinn said that by this point in the conversation, he was at the partition between his and his neighbour's carports where the fire was located. Mr. Quinn stated that he had been concerned about getting to work on the fire, so he handed the telephone to Joyce Glada, telling her to carry on the conversation if more information was required.

Ms. Glada stated that when she left the residence, Lloyd Quinn was in front of her, talking on the telephone. She described him fiddling with a hose and then handing her the telephone. She stated that the "operator" said to her that she wanted to ensure someone was on the phone. She indicated that she then heard static and then silence. She recalled that she said "Hello, hello" into the receiver, waited a couple of minutes, and then asked her sister Denice Quinn what she should do with the phone. Mrs. Quinn indicated that she should put it in the front seat of her mother's car and she did so.

Ms. Lynn Gourlay was the Assistant Manager, Operator Services, on duty in the New Westminster office of B.C. Tel on July 5, 1989. She stated that an emergency call placed from a telephone in Coquitlam would be directed to either the Abbotsford or New Westminster offices of B.C. Tel. On that day, 111 emergency calls were received by the New Westminster office and 92 by the Abbotsford office. A total of 62 telephone operators were on duty at the time Mr. Quinn would have placed his call. There is no record of Mr. Quinn's call because, as a matter of policy, B.C. Tel destroys all records of emergency calls after three months.

In its Traffic Service Position System Student Workbook, B.C. Tel cautions its operators that it is important that they are aware that telephone exchange boundaries and municipal or city boundaries do not necessarily correspond. In the Emergency Calls Section of

that manual, B.C. Tel uses Port Moody and Coquitlam as a specific example. Thus, B.C. Tel instructs its operators that it is imperative that they ask the customer which locality the customer wants in a particular emergency. This is to minimize any delay that could be encountered by connecting the customer to the wrong agency.

During, and even after, a call from a customer with an emergency, the B.C. Tel operator can display on a screen the telephone number from which the emergency call originates. The 3 digit prefix of the number tells the operator the telephone exchange in which that telephone is located. In the case of the Quinns' telephone, the 3 digit prefix indicated that their telephone was located in the Port Moody exchange.

Ms. Gourlay stated that B.C. Tel has found that the emergency systems in either Port Moody or Coquitlam have maps such that they are able to determine the location of an emergency in either municipality. She also stated that B.C. Tel operators find that it is more expedient to connect a customer reporting an emergency with the appropriate emergency service in the area. It was her evidence that operators at the emergency service can get the call completed to the required service faster than B.C. Tel, as it would take a B.C. Tel operator longer to find the number and call the appropriate agency. She said that once B.C. Tel connects the customer to the emergency service and determines that the customer

is receiving a response, the call is then put on hold from the operator's point of view. That is, the B.C. Tel operator no longer takes part in the conversation between the customer and the emergency service. She indicated that B.C. Tel emphasizes to its operators that they get the call through as soon as possible.

B.C. Tel's own investigator attempted to identify the operator who had handled Mr. Quinn's call but, although contacting 57 of the 62 operators then on duty, was unable to do so.

In cross-examination by Ms. MacPhee, Ms. Gourlay indicated that if the customer reporting an emergency remains on the line, normally the operator will not trace the call (but will do so if the customer is no longer on the line).

The records of the Coquitlam Fire Department establish that it first received notification of the fire at 12:48 p.m. The call was from the Coquitlam Police Department. The Coquitlam Police in turn had received notification of the fire from the Port Moody Police dispatcher. The Port Moody Police had no record of the call. Mrs. Lauralene Saxton was the Emergency Dispatcher on duty in Port Moody at the time in question. She said they had no records of a house fire at 1287 Hachey. She says that if she receives an emergency call through the operator, she gets the necessary information, i.e. address, location and nature of call, keeps the caller on the line and calls the required Coquitlam agency. She commonly radios the

Coquitlam R.C.M.P. as they can call the Fire Department a lot faster than she can dial it.

Mr. Quinn was aware that the closest Coquitlam Fire Hall to his residence was not far away (in fact 7/10ths of a mile). Approximately 10 minutes after his first call to the B.C. Tel operator, he again attempted to telephone the operator using the portable telephone. He said the telephone line was dead. Although electrical (and other service) lines to the house eventually came down, I am satisfied that at that point in time they were still intact. Mr. Quinn then moved his van, after his neighbour Mr. Oxley had moved his, and stood wondering where the Fire Department was. Before Mr. Quinn moved the van, his neighbour, Ms. Georgina Briggs, called over and asked him if the Fire Department had been called. He replied that it had but he had not heard them yet. He said that she could call them again <u>if she wanted to.</u> Consequently, Ms. Briggs did not call the Fire Department. In due course, another neighbour, Mr. Archie Stockli, saw the fire. He in fact called the Coquitlam Fire Department, reaching it directly by telephoning the Fire Department's telephone number. He was advised that, at that point, the Fire Department had already received the alarm.

It is the position of the Plaintiffs that there was a significant delay by a B.C. Tel operator (20 to 25 minutes) between receiving Mr. Quinn's request for assistance and ultimately

relaying his request. I am not convinced that the evidence goes that far.

B.C. Tel, prior to calling evidence, made an application under Rule 40(8) to have the Plaintiffs' claims dismissed on the ground that there was no evidence of negligence on the part of B.C. Tel. Because the application was made in June of this year during a continuance of the trial, and an analysis of evidence given in November of 1992 was required, I reserved on the motion, suggesting B.C. Tel proceed with its evidence. I am now satisfied that there was some evidence of negligence on the part of B.C. Tel. Specifically, B.C. Tel protocol for its operators required the operator to ask the customer requesting an emergency what area the customer was calling from, particularly in areas such as Coquitlam/Port Moody where a single exchange serves more than one community. There was no evidence that such a request was made by the B.C. Tel operator. That, in itself, is sufficient for me to determine that there was some evidence of negligence requiring B.C. Tel to be put to its defence.

However, after weighing all of the evidence, I am satisfied that it does not establish that B.C. Tel was responsible for whatever delay occurred between Mr. Quinn requesting assistance and notification of the fire being received by the Coquitlam Fire Department.

On a balance of probabilities, I find that the most significant reasons for the delay that I am satisfied occurred before Coquitlam Fire Department received the alarm was Mr. Quinn's own conduct and, to a lesser extent, that of Joyce Glada and Mrs. Quinn.

Mr. Quinn could well have dialled the Fire Department directly in a matter of seconds. However, it is clear from Joyce Glada's description of his calling out "Let's get out of here", that he became excited upon realizing that the fire was in the carport of the adjoining duplex. He dialled 9-1-1 as he ran out of the house, not knowing whether that service was in effect in Coquitlam or not. He then dialled the operator but did not fulfil the requirements of B.C. Tel for the use of the operator in reporting an emergency. Specifically, B.C. Tel at that time required a customer dialling the operator to report an emergency to give the operator the area name where help was needed and, if unable to stay at the telephone, tell the operator the exact location of the emergency. I am satisfied that, due to his excitement, Mr. Quinn did not tell the operator that he wanted the Coquitlam Fire Department, nor did he tell the operator that the address he was giving to her was in Coquitlam.

He should not have turned over the telephone to Joyce Glada before being certain that he had reached the Fire Department. For her part, Joyce Glada took on the responsibility of monitoring the

call but, when the telephone went dead, she waited a couple of minutes before asking Mrs. Quinn what to do. Mrs. Quinn then told her to put the telephone in the car. She should have told Mr. Quinn who, in turn, should have again tried to reach either the operator or the Fire Department directly.

It was not until a considerable time later that Mr. Quinn again tried to telephone, and upon determining that the portable telephone was dead, he made no attempt to have anyone contact the Fire Department. Shortly after discovering that the portable telephone was dead, he told Ms. Briggs she could call the Fire Department if she wanted to. Mr. Quinn therefore demonstrated an unbelievable lack of concern for his own well being and that of others involved.

I have said that there is no evidence that the operator asked, as she should have, what area Mr. Quinn was in. That contributed to the problem.

However, on a balance of probabilities, I conclude that what happened was, because the operator was having difficulty getting clear directions from Mr. Quinn, the operator contacted the Emergency Service in the exchange area that the Quinns were in, namely Port Moody. The evidence of what Mr. Quinn heard, of his being transferred to another woman and again being requested to provide advice as to the location of the fire, is all consistent

with B.C. Tel having relayed Mr. Quinn's request for assistance to the Port Moody Emergency Dispatch Operator. The fact that the Coquitlam Fire Department Fire Incident Report indicates that: "Port Moody Police have no record of the call or caller and suggested that it was relayed immediately to the R.C.M.P. without being noted in their log", does not dissuade me from this view. The same report indicates that the Coquitlam R.C.M.P. dispatcher forwarded the call at 12:48 p.m., having received it 3 minutes earlier. That in itself is a delay of some significance. It may well be that an even more significant delay occurred at the Port Moody Police Department although that, of course, is speculation. It is equally speculative to say that the blame for delay of over 20 minutes in the Coquitlam Fire Department receiving notification of the fire can be laid at the doorstep of B.C. Tel. Plaintiffs must, of course, establish their cases on a balance of probabilities. These Plaintiffs have not done so in this case with respect to B.C. Tel.

B.C. Tel (at least for the purposes of its application under Rule 40(8)) admitted that it owed a duty of care to the Plaintiffs as a volunteer. I do not agree that B.C. Tel can be classified as a volunteer when, as here, it was providing an advertised service to one of its customers. B.C. Tel may well be in the position of a volunteer in responding to a person who is not a customer. However, to obtain such telephone service from B.C. Tel, it is necessary for the customer to fulfil the terms under which B.C. Tel

says that it will provide the service. As I have already found, Mr. Quinn did not do so.

There are no reported Canadian cases on telephone company negligence related to fire reporting. Plaintiffs' Counsel referred me to a number of American authorities which I did not find helpful. However, the case of Beutler v Beutler (1983), 26 C.C.L.T. 229 (Ont. S.C.) is of some assistance. In that case, the Court found a gas company liable in negligence for failing to properly train its operators in handling emergency telephone calls. As a result of this lack of training, the gas company's dispatcher had not asked the police constable who reported a gas leak the necessary questions to enable the serviceman dispatched to the site to properly deal with the problem. Similarly, in this case, B.C. Tel's operator should have asked Mr. Quinn what area he was calling from. In this case, however, I cannot say that the failure to ask that question led to a delay in forwarding Mr. Quinn's request for assistance.

I am satisfied that B.C. Tel adequately discharged its duty of care by forwarding Mr. Quinn's request for emergency assistance to an appropriate agency, in this case the Port Moody Emergency Response Operator. B.C. Tel was not under a duty to put Mr. Quinn directly in contact with the Coquitlam Fire Department. They did have a duty, of course, not to put him in contact with an inappropriate agency, but the Plaintiffs' evidence does not

establish that they failed to put Mr. Quinn in contact with an appropriate agency.

If I am in error in that conclusion, I would have found that the negligence of the B.C. Tel operator in not having asked for the area where Mr. Quinn was calling from accounted for 20% of the responsibility for the delay that ultimately occurred.

In the next section of the judgment concerning the response of the Coquitlam Fire Department to the alarm once it was received, I will deal with a division of damages to the Plaintiffs' property to the time of the receipt of the alarm by Coquitlam and thereafter.

II. THE RESPONSE OF THE COQUITLAM FIRE DEPARTMENT:

The Plaintiffs' case against Coquitlam detailed a number of alleged deficiencies in the manner in which the Coquitlam Fire Department responded to the reported fire at 1287/1289 Hachey. I will deal with each of them in turn. My analysis will be guided by the following general concept: A municipal Fire Department is a valuable public service. The citizens of the community serviced by that Fire Department are entitled to expect a high standard of service, consistent with the resources the community has made available for fire protection. In that I include quality and numbers of equipment, numbers of staff and the quality of training of that staff. The community is entitled to expect that members of the Fire Department will do the best job they can with the

resources available to them. The community is not entitled to expect either perfection, or that the standard applicable to the best trained, best equipped, most competent Fire Department be applied to every Fire Department.

Undoubtedly, Coquitlam owed a duty of care to the Plaintiffs to ensure that its Fire Department carried out its response to the fire in a reasonable manner and without negligence. See: Arial v City of Edmonton, [1935] W.W.R. 536 (Alta S.C.) and Densmore v Whitehorse (City),(1986) 5 B.C.L.R. (2d) 284 (Y.T.S.C.). Coquitlam has admitted that it was negligent in maintaining incomplete maps of the area in which 1287/1289 Hachey was located. This, concedes Coquitlam, gave rise to a delay of approximately 3 to 4 minutes in placing effective water on the fire. Numerous other allegations by the Plaintiffs of negligence by the Coquitlam Fire Department are denied by Coquitlam.

Although I heard evidence of the Coquitlam Fire Department's response to this fire in painstaking detail, and although I intend to review in much less detail the specific allegations of negligence advanced by the Plaintiffs, I conclude that the central issues to be addressed are the length of the delay in Coquitlam putting effective water on the fire after receiving the alarm, and the extent to which the damages caused by the fire were exacerbated by that delay. In other words, if the length of delay is

established, it is unimportant whether there is one way in which Coquitlam was negligent or 10 ways.

I agree with the submission of Counsel for the Plaintiffs that Coquitlam owed a duty of care to them that included maintaining accurate maps of the area, ensuring fire fighters were knowledgeable of the area and that technical standards of fire fighting were maintained. In responding to the fire at 1287/1289 Hachey, I am satisfied that Coquitlam breached this duty of care although, with respect to its technical standards of fire fighting, only to a minor degree. It is agreed that once effective water was placed on the fire, Coquitlam's fire fighters carried out their duties proficiently.

Coquitlam first received notification of the fire at 12:48 p.m. The dispatcher on duty was Fire Fighter Ken Gordon who was located at the Pinetree Station in Coquitlam. After a brief uncertainty resulting from the caller's pronunciation of the word "Hachey", Gordon located Hachey Street in his map book. The map indicated that 1287/1289 Hachey was in the Fire Department's Zone 19. Consequently, Gordon dispatched 3 vehicles and their crews from the Austin Heights Fire Station: pump 1 (P-1), pump 4 (P-4) and rescue unit truck 1 (T-1). In addition, he dispatched pump 2 (P-2), a pumper manned by auxiliary fire fighters. As only one volunteer responded to the call, P-2 did not leave the station.

As Coquitlam admits, and as all 3 of the experts who testified stated, a problem central to the delay in Coquitlam's response to the fire was the fact that the maps maintained by Coquitlam's dispatcher and in its trucks were not up to date. In addition, by unlucky coincidence, the indication "Zone 19" was placed over the area where 1287/1289 Hachey was located on the map. Consequently, the map did not show that Hachey (a narrow lane-like road) could be accessed from the west (the most direct route from the fire station) but could not be accessed from the east. The duplex was located on a dead end. Further, the location of one fire hydrant in the Laval Square area was incorrectly marked on the map. As it transpired, the latter point was of no significance. The Austin Heights fire station was a total of 9 blocks from the fire. As earlier stated, this was approximately 7/10ths of a mile. It should have taken the Fire Department approximately one and a half minutes to drive that distance after leaving the fire hall. Each of the three vehicles involved took a different route to the scene of the fire. I find that was because none of the men in charge of guiding the vehicles to the fire, including the dispatcher, had adequate knowledge of the area, including the nature of the streets, the location of the residences and location of fire hydrants. This lack of knowledge was compounded by the inadequate map.

Captain Safarik, in charge of P-1, had the presence of mind to radio the dispatcher asking for assistance in locating the fire.

He should have known the location without having to radio. However, having done so, he received incorrect instructions from Gordon based on Gordon's reading of the map.

It was intended that P-1 be the first unit in. However, Captain Safarik, in part based on the incorrect directions he had received from Gordon, and in part due to his own precipitous action in taking (hooking his supply line to) what turned out to be the fifth closest hydrant to the fire, committed P-1 to a location that, due to a number of factors including lack of street access, made P-1's effective involvement in the fire negligible.

P-1 was a pumper with an elevated arm from which water could be sprayed. Realizing he was out of position, Safarik radioed that he was going to protect exposures. By that he meant that he was going to spray the surrounding area to prevent the spread of the fire. He ordered Captain Mitchell in P-4, which up to that time was standing by, to proceed into the fire. P-1's elevated arm was raised and water sprayed into the area of the fire although, arguably, without adequate direction from Safarik who, initially, did not have a clear view of where the water was going. It was suggested very strongly by the Plaintiffs that the crew of P-1 attempted to spray water onto the fire, a procedure I accept could have caused a mushroom effect and made the fire worse. However, I am not convinced on a balance of probabilities that that is what

the crew of P-1 was attempting to do. They apparently were successful in protecting what are known as external exposures.

By this time, Safarik was apparently aware that the appropriate hydrant to hook up to was one located at the corner of Hachey and Begin, an intersecting street. Thus Captain Safarik indicated that Captain Mitchell, who was in charge of P-4, should proceed into the scene of the fire via Begin. P-4, which was then located approximately 2 blocks from the scene of the fire, did not proceed as directed. Captain Mitchell directed that the P-4 unit be taken down Tech, a street which was one block closer to 1287/1289 Hachey but which would have put P-4 in a position where it would not have been able to do a "forward lay". That is, it would not have been able to hook up its supply hose to the hydrant and proceed forward to the burning structure. Even allowing for the fact that Safarik probably told Mitchell to take instructions on access from Fire Fighter Radonich, one of the crew of T-1, Mitchell's decision to try access via Tech caused a further delay. That is because when P-4 was part way down Tech, Radonich ran forward, telling Mitchell to back up and access via Begin. Mitchell did so and arrived at the fire, doing a forward lay from the hydrant on the corner of Hachey and Begin.

Luckily, P-4 was a pumper which carried a supply of its own water. Thus its crew was able to commence putting water on the fire approximately 2 minutes before the hydrant water was

available. It was suggested by Mr. Quinn that there was a delay between the application of P-4's supply of water and the flow of the hydrant water. This was denied by Radonich. I accept the latter's testimony that there was no gap in the provision of water to the fire that was of any consequence whatever.

I am satisfied that P-4 was able to apply hydrant water to the fire at approximately 12:59, 11 minutes after the alarm had been received. I am also satisfied that effective water from P-4's tanks was applied 2 minutes earlier, or 9 minutes after the alarm was received.

I accept that, as a general standard, a response time of 5 minutes from receipt of alarm to application of water on a residential fire is acceptable. The Plaintiffs' expert Mr. Stanley Bourne, Coquitlam's expert Mr. John Philbin and Fire Chief Allan Nixon of the Burnaby Fire Department all gave evidence to this effect. Mr. Gordon Vickery, another expert called on behalf of the Plaintiffs, maintained that the response time of Coquitlam to this fire should have been approximately one half of that time. There was a great deal of hair-splitting during examination and cross-examination of the various fire fighters and experts who gave evidence which led me to conclude that, in a perfect world if all had gone precisely right (as, I suppose, one always hopes it will in situations like this), the response of Coquitlam to this particular fire could well have been within the 2 ½ to 3 minute

time frame suggested by Mr. Vickery. However, I conclude that any measure of delay occasioned by Coquitlam's negligence should be measured by a general standard, not against what I would describe as the optimum response time.

In Haag v Marshall (1989), 39 B.C.L.R. (2d) 205 at p. 216, Mr. Justice Locke of our Court of Appeal stated:

> In cases of professional negligence above all, with the many difficult and varied situations met, if a plaintiff hopes to succeed on the grounds of lack of competency it must be fairly demonstrated that it has fallen below an established standard or practice in the profession.
> (emphasis added)

Thus, I conclude that the negligence of Coquitlam's Fire Department resulted in a delay of 4 minutes in placing effective water on the fire.

The areas of negligence I have already dealt with were those which, in my view, had the most crucial impact in causing the delay. However, the Plaintiffs have also alleged a number of other instances of incompetence or negligence on the part of Coquitlam's Fire Department. I will deal with these briefly.

Mr. Vickery suggested that there was inadequate water pressure from the hydrant at Begin and Hachey and, arguably the same problem existed at the hydrant from which P-1 drew water. I am satisfied

from the evidence of Chief Kermit Johnson that sufficient water pressure did exist at the Begin/Hachey hydrant. Further, I am satisfied from the evidence of Captain Safarik that the water pressure available to P-1 was sufficient as well.

Coquitlam's fire fighters were each equipped with a radio. Three channels were available for broadcast. Channel 1 was normally used for dispatch. I agree with Mr. Bourne that the crew demonstrated an apparent lack of discipline in using the radio apparatus, particularly in communicating with each other on Channel 1 with the result that, on at least one occasion, Gordon could not communicate with one of the officers. However, this difficulty was rather minor and in my view did not contribute to the delay.

Mr. Vickery stated that Safarik, having found himself out of position with P-1 on Laval Square, should have accessed the fire by coming through Ms. Briggs' side yard. This is one of those occasions when hindsight is of great assistance. However, given the situation that existed at the scene of the fire, most notably with the downed power line in the area, I am satisfied that Safarik did not exercise improper judgment in not wishing to risk placing his men in the area of the power line. I say this notwithstanding Safarik's admission that the downed power line did not hamper him in walking toward the fire.

The Plaintiffs suggested that, having made the decision to go down Tech, Captain Mitchell should have continued to do so, parked near the burning structure, and had his crew reverse-lay the supply line to the hydrant at Begin and Hachey. On all of the evidence, however, I am not satisfied that that would have gained any effective time, given the increased difficulty of a reverse lay (taking the supply hose from a stationary truck back to the area of the hydrant).

I agree with Mr. Bourne's suggestion that P-1 should have stopped at the corner of Thomas and Tech (Thomas being one street north of Hachey) and the driver and captain should have gone down Tech and sized up the fire. However, it must be remembered that, given the directions Captain Safarik had received from Gordon, this clearly would not have occurred to Safarik.

There was some criticism of Coquitlam's command procedure and structure. I have already dealt with one of those issues with respect to P-4 being taken down Tech by Mitchell when Safarik had directed that it be taken down Begin. It was suggested that Lieutenant Ross of T-1, being the first on the scene, should have taken command. However, I accept that was not the procedure used by Coquitlam. I am satisfied that the person who should have taken command, Safarik, did so.

It was suggested that an unduly long period of time elapsed (10 minutes) before Chief Cobb took command. I do not find anything untoward in the timing of Cobb assuming command. The Plaintiffs also allege that those who took command did not clearly announce that they were doing so. This was based on a reading of a partial transcript prepared by Coquitlam's Fire Department for the purpose of reviewing procedures at the fire. However, I accept that the transcript is a partial one and that the appropriate announcements may well have been made. In any event, if they were not, I find that such lack of protocol did not contribute to the delay which occurred.

Finally, it was suggested P-2 should have been required to come to the fire, even though only one volunteer fire fighter was available to operate it. This was so its pumping capacity would have been available. I am satisfied that P-4 had adequate pumping capacity and that P-2 was not required.

III. THE FIRE:

It is the Plaintiffs' position that one cannot say how much damage occurred due to Coquitlam's delay in getting water on the fire. The Plaintiffs argued that it is difficult, if not impractical, to determine the respective degrees of fault of the Defendants and thus liability should be apportioned 50 percent to each. On the other hand, Coquitlam argued that the fire clearly grew tremendously during the approximately 25 minutes between the

discovery of the fire and the alarm being sounded. Thus, says Coquitlam, even if its Fire Department had not delayed getting water on the fire for 4 minutes, the fire had progressed to such an extent by that time that there was no identifiable loss which can be attributed to Coquitlam's negligence. B.C. Tel did not address the issue of the apportionment of responsibility for the damages caused by the fire.

When the children Bradley and Krystal, Mr. and Mrs. Quinn and Mr. Oxley first saw the fire it was very small, perhaps one foot in width and height. Mr. Quinn and Mr. Oxley both sprayed water from garden hoses onto the area of the fire at the rear of the 1289 Hachey carport for most of 10 minutes. During that time, smoke which had originally been grey, turned black, indicating the involvement of petroleum products or tires. By the end of this 10 minute period, the fire grew and smoke filled the carport to such an extent that Mr. Quinn and Mr. Oxley had to abandon their efforts at putting water on the fire. Mr. Oxley said that at that point, the hoses did not seem to be having any effect. During this initial 10 minute period, both Mr. Quinn and Oxley moved their vans away from the immediate vicinity of the building. At one point, a man arrived offering to assist, took Mr. Quinn's hose and went into the carport area only to be beaten back by the volume of smoke a very short time later. Mr. Quinn said that by the time he, Quinn, stopped hosing, he could see flames. Mr. Quinn described bellowing smoke, flames, the walls being on fire, and yet he still waited 15

minutes until the emergency truck arrived. Mr. Quinn said that a few minutes before the emergency truck arrived, there was thick black smoke in ever increasing volume, and flames being thrown out of the carport and up the front of the duplex. He indicated that he could not see the east side of the duplex nor the interior of the Oxley residence. I have already indicated that I do not place great reliance on Mr. Quinn's time estimates. I do not say that by way of criticism, but rather because he was clearly upset and excited at the time of the fire and I conclude that he has now reconstructed times to fit his subsequent perception of when events occurred. I do, however, accept that he did see fire and smoke as he described prior to the arrival of the first of Coquitlam's units.

When Ms. Briggs first saw the fire, she saw heavy black smoke curling up over the balcony of 1289 Hachey. She saw Mr. and Mrs. Quinn standing on the west side of the duplex in the lane. She said that Mr. Quinn had a telephone in his hand. I conclude that this was when Mr. Quinn was attempting to make his second telephone call. Ms. Briggs went back into her home and telephoned her daughter, telling her about the fire. She stated that when she next looked outside, the whole east side of the duplex was burning. She came back outside and saw flames shooting up the side of the building. She then described a "swishing" or "whooshing" noise and a "flame thrower like flame" coming out of the carport and hitting the cherry tree in her yard about 20 to 25 feet away. From the

evidence of the experts called by the Plaintiffs and Coquitlam, I accept that this flame was caused by the ignition of a liquid accelerant, probably gasoline. Ms. Briggs said that as the flame came out the roof on the east side of the duplex, the roof began to crumble. She then heard sirens.

When Mr. Stockli first noticed the fire, he saw a man with a garden hose spraying water on the fire. When asked by Stockli if he should call the Fire Department, Stockli said that the man said yes. Stockli did so and was told by the Fire Department that they had already been contacted. That may indicate that either there was less of a delay between the water being applied by Mr. Oxley and Mr. Quinn with garden hoses and the arrival of the Fire Department than Quinn and Oxley indicate, or Stockli may have erred in either his time estimates or his observations. Stockli's evidence is difficult to reconcile with the observations of others, including Ms. Briggs. However, Stockli did indicate that, at the time he had the conversation with the Fire Department, flame and smoke were going up the side of the carport and hitting the top of it. Stockli subsequently laid down for a period of time on his couch and got up when he heard the sirens of the fire trucks. He later took certain photographs, one of which depicts a column of black smoke and fire rising (apparently) from the rear centre of 1289 Hachey. It is also evident that this photograph was taken while water was being sprayed in the direction of the structure.

Fire Fighter Radonich stated that when he arrived at the burning structure, he saw flames rolling up the balcony on 1289 Hachey. He said fire had come out of the upper sliding glass doors, out onto the soffits.

From the testimony of the expert witnesses, including Mr. Vickery, it is evident that fires of this nature grow exponentially. They require heat, air and fuel. Therefore the sooner water is applied, the faster the growth curve is reduced. Thus the application of water from the garden hoses slowed the growth of the fire initially.

I agree with Plaintiffs' Counsel that it is difficult to make an assessment of the rate of growth of this fire. However, in comparing all of the evidence of those who observed the fire, I conclude that it is not impossible.

On a balance of probabilities, I am satisfied that the fire, from its incipient state when discovered, grew relatively slowly, impeded by the cooling effect of the water placed on it by Mr. Quinn and Mr. Oxley. Probably aided by the presence of tires and such material as solvents, the fire continued to grow, certainly with more strength, once the cooling effect of the water was discontinued. The jet of flame that came out of the carport and struck Ms. Briggs' cherry tree was, I conclude, from a liquid accelerant, probably gasoline, that clearly had an accelerating

effect on the fire which then grew rapidly. I am satisfied that this event occurred minutes before the arrival of the fire trucks. However, the fire was not so advanced at the time of the arrival of the rescue personnel as to prevent them from entering 1289 Hachey and successfully retrieving Mr. Oxley's turtles and computer disks.

I do conclude, however, that even though the delay of Coquitlam in getting effective water on the fire was only 4 minutes, the delay came at a very critical time when the fire was spreading rapidly. Thus I conclude that, had the fire fighters commenced putting water on the fire 4 minutes earlier, there would have been somewhat less damage to both 1287 and 1289 Hachey.

It is notable that all of the witnesses to the fire describe the fire in terms of its involvement with 1289 Hachey. It is only after water had been applied by the crew of P-4 to the fire for a few minutes that the fire fighters, on orders from Chief Cobb, made 3 attempts to enter 1287 Hachey. By that time, the floor of 1287 was spongy and the fire fighters considered it unsafe.

Most of the damage to the furniture and clothing of Mr. and Mrs. Quinn was caused by smoke and water. I conclude that it is probable that, even if the fire fighters had started putting water on the fire 4 minutes earlier than they did, both smoke and water would have found their way into the Quinn residence during the course of protecting internal exposures (applying water to the fire

within the structure). But, as with the structure generally, I conclude that it is probable, had the application of the water come earlier, that somewhat less damage would have been done to Quinns' goods than was the case.

Clearly, a small amount of damage would have been done to 1289 Hachey even if the Fire Department had been contacted directly and arrived promptly. Therefore, I conclude on the evidence that with respect to the claim of the Bayuses, a nominal amount of damage, 5 percent, was damage which would have been occasioned to the structure absent any delays whatever. Fifteen percent of Bayuses' damages resulted from the delay of Coquitlam in getting effective water on the fire, and 80 percent was due to the delay in Coquitlam receiving the fire alarm for which I have found B.C. Tel not responsible.

With respect to the claim of Mr. and Mrs. Quinn, I find 15 percent of their damages resulted from Coquitlam's delay and 85 percent was due to the delay in the alarm being received by Coquitlam.

IV. DAMAGES:

The parties have agreed that the Bayuses' damages are $128,145.80. No argument was advanced by the Defendants with respect to betterment. I take it, therefore, that the parties are content with that figure.

From the evidence of Mr. and Mrs. Quinn, it is clear that their belongings were subjected to extensive smoke and water damage. Because the Quinns could not afford to replace many of them, a number were repaired. For example, they had a black lacquer bedroom suite cleaned at a cost of $1,100, but this did not leave them with furniture that was in the same condition as it had been before the fire. In estimating damages for any lost or damaged items of clothing, Mrs. Quinn took average prices from catalogues without specific regard to depreciation or the specific quality of the goods owned by them as compared to those priced. While I suspect that the Quinns have been generous to themselves in their estimation of a number of their clothing items, I am also satisfied that they have been, probably due to financial circumstances, modest in their approach to dealing with some of the larger items such as furniture. In the result, I conclude that a just assessment of Quinns' damages is the amount claimed by them, $36,560.03.

V. CONCLUSION:

Mr. and Mrs. Bayus will have judgment against Coquitlam for $19,225. Mr. and Mrs. Quinn will have judgment against Coquitlam for $5,500. The claims of all Plaintiffs against B.C. Tel are dismissed.

VI. COURT ORDER INTEREST:

The Plaintiffs are entitled to Court Order Interest on their respective judgments from July 5, 1989 to date of judgment at Registrar's rates in effect from time to time.

VII. COSTS:

Counsel may address the question of costs either at a convenient time in Vancouver or by brief written submissions.

"Melnick, J."

Dated at Cranbrook, B.C.,
this 10th day of August, 1993.