

Sever bath-up

File No. 946899

**C A N A D A**

**IN THE PROVINCIAL COURT OF BRITISH COLUMBIA  
(BEFORE THE HONOURABLE JUDGE W.J. RODGERS)**

**NORTH VANCOUVER, B.C.**

**1996 NOVEMBER 21**

**BETWEEN:**

**MURRAY E. BLANCHARD**

**CLAIMANT**

**AND:**

**THE CORPORATION OF THE DISTRICT OF WEST VANCOUVER**

**DEFENDANT**

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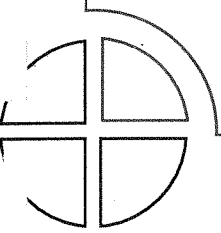
**EXCERPT FROM PROCEEDINGS**  
**(Reasons for Judgment)**

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**APPEARANCES:**

D. THOMAS	for the Claimant
J. POOLE	for the Defendant
D. HABKIRK	Court Recorder
S. OSBORNE	Transcriber

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## Judgment (Rodgers, W.J., P.C.J.)

1 THE COURT: This is a claim brought by Mr. Blanchard against  
2 the Corporation of the District of West Vancouver  
3 arising from a sewer blockage which occurred the 5th of  
4 February 1994. On that date, Mr. Blanchard lived at  
5 6360 Bruce Street in West Vancouver. He noted that  
6 there was trouble with his toilet. He obtained a six  
7 foot snake but he could find no blockage in his toilet  
8 by using that instrument. So then he got a twenty-five  
9 foot snake, again he could find no blockage.

10 He called West Vancouver and asked for a plumber  
11 recommendation. It was his experience that ninety-nine  
12 per cent of sewer blockages are caused by the  
13 homeowner. He hired a plumber. The plumber began to  
14 use a sixty foot coiled snake. He found an  
15 obstruction but he decided that he needed a better  
16 snake. The next morning the plumber returned. He  
17 returned with an electric driven snake. Mr. Blanchard  
18 and the plumber again found an obstruction. Mr.  
19 Blanchard called West Vancouver for information about  
20 sewer hook-ups. He then, with the assistance of the  
21 plumber, started to dig up the house sewer and he kept  
22 pressing with the snake.

23 The snake broke through whatever blockage was in  
24 his pipe and proceeded to a total of a hundred and  
25 twelve feet in distance. This took the snake past the  
26 boundary line of Mr. Blanchard's property. Mr.  
27 Blanchard called the municipality. A worker came and  
28 lifted up the manhole which was upstream in the sewer  
29 line from where Mr. Blanchard's sewer joined the main  
30 sewer pipe. The worker observed that there was water  
31 only eighteen inches below the manhole cover. His  
32 conclusion was that there was a blockage downstream  
33 from where Mr. Blanchard's line joined the main line.

34 Mr. Blanchard observed some workers both that  
35 night and the following day working on the line. He  
36 has had no problem with the line since.

37 Mr. Michael Miller is a labourer employed by the  
38 District of West Vancouver who was assigned to the  
39 problem. He was there on the 8th of February and after  
40 observing the water in the upstream portion of the  
41 pipe, he began to rod, as he called it, in the  
42 downstream junction. He found a blockage and had to  
43 work on it until it was able to be freed. His  
44 observations are important.

45 He said he saw sand and gravel come through the  
46 pipe when he was rodding. He said that the blockage  
47 could have been four feet or five feet long, but he

## Judgment (Rodgers, W.J., P.C.J.)

1 was not certain. He said it was not common to see sand  
2 and gravel in the sewer, as the line was supposed to be  
3 a sealed unit. He said it was possible that the sand  
4 and gravel was coming from the excavation of a new  
5 house further upstream on the sewer. He did not  
6 inspect the house under construction. He admitted that  
7 this was only a suspicion on his part that the sand and  
8 gravel came from the excavation of the new house.

9 The issues are as follows. Was the Corporation of  
10 the District of West Vancouver liable to Mr. Blanchard  
11 in negligence or in nuisance? It is submitted on  
12 behalf of Mr. Blanchard that there are two legs to this  
13 argument. The first is that the sewer system was  
14 negligently designed and would never be self-flushing.  
15 The second is that there was no proper system of  
16 inspection in order to ensure that the system operated  
17 properly.

18 Mr. Blanchard is a retired civil engineer. He  
19 holds a bachelor of science in civil engineering degree  
20 which was obtained in 1946. He holds a masters of  
21 civil engineering from the Massachusetts Institute of  
22 Technology obtained in 1948. He has been a civil  
23 engineer for forty-six years. He operated a municipal  
24 sewer in Guyana for three years. He is familiar with  
25 sewers.

26 In his view, a sewer must be constructed with a  
27 slope of two per cent, that is there should be a drop  
28 of two feet in one hundred feet. This is important in  
29 order to ensure that the velocity of materials moving  
30 through the pipe is fast enough so that the system will  
31 be self-cleaning. The rate of velocity should be two  
32 feet per second in order to keep small particles in  
33 suspension or to roll larger materials along the bottom  
34 of the pipe.

35 He formed a conclusion that this pipe would not be  
36 self-cleaning, and so that the blockage was a  
37 foreseeable certainty. It is his theory that the  
38 municipality should have inspected and cleaned the  
39 sewer and further should have warned all homeowners  
40 including himself of the foreseeable blockage.

41 In reply to these allegations, the District of  
42 West Vancouver called two witnesses. The first was Mr.  
43 Tanton. He is an engineer with the District of West  
44 Vancouver. He holds a bachelor of civil engineering  
45 degree obtained in 1987 and he has been a professional  
46 engineer since 1989. He has worked in Ontario, Alberta  
47 and British Columbia.

## Judgment (Rodgers, W.J., P.C.J.)

1 He agreed that the goal of the sewer designs in  
2 West Vancouver is to be self-cleaning. It was his  
3 opinion that a slope of one per cent is normal. It is  
4 here that the evidence of Mr. Tanton and Mr. Blanchard  
5 differed. Mr. Tanton testified that the slope on Bruce  
6 Street where Mr. Blanchard resides is 1.11 per cent.  
7 He calculated that the velocity would be three feet per  
8 second with respect to the flow of materials through  
9 the pipe. He also said that the two feet per second  
10 assumption made by Mr. Blanchard is a theory and that  
11 the District of West Vancouver also used its practical  
12 experience when designing and operating the sewer  
13 system.

14 Mr. Tanton testified that both the Municipalities  
15 of Surrey and Langley allow sewers to be designed with  
16 a one per cent slope. It was the opinion of Mr. Tanton  
17 that the Bruce Street sewer meets all design  
18 requirements and will be self-cleaning. He said that  
19 the system was built in 1985 and this was the first  
20 time there had been a complaint. He also testified  
21 that during construction of homes, builders sometimes  
22 fill the sewers with sand and gravel.

23 The next witness called on behalf of the  
24 Municipality was Mr. Bamford. He is the Superintendent  
25 of Sewers and Drainage. He testified with respect to  
26 the policy established by the District of West  
27 Vancouver for the maintenance of the sewers. He said  
28 that the policy of the municipality was to respond to  
29 complaints. He said that there was not a policy of  
30 regular inspection or flushing, save and except in  
31 three lines because of build-up of grease in them.  
32 Apart from these three lines, his experience is that  
33 the sewers of West Vancouver are self-cleaning  
34 including the sewer in front of Mr. Blanchard's home.  
35 The policy of West Vancouver is upon receipt of a  
36 complaint the municipality directs the homeowner to  
37 look at the homeowner's system and hire a plumber. The  
38 exception to that rule is where there are multiple  
39 complaints from residents along a street. Mr. Bamford  
40 agreed with Mr. Tanton that sand and gravel do  
41 occasionally get into a line from construction.

42 Mr. Blanchard testified in reply to the evidence  
43 of Mr. Bamford and Mr. Tanton. He said that he had  
44 inspected the new homes that were being constructed.  
45 He saw that the lateral sewer lines, that is the sewer  
46 lines running from the home to the main sewer, were in  
47 place but he said they were blocked in order to prevent

## Judgment (Rodgers, W.J., P.C.J.)

1 any debris from falling into the sewer lines. He said  
2 it was possible that during construction that an  
3 existing lateral was broken and that gravel could seep  
4 into it; however, he said that if this had occurred,  
5 the gravel could not have moved so far to the blockage  
6 as there was not any flow to move the blockage along.

7 To summarize the arguments of the plaintiff, he  
8 said first of all that the system could not be self-  
9 cleaning. There was not enough upstream houses  
10 generating flow into the sewer to ensure adequate  
11 cleaning. The 1.1 per cent slope was not sufficient.  
12 He said this was a foreseeable blockage in view of the  
13 slope of the sewer and the policy of West Vancouver to  
14 not inspect the sewers on a regular basis and not to  
15 flush them. It was submitted that the evidence of Mr.  
16 Tanton ought to be rejected, as the flow of water from  
17 a flush of the toilet in Mr. Blanchard's home would not  
18 have the requisite velocity suggested by Mr. Tanton in  
19 his calculations.

20 With respect to the issue of negligence, the  
21 questions I must ask is firstly whether or not the  
22 system was properly designed with respect to the slope  
23 to ensure adequate velocity. I first of all ask myself  
24 what caused the blockage. The only evidence before me  
25 is the evidence of the worker, Miller. He said the  
26 blockage was caused by sand and gravel and that sand  
27 and gravel was not normally found in the system. It  
28 was suggested that the sand and gravel could have  
29 accumulated as a result of a homeowner flushing sand  
30 and gravel down the toilet as a result of children  
31 returning from the beach, kitty litter and similar  
32 types of contributions, if I can use that word.

33 Again, I have the evidence of Miller that the  
34 blockage could have been perhaps four to five feet  
35 long. It certainly required some effort in order to  
36 dislodge the blockage. I find that the blockage was  
37 more than the blockage which would normally be found as  
38 a result of a homeowner flushing kitty litter down the  
39 sewer or washing their children. I find that the  
40 probable cause of the blockage was sand and gravel  
41 being deposited into the system from the construction  
42 of the home. With respect to that, I find that the  
43 blockage of sand and gravel was not a substance which  
44 was normally found in the sewer lines.

45 There are two cases which I must consider. The  
46 first is the case of Moffett and the other is the case  
47 of Meadow Mist. Those two cases address the

## Judgment (Rodgers, W.J., P.C.J.)

1 application of Section 755.3 of the municipal Act.  
2 Section 753.3 states,  
3

4 "A municipality is not liable in any action  
5 based on nuisance or on the rule in Rylands  
6 v. Fletcher where the damages arise directly  
7 or indirectly out of the breakdown or  
8 malfunction of a sewer system."  
9

10 In this case, I find that the Moffett decision applies.  
11 The sand and gravel was not a normal or foreseeable  
12 substance to be deposited into the sewer line, it  
13 therefore becomes a malfunction or a breakdown within  
14 the ambit of the Moffett decision.

15 The next question I must address is whether or not  
16 the policy of West Vancouver is adequate. This is the  
17 policy of responding to the complaints of homeowners  
18 rather than following a policy of regular inspection  
19 and flushing.

20 There are a number of cases which deal with that.  
21 There is the case of Just v. British Columbia, a  
22 decision of our Supreme Court; there is also the  
23 decision of Crosty v. The City of Burlington, and  
24 further the case of Gaw v. Port Industries, a decision  
25 of our Supreme Court. All of those cases lead me to  
26 the conclusion that it was a reasonable policy on the  
27 part of the municipality to respond to complaints of  
28 blockages, rather than instituting a policy of regular  
29 inspection and flushing.

30 Accordingly, I find that the claimant has failed  
31 to prove on the balance of probabilities that the  
32 District of West Vancouver was negligent or in some way  
33 liable by way of nuisance. In the event that this  
34 decision is reviewed, I find as a fact that the damages  
35 claimed by Mr. Blanchard, one thousand five hundred and  
36 thirty-three dollars and seventy-five cents, were  
37 reasonably incurred in the circumstances. If I am  
38 wrong with regards to my decision on liability, then  
39 the judgment would have been in favour of Mr. Blanchard  
40 for the sum claimed in the claim of one thousand five  
41 hundred and thirty-three dollars and seventy-five  
42 cents, plus interest pursuant to the Court Order  
43 Interest Act from the 8th of February 1994 to today's  
44 date, plus such costs as were reasonably incurred.  
45 However, in view of my finding, the claim is dismissed.  
46 In the circumstances, I am not going to award costs to  
47 the defendant municipality.

Judgment (Rodgers, W.J., P.C.J.)

Thank you, Counsel.

(PROCEEDINGS CONCLUDED)

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I hereby certify the foregoing to  
be a true and accurate transcript  
of the evidence recorded on a  
sound recording apparatus,  
transcribed to the best of my  
skill and ability.



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S. Osborne  
Transcriber