

Bad witness

C6322

Canada

PROVINCE OF BRITISH COLUMBIA

In the Provincial Court of British Columbia

Small Claims Division
(BEFORE THE HONOURABLE JUDGE L.P. CLARE)

PORT COQUITLAM, B.C.

25 NOVEMBER 1998

BETWEEN:

JAMES R. KRAWCHUK and
CAROL LYNN KRAWCHUK

CLAIMANTS

AND:

DISTRICT OF MAPLE RIDGE

DEFENDANT

PROCEEDINGS AT

EXCERPT FROM PROCEEDINGS
(Reasons for Judgment)

APPEARANCES:

K.L. PROCKIW	for the Claimants
J. HONEYMAN	for the Defendant
J. GILL	Court Recorder
M. McEACHERN	Transcriber

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Reasons for Judgment (Clare, L.P., P.C.J.)

1 M. McEACHERN Transcriber

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3 THE COURT: I am sure these two young ladies have got quite an
4 education on culverts and storm sewers. Let me explain,
5 I will just give you a very quick lecture in the law,
6 that when a person is charged with a criminal offence,
7 there is a very heavy onus upon the Crown prosecutors.
8 They must be able to prove a case what we call "beyond a
9 reasonable doubt".

10 When we are in a civil court, one party suing
11 another party, and that is what we are in here today, the
12 onus of proof is really quite different. For example, if
13 you took a scale and the claimants or the plaintiffs
14 present their evidence on one side and the defence on the
15 other, whichever way that scale tips, that party wins.
16 That's what you call a "balance of probabilities".

17 Now, when a person, and again this area of the law
18 really is fascinating, it is most interesting when you
19 sue a municipality. There is an area that we call
20 nonfeasance. If the middle of the road just happened to
21 wash out because of a culvert, or through the winter
22 weather you get frost and you get potholes and you blow
23 tires, et cetera, you cannot sue the municipality,
24 because they have done nothing wrong. They are not
25 negligent. It has just been an act of God or something
26 that has happened. That is what we call nonfeasance. So
27 a municipality is not ever responsible for nonfeasance.

28 Misfeasance, where they do something and if they do
29 it negligently, then they are responsible. For example,
30 let's say they are putting in a water line, sewer line,
31 and they dig a trench across the center of the road, and
32 they forget to put up lights and barriers and you come
33 along in your car in the middle of the night and plop
34 into the hole, they are responsible because they have
35 done something and they have done it wrongly. Now, that
36 is just a very quick overlay about civil courts and
37 against suing municipalities.

38 The problem here all seems to have started around
39 December the 19th of 1994, when part of the shoulder of
40 the road on the south side was washing out. Somebody
41 made a complaint, it got to the municipality, they sent
42 out a crew to try and find out what was causing erosion.
43 We have heard about how this corrugated pipe was rusting,
44 and where the join was allowing gravel and other debris
45 I guess to get on the inside of the pipe, thus the water
46 was not going through the pipe properly but was leaking
47 around the seal or the seam and was eroding out

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1 underneath the pipe, causing the gravel to wash out.

2 We all have heard evidence that in November is the
3 big, heavy rainy season. All the leaves come down,
4 everything gets -- I forget the term, the first flush or
5 the first wash, or whatever it was. We have heard that
6 in December of 1994, there was an extreme rainy season in
7 the days which preceded I guess December the 19th.

8 The Municipality sends out a crew. They dig and
9 they find the problem. They remove the rusted-out
10 section of the corrugated pipe, and we have heard a lot
11 of evidence about how they put in this eight-inch plastic
12 pipe on somewhat of an angle. There is then they think
13 that temporary work is completed. They, in effect, put
14 in an order, or it has to be passed by the higher-ups,
15 that something is going to have to be done one day to
16 replace this, or there is trouble. There was heavy rain,
17 and then in the night of December the 26th, you
18 experienced this bad flooding problem in your basement.

19 I think that the blockage here was reasonably
20 foreseeable by the Municipality. We know a blockage did
21 occur. It is somewhat odd, you know. I have heard
22 evidence that there were large rocks still left in the
23 bottom of this wooden pipe. They were not cleaned out,
24 so that when they shoved up the plastic pipe, it actually
25 sat not on the bottom of the wooden pipe but on top of
26 these rocks and very close to the top. One can only
27 speculate, but let's say that eight-inch pipe is sitting
28 up about six, seven inches and there is rocks under it,
29 any more rocks that come down are obviously going to get
30 caught there, and it is going to build up and it is going
31 to build up like a dam.

32 I am satisfied that there were these large rocks in
33 the wooden pipe. I am satisfied that when the eight-inch
34 plastic pipe was put in, this would obviously cause some
35 restriction in the clear flow of water. I feel that this
36 does amount to what I referred to as a "mifeasance".
37 They have done something, and I do not think they have
38 done it properly, and it amounts to negligence. Perhaps
39 a larger pipe should have been used. Perhaps a pipe
40 should have been put through right from one end to the
41 other so there was a clear shot. Mr. Smith said an
42 eight-inch pipe should have been sufficient to handle
43 this amount of this flow of water.

44 When there is a constriction within a pipe, an
45 eight-inch pipe put into a 15-inch pipe, the flow of
46 water naturally has to slow. There are natural deposits
47 which come down. These are more than likely with a

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1 | constriction to cause some type of a blockage. To put in
2 | this eight-inch pipe and to leave it in, partway into the
3 | 15-inch pipe which is already partially blocked by these
4 | large rocks in the rainy season of the year, is inviting
5 | trouble.

6 | Now, I am going to make a comment. Mr. Sillis
7 | (phonetic) was there the first day, the foreman who
8 | oversaw the work being done. He was not there after the
9 | problem of the flooding occurred. Mr. Wickland was there
10 | on the first day. He was the one who actually shoved the
11 | plastic pipe up in there. Now, isn't it odd -- maybe
12 | it's not, but -- he was there the first day and has a
13 | very clear recollection of each and everything that was
14 | done. Then the big problem comes. Big damage. He does
15 | not remember anything about the 26th. He was there, but
16 | he is drawing a blank. By choice or by memory, I do not
17 | know, but he does not remember about the 26th.

18 | If the wooden pipe collapsed, if it caused the
19 | blockage, it did so within about four days after they had
20 | been there and done their work. I am afraid this is just
21 | too much of a coincidence to say that wooden pipe gave
22 | way from old age four days after they had been there
23 | working. I cannot buy that.

24 | I have paid attention, I have weighed the
25 | circumstantial evidence, I have weighed the direct
26 | evidence, and I have determined that you, the claimants,
27 | have been able to establish on the balance of
28 | probabilities a *prima facie* case of negligence as against
29 | the defendant corporation.

30 | Therefore, my finding is liability goes against the
31 | defendant.

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33 | (EXCERPT CONCLUDED)
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40 | Clare, L.P., P.C.J.
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