

File No: C6510  
Registry: Campbell River

**In the Provincial Court of British Columbia**  
Civil Division

**BETWEEN:**

**DAWN-MARIE McLEAN and DAVID McLEAN**

**CLAIMANTS**

**AND:**

**CITY OF CAMPBELL RIVER**

**DEFENDANT**

**REASONS FOR JUDGMENT  
OF  
THE HONOURABLE JUDGE P. DOHERTY**

**COPY**

**Appearing on his own behalf:**

**D. McLean**

**Counsel for the Defendant:**

**A. Atherton**

**Place of Hearing:**

**Campbell River, B.C.**

**Date of Judgment:**

**December 13, 2012**

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[1] THE COURT: This is File C6510 out of the Campbell River Registry. The claimants are Dawn-Marie McLean and David McLean, and the defendant is the City of Campbell River.

[2] The claimants sue the City of Campbell River, seeking recompense for expenses the claimants paid to remedy a sewer problem. The claimants lay the problem at the feet of the City.

[3] The claimants owned a property that has a Y-jointed sewer line connecting the City's main by way of a T junction. The claimants' system connection, although placed in the 1960s, seemed to run without difficulty until the claimants' property was converted to a college. The system became overburdened. It is suggested this happened for a number of reasons; the sewer line connecting the main began to sag over the years. Feminine hygiene products were being introduced to the system in such numbers that they caused blockage. Inadequate flushing.

[4] The claimants assert that despite the system being tied to the main in the form of a T and working for approximately 50 years, nonetheless it was the T design that failed to allow adequate clearance of whatever was being introduced into the claimants' system.

[5] This is a theory based on speculation. The claimants' T

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had never failed before, nor had that of adjoining properties, nor had hundreds of other T junctions utilized as connections to city mains throughout the town.

[6] The claimants suggest the faulty connection theory has merit because the City, in an attempt to assist him, used City equipment on his private property to change the design, moving it from the T to a direct connection to a corner manhole. His theory is just as consistent with that of the City's; the cause was inadequate flushing by the college to clear whatever was introduced into the pipe, and the fact that the pipe connecting to their main had sagged over the years, collecting material at the bottom of the pipe, which then dried out from inadequate flushing, plugging the claimants' system.

[7] There is no doubt from the evidence presented that it was the claimants' system that was plugged, and more than once. There is no evidence, despite numerous checks and flushes, that the main was in any way blocked.

[8] During a discussion with one of the City's witnesses yesterday, Mr. McLean stated, in regard to the plugs, causes, and clearance, "It is a mystery." Well, if it is a mystery to Mr. McLean, it is a mystery to everyone else. It is, in effect, an admission that he is unable to prove his case to a civil standard and on a balance of probabilities. He may

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theorize, he may speculate, but he cannot meet this standard of proof and, of course, the onus is on him to do so.

[9] The claimant wants the court to draw causal inferences, but there is insufficient persuasive evidence that would permit this court to draw such inferences. To the contrary, any inference I would draw on the evidence I have heard would be adverse to the claimant.

[10] There are many other legal defences put up by the City, but I need not deal with any of them. The claimant has simply not proven his case and it must be dismissed on that ground.

[11] I cannot leave this matter without saying some words about the City of Campbell River, its response, and its employees. Both the City and its employees went above and beyond in an attempt to a rectify a citizen's problem, one that the City was not responsible for. The taxpayers even funded a solution for the claimants' pipe system by laying a new and presumably level connection on the claimants' property, without charge, to the manhole at the corner of the main, and they are to be commended for their efforts. I think even Mr. McLean agrees with that comment.

[12] Judgement accordingly.

(REASONS CONCLUDED)