

**SMALL CLAIMS COURT OF NOVA SCOTIA**

**Citation:** *Gaslard v. Cape Breton Regional Municipality*, 2019 NSSM 41

**Date:** 20190806

**Docket:** SCCS 486470

**Registry:** Sydney

**Between:**

Kevin J. Gaslard

*Claimant*

-and-

Cape Breton Regional Municipality

*Defendant*

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***Decision***

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**Appearances:** For the Claimant: in Person  
For the Defendant: Christina Murray

**Adjudicator:** Tuma T. W. Young

**Heard:** June 19, 2019 at Sydney, Nova Scotia

**By the Court**

1. This is a claim in negligence.
2. The claimant has claimed against the defendant, the amount of \$25,000 for damages and losses resulting from a basement flooding that the claimant claimed was caused by the defendant's negligence in maintaining a proper sewer system. The claimant lives at 642 Shore Road, Sydney Mines, Nova Scotia and had lived there since purchasing the property in 2009. The claimant had done significant renovations to the house and in particular to the basement and it was considered a finished basement.
3. On the evening of November 28 and into the early hours of November 29, 2018, there was an early winter storm that resulted in a significant amount of

precipitation in the form of snow and heavy rains. The claimant discovered in the early morning that the basement of his home had flooded resulting in significant damage to his finished basement and items that were lost or damaged.

4. The claimant reported the flooding and damage to the Cape Breton Regional Municipality staff on Dec 2 and Dec 7 and filed a claim report (Exhibit 1, page 1). The claim report states that the claimant found that a sewer/storm outfall was blocked by rocks and this is what caused the manhole to back up and sewer/rainwater to back up into his house.

5. The claimant states that the defendant did not properly maintain this sewer/storm outfall and it is this reason that he suffered the loss.

6. The defendant denies responsibility and filed a defence asserting that they have no ownership, care or control over this particular sewer line, manhole and lateral line or sewer system; that this sewer system is not connected to the municipal system and the Municipality does not repair or maintain private sewer systems.

7. The defendant denies any negligence on its part.

8. Every individual or claimant who comes before the court is entitled to be heard. If that individual has some problems accessing or requires some sort of accommodation, this Court will do its best to accommodate, be accessible and ensure that all folks have access to justice and access to the Court. This, at times, will require accommodation, sometimes significant accommodation will be required.

9. The claimant identified a potential barrier to the Court which was the level of literacy the claimant possessed.

10. This Court did its best to ensure that the claimant had full access to the materials presented and took steps to ensure that the claimant was fully aware and understood the process that was unfolding. At times, the Court had to assist the Claimant in introducing evidence, have full opportunity to cross examine and to understand the nature of hearsay in the proceedings.

11. The Court also commends the patience of the counsel representing the defendant which helped the claimant have full access to the court process.

12. Although it took a significant amount of time to fully hear the case, there is really only one issue to decide in this matter. That is who has the ownership and responsibility for the sewer system in question.

13. The claimant introduced evidence (through his testimony and opening statements) that asserted that this sewer/storm system was put in place by the defendant a number of years past.

14. The claimant asserted that a certain retired former employee of the CBRM had informed him that the sewer system/line was put into place during that person's tenure at CBRM. This potential witness was not available to testify or to be cross examined at trial.

15. The claimant did not call any witnesses or present any evidence, other than his testimony, to show that the defendant was responsible or was negligent in maintaining the sewer system.

16. The defendant introduced overwhelming evidence to show that the sewer system in place was a private system. This particular system was not connected to the existing municipal sewer or any storm sewers operated and maintained by the defendant.

17. The defendant introduced maps that show all of the existing municipal sewer and storm systems and showed that the claimant's home was not hooked up to any of its systems. Furthermore, the defendant showed that the claimant had not been charged for residential sewer charges on the claimant's tax accounts going back to September 2009. The witness called to explain the tax information testified that anyone who is hooked up to a municipal system will have the charge recorded on their tax bills.

18. The claimant's tax account records do not have a residential sewer charge on it.

19. All of the evidence introduced by the defendant showed that this particular sewer system was a private system, was located on the property of the claimant and that the claimant was actually responsible for the maintenance and proper upkeep of this system.

20. I find that the defendant has no ownership interest, responsibility or duty to maintain this particular sewer system in place. I find no negligence on the part of the defendant in regard to this claim.

21. I find for the defendant and dismiss the claim.

Tuma T. W. Young  
Adjudicator