SUPREME COURT
OF
BRITISH COLUMBIA
SEAL
24-Nov-26
Victoria
REGISTRY

Court File No. VIC-S-S-2617675

No. _____
Victoria Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

COLIN MICHAEL EVES, SANDRA LORENE EVES, LEON GRANT BOHMER, SHELLEY MARIE BOHMER, HENRIETTA MCMILLAN, JAMES MALCOLM MCMILLAN, GRAEME BOCK, MELISSA KATHARINA BOCK, PETER ARTHUR RIPPON, LAURIE MARIE RIPPON, SYLVIA DIANE MITCHELL, THOMAS ANDREW MITCHELL, DARCY ROY WALTERS, and CAROL ELIZABETH WALTERS

PLAINTIFFS

AND:

COMOX VALLEY REGIONAL DISTRICT,
MAPLE REINDERS CONSTRUCTORS LTD. and KNAPPETT INDUSTRIES (2006) LTD., carrying on business as MAPLE KNAPPETT JOINT VENTURE, and
NCS FLUID HANDLING SYSTEMS INC.

DEFENDANTS

NOTICE OF CIVIL CLAIM

This action has been started by the plaintiffs for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

(a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and

(b) serve a copy of the filed response to civil claim on the plaintiffs.

If you intend to make a counterclaim, you or your lawyer must

(a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and

(b) serve a copy of the filed response to civil claim and counterclaim on the plaintiffs and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

Time for response to civil claim

A response to civil claim must be filed and served on the plaintiffs,

(a) if you were served with the notice of civil claim anywhere in Canada, within 21 days after that service,

(b) if you were served with the notice of civil claim anywhere in the United States of America, within 35 days after that service,

(c) if you were served with the notice of civil claim anywhere else, within 49 days after that service, or

(d) if the time for response to civil claim has been set by order of the court, within that time.

CLAIM OF THE PLAINTIFFS

Part 1: STATEMENT OF FACTS

The Plaintiffs and the Plaintiffs' Properties

1. The Plaintiffs are individuals who reside in Comox, British Columbia. At all material times each Plaintiff was, and is, the registered owner in fee simple and the occupier of the lands and premises set out opposite that Plaintiff's name below (together, the "**Plaintiffs' Properties**", and each a "**Property**"):

Plaintiff	**Civic address (Comox, BC)**	**Legal description**
Colin and Sandra Eves	85 Jane Place	LOT A SECTION 56 COMOX DISTRICT PLAN EPP6162
Carol and Darcy Walters	45 Jane Place	LOT A SECTION 56 COMOX DISTRICT PLAN VIP75524
Leon and Shelley Bohmer	1713 Beaufort Avenue	LOT 170, SECTION 56, COMOX DISTRICT, PLAN 104
Melissa and Graeme Bock	41 Jane Place	PARCEL A SECTION 56 DISTRICT LOT 95-G COMOX DISTRICT PLAN EPP101060
Thomas and Sylvia Mitchell	78 Jane Place	LOT 3, SECTION 56, COMOX DISTRICT, PLAN 31205
Laurie and Peter Rippon	49 Jane Place	LOT A SECTION 56 COMOX DISTRICT PLAN EPP50963

Henrietta and James McMillan	44 Jane Place	LOT 5, SECTION 56, COMOX DISTRICT, PLAN 29786

2. The Plaintiffs' Properties are residential properties on Jane Place and Beaufort Avenue in the Town of Comox. They are situated in a residential area (the "**Neighbourhood**") in close proximity to the Pump Station (defined below), and they front on or overlook the Comox Harbour and Courtenay River Estuary (defined below).

The Defendants

3. The Defendant Comox Valley Regional District (the "**CVRD**") is a regional district incorporated under the *Local Government Act*, R.S.B.C. 2015, c. 1 (the "***LGA***"), with its head office at 770 Harmston Avenue, Courtenay, British Columbia. The CVRD owns and operates the Comox Valley Sewer Service, which collects, conveys and treats wastewater from the City of Courtenay, the Town of Comox, K'ómoks First Nation and CFB Comox (the "**Sewage System**"), under the governance of the Comox Valley Sewage Commission, a commission of the CVRD board.

4. The Defendants Maple Reinders Constructors Ltd. ("**Maple Reinders**") and Knappett Industries (2006) Ltd. ("**Knappett**") are companies carrying on business in British Columbia together as a joint venture as Maple Knappett Joint Venture ("**MKJV**"). MKJV is the design-builder of the pump station components and part of the forcemain of the Project (defined below) under a design-build agreement with the CVRD. Maple Reinders is a federal company extraprovincially registered in British Columbia with an office for delivery and service at 200-537 Leon Avenue, Kelowna BC V1Y 2A9. Knappett is a British Columbia company with an office for service and delivery at 666 Burrard Street, Suite 2700 Vancouver, BC V6C 2X8.

5. The Defendant NCS Fluid Handling Systems Inc. ("**NCS**") is an Alberta-based company registered extraprovincially in British Columbia. Its extraprovincial office for service and delivery is Lawdell Corporate Services Limited, 1600-925 West Georgia Street, Vancouver, BC V6C 3L2. NCS carries on business in British Columbia as a specialist bypass-pumping and fluid-handling contractor. NCS designed, supplied, installed and tested the Bypass (defined below) under a subcontract with MKJV.

The Comox Pump Station

6. The CVRD owns and operates a sewage pump station at or near 81 Jane Place, Comox, on lands legally described as Those Parts of District Lot 203G, Comox District and Part of the Beds of Comox Harbour and Georgia Strait, Nanaimo District, shown on Plans 3511 RW and 51139 except Block A, District Lot 380, Nanaimo District and except Parts in Plans EPP6162 and EPP55375, and That Part of the Bed of Comox Harbour, Comox District, included in Plan 41919 (the "**Pump Station**").

7. The Pump Station is a key component of the Sewage System. It receives wastewater from the Town of Comox and pumps it under pressure through a forcemain that connects with the regional forcemain carrying wastewater from the Courtenay Pump Station and the rest of the Sewage System to the Comox Valley Water Pollution Control Centre on Brent Road for treatment (together, the "**Forcemain**").

8. The Pump Station sits on the foreshore of Comox Harbour, immediately adjacent to the intertidal zone, the Comox Harbour Authority's east marina (the "**Marina**") and the Plaintiffs' Properties. The property of the plaintiffs Colin and Sandra Eves is next door to the Pump Station lands.

9. Comox Harbour and the Courtenay River Estuary (together, the "**Estuary**") are ecologically sensitive marine waters and foreshore within the traditional territory of the K'ómoks First Nation. The Estuary supports commercial and recreational fisheries, and extensive recreational use including swimming (including open-water swimming), paddling, sailing, foiling and foreshore access from the Neighbourhood. The Estuary is also the location of various registered archaeological sites. Locals and visitors alike enjoy strolling and dog-walking along the foreshore.

The Sewer Conveyance Project and the Bypass

10. In or about November 2023 the CVRD entered into a design-build agreement with MKJV (the "**Design-Build Agreement**") for the design and construction of the pump station components and part of the forcemain of the Comox Valley Sewer Conveyance Project, a project budgeted at approximately $96 million comprising a new Courtenay Pump Station, retrofits to the Pump Station and to the K'ómoks First Nation pump station, and approximately nine kilometres of new forcemain routed inland away from the foreshore (the "**Project**"). Other portions of the forcemain were contracted separately.

11. Under the Design-Build Agreement MKJV assumed responsibility for the design, construction, construction management, temporary works, site safety, environmental protection, and the selection and supervision of subcontractors for the Project, including the retrofit of the Pump Station. The CVRD retained the right and the responsibility to review and accept MKJV's designs, submittals, work plans and risk assessments, and to inspect and oversee the work.

12. The retrofit of the Pump Station required its existing pumps and piping to be taken out of service while they were replaced. To maintain conveyance of sewage during the retrofit, MKJV and NCS designed and installed a temporary bypass pumping system (the "**Bypass**") consisting of temporary pumps drawing from the manhole upstream of the Pump Station, above-ground bypass piping across the Pump Station lands, and a connection to the live Forcemain downstream of the Pump Station.

13. The connection between the Bypass and the Forcemain was made by a "hot tap" cut by MKJV into the pressurized Forcemain while the Forcemain remained in service, fitted with a gate valve (the "**Gate Valve**"). The bypass piping was joined to the Gate Valve by a mechanical pipe coupling (the "**Coupling**"). The hot tap, the Gate Valve and the Coupling were located at the bottom of an open excavation on the Pump Station lands immediately adjacent to the foreshore and close to the Plaintiffs' Properties (the "**Excavation**").

14. As designed and installed by NCS, reviewed and approved by MKJV, and accepted or permitted by the CVRD, the Bypass had:

    (a) no check valve at the connection to the Forcemain, or other device to prevent pressurized sewage in the Forcemain from flowing back into the bypass piping when the Gate Valve was open;

    (b) no means of closing the Gate Valve, or otherwise isolating the Forcemain from the Bypass, from outside the Excavation;

    (c) no secondary containment capable of holding sewage released within the Excavation; and

    (d) no engineering review of the physical layout, assembly or restraint of the bypass piping, or of the procedure for connecting and testing it against the live Forcemain.

15. The design of the Bypass and the testing procedure were prepared by NCS, reviewed and approved by MKJV, and submitted to and accepted by the CVRD and its engineering staff and consultants. Each Defendant knew or ought to have known that the Bypass would be connected to the live Forcemain and tested while the Forcemain was carrying the full daytime flows of the Sewage System.

16. In the days prior to the Release, attempts to fit the Coupling to the bypass piping resulted in leaks during clean-water testing, which were known to NCS and MKJV and were known, or ought to have been known, to the CVRD.

The Release of May 26, 2026

17. At approximately 9:15 a.m. on Tuesday, May 26, 2026, at NCS's direction an MKJV crew opened the Gate Valve to test the Bypass while the Forcemain was in service. Moments later the Coupling separated from the bypass piping under Forcemain pressure. Raw, untreated sewage flowed back out of the Forcemain through the open Gate Valve into the Excavation, which filled and overflowed across the Pump Station lands and the adjoining foreshore and into Comox Harbour (the "**Release**").

18. The Release continued for approximately eight hours. Throughout that period the upstream pump stations of the Sewage System continued to operate, interrupted only by shutdowns of about 20 minutes at a time, and sewage in the Forcemain continued to flow back out through the Gate Valve. The CVRD asked approximately 43,000 residents of Courtenay, Comox and K'ómoks First Nation not to flush toilets or use water draining to the Sewage System. That appeal reduced flows by roughly half but did not stop the Release.

19. The Gate Valve was closed at approximately 5:35 p.m. on May 26, 2026 by divers, mobilized to the site earlier that day, who entered the flooded Excavation.

20. The Release discharged approximately 5,800 cubic metres (5.8 million litres) of raw sewage onto the Pump Station lands, onto the foreshore and intertidal zone adjoining the Neighbourhood, and into the Estuary.

21. Sewage, sewage-contaminated water, sewage solids and sewage-derived debris from the Release were deposited on the foreshore immediately adjoining and in front of the Plaintiffs' Properties, where some of that material remains, and reached, and at high tides extended onto, parts of some of those Properties.

22. From May 26, 2026 a pervasive odour of raw sewage permeated the Plaintiffs' Properties and homes. The odour persisted until about mid-September 2026, and was particularly strong for two to three weeks after the revised Bypass began operating on or about August 21, 2026.

The Defendants' Response

23. No spill-containment equipment or personnel were deployed on the foreshore for approximately four to five hours after the Release began. Sandbag berms were then built on the foreshore to form a temporary settling lagoon. By approximately 5:00 p.m. on May 26, 2026 sewage was breaching those berms. An oil-spill boom was deployed to capture floating debris. The Release was not contained.

24. Since 2017, the CVRD has maintained a written spill response plan for the Sewage System covering the forcemains from the Courtenay Pump Station and from the Pump Station (then called the "Jane Street Pump Station"), which warned that those forcemains could fail at any time; that failures of pressurized pipes range up to catastrophic failure due to improper or insufficient restraints; that apparent pressure spikes in the forcemain of up to 130 psi had been observed and could separate large sections of pipe; that the forcemains had very limited options for bypassing their flows and minimal storage, that each pump station could be shut down for only about 20 minutes at peak flow, and that leaking sewage was to be contained and collected. Despite this, no spill-response personnel, equipment or containment commensurate with that plan were staged at the Pump Station when the Bypass was connected to the live Forcemain and tested.

25. On May 26, 2026 the CVRD issued public advisories to avoid water-related activities in the Estuary, including at Goose Spit and the Marina. Fisheries and Oceans Canada closed bivalve shellfish harvesting in the affected waters. The advisories applied Island Health's safe-swimming criteria.

26. Sampling by or for the CVRD on May 26 and 27, 2026 at sites in the water immediately in front of the Pump Station and the Plaintiffs' Properties recorded enterococcus concentrations of up to 660,000 CFU/100 mL, against an Island Health safe-swimming guideline of an average below 35 CFU/100 mL and no single sample above 70 CFU/100 mL.

27. The CVRD lifted its advisory for portions of Comox Harbour on June 3, 2026, and the federal fisheries closures were lifted in stages ending June 8, 2026. However, the advisory for the "Immediate Spill Area" — the foreshore between Jane Place and the Comox Wharf, directly in front of the Plaintiffs' Properties — remained in effect until August 31, 2026, a period of 97 days. The advisory for the water within the Marina was lifted on August 5, 2026.

28. The Defendants' clean-up of the foreshore between May 27 and May 30, 2026 was limited to washing and raking visible solids into the lagoon, pumping liquid from the lagoon to the Sewage System, and collecting trash. The berms were removed between June 8 and June 12, 2026, including the main berm across the lagoon outlet on June 11, 2026. Sewage solids, sanitary products and other sewage-derived debris remained on the foreshore adjoining the Plaintiffs' Properties after that work.

29. The CVRD's communications with the Plaintiffs about the Release, the clean-up, water-quality results and the schedule for completing the Pump Station works were often delayed and incomplete.

The Defendants' Admissions

30. In a report to the Sewage Commission dated June 18, 2026, the CVRD has confirmed that:

    (a) the cause of the Release was the failure of the Coupling;

    (b) the Gate Valve was open when the Release occurred;

    (c) as soon as the Release commenced it became unsafe for a worker to enter the Excavation to close the Gate Valve;

    (d) the Bypass was "the sole responsibility of the contractor, who takes responsibility for the event"; and

    (e) going forward the revised bypass plan would include the ability to operate the Gate Valve from outside the Excavation, an additional check valve bolted to the

Gate Valve to prevent sewage flowing back from the Forcemain, and thorough review of the Bypass by an engineer before testing.

31. In or about June 2026 MKJV issued an environmental spill investigation report setting out preventative and corrective measures. The CVRD has stated publicly that MKJV "has claimed full responsibility for the event."

32. In July 2026, CVRD staff recommended an independent engineering review of the Release, at a cost of up to $75,000, to report in early 2027.

Continuing Works and Continuing Interference

33. Construction at the Pump Station resumed after the Release. A revised Bypass came into service on or about August 21, 2026, about three months after the May 25, 2026 start date the CVRD had given residents in its letter of May 14, 2026, and remained in operation at the date of this claim.

34. Since May 26, 2026, the Defendants' construction, bypass pumping, remediation and monitoring activities at and around the Pump Station have caused:

    (a) noise from temporary bypass pumps, generators and construction equipment, running continuously, including overnight, at levels exceeding the 45 dBA night-time limit that the CVRD advised residents in writing, on May 14, 2026, the bypass pumps would be required to meet before they began operating;

    (b) odour from the Bypass, the Excavation and the contaminated foreshore;

    (c) heavy vehicle, equipment and worker traffic on Jane Place and Beaufort Avenue, including the parking and staging of vehicles, equipment and materials against or adjacent to the Plaintiffs' Properties;

    (d) vibration, dust and night lighting; and

    (e) obstruction of the Plaintiffs' access to the foreshore and to the public roads of the Neighbourhood, and the storage of equipment, materials, spoil, fencing and containment works on the Pump Station site and the adjoining foreshore, for an extended period, in a disordered and unsightly condition.

Notice to the CVRD

35. On July 24, 2026, within two months of the Release, the Plaintiffs delivered written notice to the CVRD setting out the time, place and manner in which they sustained damage. The CVRD has acknowledged service.

Loss and Damage

36. As a result of the Release and the Defendants' continuing activities, the Plaintiffs have suffered and continue to suffer loss, damage and expense, including:

(a) physical contamination of the foreshore adjoining the Plaintiffs' Properties and of parts of some of those Properties, by sewage, sewage solids and sewage-derived debris;

(b) loss of the use and enjoyment of their homes, gardens, decks and waterfront, including the inability to open windows or to use outdoor space;

(c) loss of access, use and enjoyment of the foreshore, near-shore, intertidal zone and the water for all purposes;

(d) exposure to highly polluted air and water, offensive odour, noise, vibration, light, dust and traffic;

(e) interference with sleep and with the ordinary comfort of residential life;

(f) inconvenience, discomfort, anxiety and distress;

(g) diminution in the market value of the Plaintiffs' Properties, including stigma arising from the Release and from the Neighbourhood's association with it;

(h) the cost of independent testing of sewage-affected water and sediment; and

(i) other out-of-pocket expenses.

37. Particulars of special damages will be provided before trial.

Part 2: RELIEF SOUGHT

38. The Plaintiffs claim against the Defendants, and each of them, jointly and severally:

(a) A declaration that the Defendants are liable to the Plaintiffs in negligence, private nuisance, public nuisance and the tort in *Rylands v. Fletcher* for the Release and its consequences.

(b) General damages.

(c) Special damages, including the costs of independent monitoring, assessments, and testing.

(d) Damages in lieu of, or in addition to, an injunction.

(e) Interlocutory and permanent injunctions:

i restraining the Defendants, by themselves, their servants, agents, contractors and subcontractors, from causing or permitting sewage, wastewater, sewage

solids or sewage-derived material from the Pump Station, the Forcemain or any bypass works to escape onto the Plaintiffs' Properties or onto the foreshore adjoining the Neighbourhood;

ii restraining the Defendants from carrying on construction, bypass pumping, remediation or related activities at or about the Pump Station in a manner that causes noise, odour, vibration, light or obstruction amounting to a nuisance; and

iii requiring the Defendants, at their expense and under the supervision of a qualified environmental professional, to remove all sewage, sewage solids and sewage-derived debris from the foreshore adjoining the Neighbourhood, and to restore those lands to their condition before the Release.

(f) Interest pursuant to the *Court Order Interest Act*, R.S.B.C. 1996, c. 79.

(g) Costs.

(h) Such further and other relief as this Honourable Court deems just.

Part 3: LEGAL BASIS

Negligence

39. Each Defendant owed the Plaintiffs a duty to take reasonable care in the design, construction, connection, testing and operation of the Bypass and in the conduct of the Project at the Pump Station so as to prevent the escape of sewage onto the Plaintiffs' Properties and the adjoining foreshore, and to avoid unreasonable interference with the Plaintiffs' Properties. The Plaintiffs' Properties are all situated close to the Pump Station. Harm to the Plaintiffs and their Properties from an escape of sewage was the obvious and foreseeable consequence of a failure of the Bypass. The relationship between the Plaintiffs and each Defendant was one of close proximity.

40. The CVRD owed the Plaintiffs a duty of care as the owner and operator of the Pump Station, the Forcemain and the Sewage System, as the owner of the Project, and as the party that reviewed, accepted and oversaw the Bypass and the work under the Design-Build Agreement. Its role and responsibilities with respect to the Project are operational in nature and attract no immunity from liability.

41. MKJV owed the Plaintiffs a duty of care as the design-builder responsible under the Design-Build Agreement for the design, construction, temporary works, construction management, site safety and environmental protection of the Project, and for the selection and supervision of NCS.

42. NCS owed the Plaintiffs a duty of care as the specialist contractor that designed, supplied, installed, connected and tested the Bypass.

43. Each Defendant breached its respective standard of care in relation to these Plaintiffs. Particulars of the negligence of NCS include:

(a) designing and installing a connection between the Bypass and the live, pressurized Forcemain without a check valve or other backflow protection;

(b) selecting, specifying and installing a Coupling that was unsuitable for, or was not installed so as to withstand, the pressure of the Forcemain;

(c) opening the Gate Valve to the live Forcemain to test the Bypass, instead of pressure-testing the bypass piping and the Coupling against an isolated and controlled source;

(d) proceeding with the Bypass test after earlier leaks at the Coupling;

(e) situating the only means of isolating the Forcemain from the Bypass at the bottom of the Excavation, with no provision for operating it from outside the Excavation;

(f) failing to provide secondary containment for the Excavation;

(g) failing to have spill-response personnel, equipment and containment in place before testing;

(h) failing to obtain independent engineering review of the Bypass and the test procedure; and

(i) failing to stop the Release promptly.

44. Particulars of the negligence of MKJV include:

(a) reviewing and approving a Bypass design and test procedure with the deficiencies set out in paragraphs 14 and 43;

(b) failing to prepare and implement a risk assessment, method statement and emergency response plan adequate to the work of connecting temporary works to a live sewage forcemain carrying much of the region's wastewater, on the foreshore of a sensitive estuary and adjacent to residences;

(c) failing to supervise NCS;

(d) permitting the test to proceed at full daytime flows, without spill-response resources on site, and without arrangements with the CVRD to reduce, divert or isolate flows in the Forcemain if the test failed;

(e) failing to stop the Release promptly, and failing to deploy containment for approximately four to five hours;

(f) failing to remediate the foreshore; and

(g) carrying on the continuing works so as to cause unreasonable noise, odour, obstruction and traffic in the Neighbourhood.

45. Particulars of the negligence of the CVRD include:

(a) accepting and permitting a hot-tap connection to its live Forcemain under a Bypass design and test procedure with the deficiencies set out in paragraphs 14 and 43, and failing to require backflow protection, external isolation, secondary containment and independent engineering review before the connection was made;

(b) failing to require and verify an emergency response plan and staged response resources before the test, despite its own 2017 spill response plan identifying the limited ability to bypass or shut down the Forcemain and the need to contain and collect leaking sewage;

(c) permitting the test to occur while the Forcemain carried full daytime flows, rather than at minimum flows or with upstream storage, diversion and shutdown arrangements in place;

(d) failing to have in place, before the test, any means of stopping, diverting or storing the flows in the Forcemain, despite knowing since at least 2017 that the Courtenay Pump Station could be shut down for only about 20 minutes at peak flow, so that sewage continued to flow out through the failed Bypass for approximately eight hours;

(e) failing to inspect and oversee the work of MKJV and NCS, as it was entitled and obliged to do under the Design-Build Agreement and as operator of the Sewage System;

(f) failing to deploy containment and spill response for approximately four to five hours;

(g) failing to provide timely and accurate information to the Plaintiffs;

(h) failing to remediate the foreshore; and

(i) permitting the continuing works to be carried out so as to cause unreasonable noise, odour, obstruction and traffic in the Neighbourhood.

46. The Defendants' negligence caused the Release and the Plaintiffs' loss and damage.

47. The Plaintiffs rely on the admissions pleaded in paragraphs 30 and 31, and on the corrective measures described there, as evidence of the precautions a reasonable contractor and a reasonable owner-operator would have taken before May 26, 2026.

48. The circumstances of the Release are within the particular knowledge of the Defendants. The escape of 5,800 cubic metres of sewage from works under the Defendants' exclusive control is itself evidence from which negligence may be inferred, and the Plaintiffs will rely on that inference.

Private Nuisance

49. The Defendants, and each of them, have caused a substantial and unreasonable interference with the Plaintiffs' use and enjoyment of the Plaintiffs' Properties, by:

    (a) the Release, which deposited sewage and sewage-derived material on the foreshore adjoining the Plaintiffs' Properties and rendered the Plaintiffs' waterfront unusable for over three months;

    (b) the pervasive odour of raw sewage from May 26 to about mid-September 2026; and

    (c) the continuing noise, odour, vibration, light, traffic and obstruction from the Bypass and the Pump Station works.

50. The CVRD authorized and directed the Project and the Bypass and the manner of their execution, and is liable in nuisance for interference that was the natural and foreseeable consequence of the work it authorized. MKJV and NCS created and have continued the nuisance and are liable for it.

51. Neither the Release nor the continuing interference was the inevitable consequence of the exercise of any statutory authority. The Project could have been carried out, and the Bypass connected and tested, without the Release and without the continuing interference, by the practicable precautions described above. The CVRD itself set a 45 dBA night-time limit for the bypass pumps, acknowledging that quieter operation was practicable. The defence of statutory authority is not available to any Defendant.

52. Section 744 of the *LGA* does not apply to or bar the Plaintiffs' claims. The Release did not arise, directly or indirectly, out of the breakdown or malfunction of a sewer system. It arose from the negligent design, installation and testing of temporary construction works that had not been commissioned or placed in service as part of the Sewage System, and from the deliberate act of the Defendants' personnel in opening the Gate Valve to the live Forcemain. The continuing noise, odour, traffic and obstruction are the product of the Defendants' construction activities, not of any breakdown or malfunction. In any event, s. 744 affords no protection to MKJV or NCS.

Public Nuisance

53. The Release interfered unreasonably with rights common to the public, including the rights to access, use and enjoy the public foreshore and nearshore, the right to fish, swim, paddle and otherwise use and enjoy unpolluted public waters, and the right to clean air. The advisories and closures issued by the CVRD and Fisheries and Oceans Canada were the direct result of that interference.

54. The Plaintiffs have suffered special damage, different in kind from and greater in degree than that suffered by the public at large. The Plaintiffs' Properties are adjacent to the

Immediate Spill Area; the foreshore and water in front of their homes remained closed for over three months when most of the rest of the harbour area reopened after eight days; sewage solids and debris remain on the foreshore in front of their homes. In short, the Plaintiffs have been deprived of public rights that impair their ability to access, use and enjoy their Properties.

The Rule in *Rylands v. Fletcher*

55. The Defendants brought onto the Pump Station lands, and accumulated and conveyed under pressure through temporary above-ground works on the foreshore, raw sewage in quantities and under conditions likely to do mischief if it escaped. That was a non-natural use of the land. The sewage escaped onto the foreshore adjoining the Plaintiffs' Properties and onto parts of some of them, and interfered with the Plaintiffs' use and enjoyment of those Properties. MKJV and NCS are strictly liable for that damage. The CVRD is likewise liable because, for the reasons in paragraph 52, s. 744 of the *LGA* does not apply.

Liability of the CVRD and MKJV for Their Contractors; Joint and Several Liability

56. The CVRD is liable for the negligence of MKJV and NCS, and MKJV is liable for the negligence of NCS, because:

    (a) the work of connecting temporary bypass works to a live sewage forcemain on the foreshore of a sensitive estuary, adjacent to residences, was inherently hazardous and carried a special risk of damage to the Plaintiffs unless particular precautions were taken, and the duty to see that those precautions were taken could not be discharged by delegating the work to a contractor;

    (b) the CVRD, as the owner and operator of the Sewage System with statutory responsibility for it, owed the Plaintiffs a non-delegable duty to prevent the escape of sewage from its works onto neighbouring land; and

    (c) the CVRD and MKJV each authorized the work and the manner in which it was carried out, including the actions taken on May 26, 2026 that led to the Release.

57. The Defendants' tortious acts and omissions combined to cause the Plaintiffs' loss and damage, which is indivisible. The Defendants are jointly and severally liable for it, and the Plaintiffs rely on s. 4 of the *Negligence Act*, R.S.B.C. 1996, c. 333.

Notice and Limitation

58. The Plaintiffs have complied with s. 736(1) of the *LGA*.

59. This action is commenced within six months after the Release. In any event, the Defendants' nuisance is continuing and gives rise to a fresh cause of action from day to day.

Damages

60. The Plaintiffs are entitled to general damages measured by the loss of amenity and the discomfort, inconvenience and distress caused by the interference; to damages for the diminution in the value of their Properties, including stigma, which are recoverable in tort whether or not any Property is remediated; and to special damages for the expense they have incurred and will incur.

61. The Plaintiffs rely on the *Negligence Act*, the *Court Order Interest Act*, R.S.B.C. 1996, c. 79, and the *Supreme Court Civil Rules*, B.C. Reg. 168/2009, in respect of damages, interest and costs.

Declarations and Injunctions

62. The Court has jurisdiction to grant the declaratory and injunctive relief sought under its inherent jurisdiction and s. 39 of the *Law and Equity Act*, R.S.B.C. 1996, c. 253. The nuisance is continuing. Damages alone are not an adequate remedy for the continuing escape of sewage, for the continuing presence of sewage-derived material on the foreshore adjoining the Plaintiffs' Properties, or for the risk of a further release from bypass works at the Pump Station, and the balance of convenience favours the relief sought. Where the Court declines to grant an injunction, the Plaintiffs claim damages in lieu.

Enactments Relied On

63. The Plaintiffs rely on the following enactments:

    (a) *Negligence Act*, R.S.B.C. 1996, c. 333, s. 4;

    (b) *Court Order Interest Act*, R.S.B.C. 1996, c. 79;

    (c) *Law and Equity Act*, R.S.B.C. 1996, c. 253, s. 39;

    (d) *Local Government Act*, R.S.B.C. 2015, c. 1, ss. 735, 736 and 744;

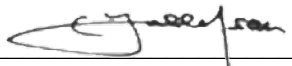
    (e) *Environmental Management Act*, S.B.C. 2003, c. 53, ss. 39, 45, 47 and 91.2, and its regulations including the *Municipal Wastewater Regulation*, B.C. Reg 87/2012 and the *Spill Reporting Regulation*, B.C. Reg. 187/2017;

    (f) *Fisheries Act*, R.S.C. 1985, c. F-14; and

    (g) *Supreme Court Civil Rules*, B.C. Reg. 168/2009.

Plaintiffs' address for service:	Tollefson Law Corporation 700 – 1175 Douglas Street Victoria, BC V8W 2E1
Fax number address for service (if any):	nil
E-mail address for service (if any):	chris@tollefsonlaw.ca
Place of trial:	Victoria, British Columbia
The address of the registry is:	850 Burdett Avenue, Victoria, British Columbia V8W 9J2

Date: November 24, 2026



Signature of lawyer for the plaintiffs
CHRIS TOLLEFSON, K.C.
Tollefson Law Corporation
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Victoria, BC V8W 2E1
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Rule 7-1 (1) of the Supreme Court Civil Rules states:

(1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,

(a) prepare a list of documents in Form 22 that lists

(i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and

(ii) all other documents to which the party intends to refer at trial, and

(b) serve the list on all parties of record.

APPENDIX

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

The Plaintiffs, owners of residential waterfront properties adjoining the Comox Pump Station, claim damages and injunctive relief in negligence, private nuisance, public nuisance and under the rule in *Rylands v. Fletcher*, arising from the release of approximately 5,800 cubic metres of raw sewage from temporary bypass works at the Pump Station on May 26, 2026 and from the Defendants' continuing construction and bypass activities.

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:

- ☐ a motor vehicle accident
- ☐ medical malpractice
- ☐ another cause

A dispute concerning:

- ☒ contaminated sites
- ☐ construction defects
- ☒ real property (real estate)
- ☐ personal property
- ☐ the provision of goods or services or other general commercial matters
- ☐ investment losses
- ☐ the lending of money
- ☐ an employment relationship
- ☐ a will or other issues concerning the probate of an estate
- ☐ a matter not listed here

Part 3: THIS CLAIM INVOLVES:

- ☐ a class action
- ☐ maritime law
- ☐ aboriginal law
- ☐ constitutional law
- ☐ conflict of laws
- ☒ none of the above

☐ do not know

Part 4:

☐ *Builders Lien Act*

☒ *Court Order Interest Act*

☐ *Insurance (Motor Vehicle) Act*

☐ *Insurance (Vehicle) Act*

☐ *Motor Vehicle Act*

☐ *Occupiers Liability Act*

☐ *Supreme Court Act*

☐ *Wills Variation Act*

☒ Other: *Negligence Act*, R.S.B.C. 1996, c. 333; *Law and Equity Act*, R.S.B.C. 1996, c. 253; *Local Government Act*, R.S.B.C. 2015, c. 1; *Environmental Management Act*, S.B.C. 2003, c. 53; *Spill Reporting Regulation*, B.C. Reg. 187/2017; *Municipal Wastewater Regulation*, B.C. Reg. 87/2012; *Fisheries Act*, R.S.C. 1985, c. F-14