



YOU AND THE LAW

WHY A SURVEY OR EASEMENT?

If you have a difficult next-door neighbour, you might decide to just go ahead and do what you want on your property regardless. But if it isn't clear that you own that land, you could end up in a fight. Taking some basic steps up front instead could save you a lot of hassle and expense later on. Consider this recent court case.

The Jones and the Lings (not their real names) owned one-acre properties next to each other. A number of boulders were placed along or near the boundary between them. These boulders were big and difficult for either neighbour to move without going over on the other side. The Lings' house sat well back from the property line, while the Jones' house was built close to it. A year after they moved in, the Jones started to improve a pathway between the two lots, thinking it was on their land. The Lings told them it wasn't and so the Jones' stopped that work. But the following year, without knowing where the property boundary was and without a survey, the Jones built a patio next to their house which went to the edge of the boulder line and also placed some artificial rocks on the boulders.

It turned out these improvements encroached (i.e. were located) on the Lings' land, going almost 2 metres onto the Lings' property.

The Jones asked the B.C. Supreme Court for an "easement" (right to use another person's land) or transfer of this area to themselves, in return for paying the Lings some compensation. The Lings asked the court for removal of the improvements instead. By this point, relations between the neighbours had gotten very bad.

The bit of land in question wasn't really accessible or usable by the Lings, being on the other side of the boulders from them. The encroaching Jones' deck and improvements were well behind and away from the Lings' house and didn't obviously intrude on their living space (except psychologically). But the way the Jones had just barged ahead without honestly believing they were building on their own land or getting a survey was inexcusable, said the court.

To resolve this messy situation, the Jones had to pay the Lings \$22,000 for the Jones' increased property value (and some loss of value of the Lings' property). But to reflect the court's disapproval of their high-handed actions, the Jones also had to pay special costs to the Lings (and their out-of-pocket and survey costs) – an expensive proposition. If the Jones didn't pay within 90 days, they would have to remove the improvements and restore the land to its original condition.

It's clear the court intended to discourage others from acting like the Jones did here and send a message that doing so wouldn't be profitable.

Had the Jones obtained a survey early on, they might have been able to negotiate an easement or similar agreement for the patio extension, while remaining on good terms with the neighbours, or pursue other options. Chances are the costs (financial and emotional) would have been a lot less.

This column has been written by Janice and George Mucalov, LL.B.s with assistance from FABRIS McIVER HORNQUIST & RADCLIFFE. It provides information only and must not be relied on for legal advice. Please contact FABRIS McIVER HORNQUIST & RADCLIFFE for legal advice concerning your particular case. Lawyer Janice Mucalov is an award-winning legal writer. YOU AND THE LAW is a registered trade-mark. © Janice and George Mucalov.



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