Neighbour versus Neighbour - The nasty world of neighbourhood disputes

From the Black Donnellys, who were bludgeoned to death by their neighbours on February 4, 1880, to the Hatfields and McCoys, who went to war over an errant pig, history is replete with famous examples of warring neighbours.

While it would be tempting to believe that society has evolved significantly since those early settlers engaged in lengthy battles over inconsequential trivialities, just this past spring the Ontario Superior Court sat in judgment of neighbours who had been fighting with each other for some 30 years - a feud that was apparently precipitated by the construction of a detached garage that was “too close” to the property line.

Matters quickly escalated out of control until it wasn’t long before the “aggrieved” neighbour had successfully managed to erode the foundation of the offending garage, causing it to lift precariously to the point where it was in danger of falling over. Though nobody died, the victorious neighbours had to spend more than $70,000 in legal fees to stop their neighbours’ misconduct. Even then, although successful, they only recovered $52,000 to fix the garage and $21,000 against the legal fees. In other words, the victorious neighbour paid more than $70,000 in legal fees only to recover $73,000 from the offending neighbour - a net of just under $3,000.

That kind of result puts one in mind of Agatha Christie, who once remarked that “one is left with the horrible feeling now that war settles nothing; that to win a war is as disastrous as to lose one”. As the example illustrates, it is an overarching problem of our legal system that, at the moment, principles cost money. And lots of it. In fact, it is arguable that the evolution of our legal system has only really managed to substitute the fear of dying at the hands of a disgruntled neighbour with a fear of bankruptcy and financial ruin at the hands of that same neighbour.

That isn’t to suggest that our legal system won’t afford you full protection when a neighbour trammels your legal rights, only that you must always begin by balancing your right to something against the relative cost of using the court system to secure that right. For instance, while you may feel that your neighbour seems to be trying to “steal” your land by putting up a fence a few inches on your side of the property line, you must judge the need to police the property line against the reality that, in many communities across Ontario, your neighbour can’t “steal” your property with that type of conduct.

Under the principles of modern real estate law, claims for “adverse possession” (the act of taking someone’s property by squatting on their land) are increasingly rare. Accordingly, while your neighbour’s conduct may, strictly speaking, violate your right of ownership, you might consider holding off engaging in open warfare with them unless there has been a pattern of repeated transgressions. At a minimum, you will want to be satisfied that the principle at stake is worth more than the cost of the fight.

Similarly, even where you are prepared to invest your money in a lawsuit against your neighbour, there is a possibility that the “principle” at stake is still not actionable. That is because in most common law jurisdictions like Ontario, the law will not concern itself with trifles (de minimus non curat lex). In that way, the Court can discourage insignificant lawsuits while allocating limited judicial resources to more meaningful cases.

The de minimus principle is heavily embedded in the legal doctrine of nuisance itself in that, to succeed in a claim against your neighbour, you must prove that there has been an unreasonable interference with the use and enjoyment of your property. In effect, the law will only intervene to shield you from interferences that are unreasonable in the light of all the circumstances. As noted by Justice Fleming in the Law of Torts (4th Ed):

“the paramount problem of the law of nuisance is, therefore, to strike a tolerable balance between conflicting claims of landowners, each invoking the privilege to exploit the resources and enjoy the amenities of his property without undue subordination to the reciprocal interests of the other. Legal intervention will only be warranted when an excessive use of property causes inconvenience beyond what other occupiers in the vicinity can be expected to bear, having regard to the prevailing standard of comfort of the time and place.”

Whether conduct will be considered “unreasonable” is almost entirely a question of fact, though several factors may help decide the question. In particular, the Court will consider such things as the severity of the interference, having regard to its nature and duration, the character of the locale, the utility of the defendant’s conduct and the sensitivity of the use interfered with. In sum, it is not enough to ask whether your neighbour is using her property in what would be a reasonable manner if she had no neighbour, but rather, is she using it reasonably, having regard to the fact that she has a neighbour?

Not surprisingly, navigating the patchwork of modern nuisance law to determine what is actionable and what isn’t can be a tricky affair made all the more complicated by unreasonable expectations that have been driven by years of “bad blood”. More often than not, the feuding neighbours’ case amounts to nothing more than an ever descending spiral of retaliatory acts that have been fuelled by the perception that a legal right has been violated, regardless of whether the legal right actually exists or is actionable.
For instance, in one recent Ontario case, one neighbour sued another for obstructing their view from their cottage property. While it is easy to imagine the aggravation and frustration felt by a person whose beautiful view of a tranquil lake or the setting sun is suddenly and unceremoniously blocked or obstructed by their next-door neighbour, that aggravation and frustration is not actionable in Canada. As noted by the Court, while it has been decided that a person is entitled to “clean air, free of odours, smoke, gases and peace and quiet, he is not entitled, at least so far as the law of nuisance is concerned, to enjoy a pleasant and attractive view. If the defendant’s conduct produces an eyesore that is visible to the plaintiff, the latter cannot claim the protection of the law of nuisance. A defendant, it seems, can make his property as ugly as he chooses, and he will remain immune from liability under the common law.”

Obviously, there isn’t sufficient room in an article of this kind to describe every instance where the Court has found an actionable nuisance. Rather, the intention is to highlight the possibility that your neighbour’s conduct, while aggravating, may not necessarily give rise to a lawsuit under the doctrine of nuisance. And even if it does, you would be well advised to reconsider initiating legal action without having talked to them about the problem first since a lawsuit, like a nuclear bomb, can be expensive, messy and the results can be unpredictable.

It is also worth noting that many communities now have what are described as “alternative dispute resolution” processes in place to assist neighbours who are, or might soon be, engaged in battle. For example, under the Line Fences Act, an owner can apply to the clerk of the municipality for the appointment of a “fence viewer” whose role it would be to view the property and arbitrate the dispute. While there is a fee levied by most municipalities for the service, the fee would certainly pale in comparison to the cost of a full legal tilt with your neighbour. In addition, most municipalities have property standards officers who are also frequently trained in alternative dispute resolution principles and can assist you with your dispute.

Finally, always apply a modicum of common sense when dealing with your neighbours and remember what Benjamin Franklin once said: “Don’t throw stones at your neighbours, if your own windows are glass.”

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