

MacLean v. Williams, 2008 NSSC 293

By Derek M. Land, Blackburn English

The plaintiff sought an order preventing the defendants from making use of an access road that had been built over the plaintiff's property. Essentially, the plaintiffs contended that they had agreed to allow for a temporary right-of-way to be built across their property, while the defendants asserted that the plaintiff's behavior was consistent with the understanding that the right-of-way was to be permanent. The defendants asserted that they had obtained an equitable licence to make use of the right-of-way, which was irrevocable and based on the doctrine of estoppel.

The dispute arose because the placement of the right-of-way, which was 265 feet in length, was from the prospective of the plaintiff's, less than ideal. However, when the right-of-way was constructed, the plaintiff and the defendants had cooperated with each other in order to establish the route that would minimally interfere with the plaintiff's enjoyment of their property while not imposing an inordinate expense upon the defendants.

There was a dispute between the parties as to the nature of the discussions leading up to the establishment of the right-of-way, but in the end, Justice Edwards accepted the evidence of the defendants on all issues, finding the plaintiff lacked credibility. His Lordship held that the plaintiff's conduct in the face of the defendants' expenditure on and use of the right-of-way had created an equitable licence effectively amounting to a permanent easement.

The plaintiff's action was dismissed.