

SUPREME COURT OF NOVA SCOTIA

Citation: *Day v. Valade*, 2017 NSSC 175

Date: 20170626

Docket: HFX457856

Registry: Halifax

Between:

Erin Day and Shaun Day

Applicants

v.

Rose Lynn Valade and Serge Valade

Respondents

LIBRARY HEADING

Judge: The Honourable Justice Michael J. Wood

Heard: June 14 – 15, 2017, in Halifax, Nova Scotia

Written Decision: June 26, 2017

Subject: Riparian Rights – Access to Navigable Waters
Nuisance – Substantial Interference
Negligence – Causation and loss

Summary: Parties own adjacent homes fronting on Rocky Lake in Bedford. Respondents install seasonal wharf and dock that extends 57 feet into the lake. Applicants' property located in a small cove. They say wharf and dock interferes with their access to the main body of the lake by sailboat due to more limited area for tacking and jibing. This is alleged to create potential safety issue when Applicants' children are learning to sail. They seek a declaration, injunction and damages.

Issues: Does the Respondents' wharf and dock interfere with Applicants' riparian right to access Rocky Lake?

Have the Respondents' created a nuisance or been negligent by installing the wharf and dock?

Result: The Court concluded that the riparian right of access entitled land owner to reach navigable waters from every point on their shoreline. What are navigable waters will depend on the circumstances. With the recreational use of Rocky Lake, Court concluded that 3 feet of water was sufficient. Applicants could reach depths in excess of 4 feet without any interference from the wharf and dock which meant no violation of riparian right of access.

Once Applicants were in navigable waters they were exercising public right of navigation and could only sustain a claim if special damage could be proven. Evidence did not demonstrate such damage.

Nuisance requires proof of substantial interference with use and enjoyment of property and negligence requires causation and loss. Applicants unable to establish either of these in circumstances.

Application dismissed.

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Counsel: Michelle Chai and Sarah Walsh, for the Applicants
Jonathan Hooper and Katie Ship (student), for the Respondents

By the Court:

[1] Rocky Lake is located near Bedford, in the Halifax Regional Municipality. It is irregular in shape and bounded by a public highway, railway right of way, and forest. As its name would imply much of its shoreline is rocky with various sizes of rocks and boulders in areas of shallow water.

[2] There is residential development adjacent to Rocky Lake. Some homes have water access which permits recreational use such as boating, fishing, and swimming. A number of homeowners have built fixed and floating docks to facilitate these activities.

[3] Serge and Rose Lynn Valade have lived on Rocky Lake since 1996. The water in front of their property is very shallow with a number of exposed rocks which makes swimming and boating near the shore difficult. As a result, in 2000 they decided to build a wharf and floating dock from the shore of their property. The Valades made applications to the Nova Scotia Departments of Natural Resources and Environment as well as Fisheries and Oceans Canada for construction approval. The sketch which accompanied these applications indicated that the wharf and dock would extend 45 feet into Rocky Lake.

[4] The Valades received permission from the provincial and federal governments to install the wharf and dock as proposed, provided that it could only be in place from June 1st to September 15th of each year.

[5] Mr. Valade first installed the wharf and dock in 2000. Because of the presence of large and uneven rocks in the planned location he decided to move it further west. In doing so he extended the length in order to reach water that was at least five feet deep, which was the minimum depth he preferred for the swimming and boating activities which he intended to undertake. The result was a wharf and floating dock system which was 57 feet in length.

[6] The Valades have put out the wharf and dock most summers from 2000 to date.

[7] In September 2012 Shaun and Erin Day purchased the home just to the east of the Valade property. Their shore frontage is a small inlet which they have named Huckleberry Cove. As with other owners, they use Rocky Lake for recreational purposes and, in particular, sailing their small boats. The Valade wharf and dock was

not installed in 2013 or 2014, and so the first time the Days saw it was the spring of 2015. They were not happy because they felt it interfered with their access to the main part of Rocky Lake.

[8] The Days complained to the Valades that the wharf and dock crossed the line created by extending the common property boundary into Rocky Lake. They said it infringed their right to access Rocky Lake and affected the use and enjoyment of their property. The Valades insisted that they were allowed to place the wharf and dock in that location. The Days have brought this litigation seeking an order enforcing their rights and requiring the removal of the wharf and dock.

[9] As part of their evidence the Days presented a plan prepared by Thomas Giovannetti, who is a professional engineer and land surveyor. The plan shows the location of the wharf and dock in relation to the Valade and Day properties. Mr. Giovannetti also carried out a sounding program and included contour lines showing the depth of Rocky Lake on the plan.

[10] According to Mr. Giovannetti's plan the dock and wharf is 57 feet in length and essentially perpendicular to the shore of the Valade property. The base of the wharf is approximately 42 feet from the common boundary. The plan also shows the hypothetical extension of this line into Rocky Lake. The wharf crosses this extension at a point that is 50 feet from the boundary survey marker which, according to Mr. Giovannetti, is 14 feet from the ordinary high water mark. This means the wharf is approximately 36 feet from shore at that location.

[11] According to the plan the western tip of the floating dock is 26 feet east of the extended boundary line.

[12] There are a number of exposed rocks shown on the Giovannetti plan, two of which require some comment. One is located just to the east of the wharf and slightly closer to shore than the floating dock. It is found in approximately three feet of water (the "West Rock"). The other is further to the east but still within the extensions of the Day boundaries. It is also in approximately three feet of water (the "East Rock"). The distance between the East Rock and the West Rock is approximately 88 feet according to Mr. Giovannetti. He also calculated the distance between the western tip of the Valade dock and the East Rock and found it to be 76 feet.

[13] The primary complaint by Mr. Day is the impact of the dock on his access to the deep water of Rocky Lake by sailboat. Both of his boats draw approximately three feet of water with the centreboard down. Depending upon the wind direction it

may be necessary to tack or jibe to enter or leave the cove. This involves the boat traversing back and forth in a zig zag pattern. According to Mr. Day the presence of the dock reduces the area available for such a maneuver which makes it more difficult and raises issues of safety. He is an experienced sailor and did not describe any incident where his safety was at risk.

[14] Mr. Day's primary safety concern is with respect to his young daughter who will be learning to sail. As a beginner sailor she may have more difficulty with the tacking and jibing maneuvers which could raise safety concerns. She will be six in July 2017 and Mr. Day expects that when she is ten she may be old enough to venture out in the boats on her own. Mr. Day's particular concern with respect to his daughter's safety was the possibility that her boat might get pinned against the Valade wharf and dock by the wind.

[15] Although not mentioned in his affidavit, during his cross-examination at the hearing Mr. Day also raised concerns that the dock affects his family's access to the lake for swimming and fishing, and also impacts on their privacy because people on the dock have a better view of their backyard.

[16] When questioned about the East and West Rocks Mr. Day indicated that he did not sail between the East Rock and the shore, as that was not necessary to obtain access to the centre of the lake. With respect to the West Rock he said that sometimes he has sailed between that rock and the shore particularly when the water level was higher and the rock was slightly submerged.

[17] Mr. Day also said that the Valade wharf and dock affects the location of the dock which he intends to install. One option that he is considering is placing a satellite or floating dock in the same location as the Valade dock. He said that this would not create the same safety concerns with respect to his young daughter sailing because the dock would be the point at which the boat departed.

Positions of the Parties

Applicants

[18] Shaun and Erin Day believe that the Valade wharf and dock has interfered with their legal rights and want a court order that it be removed from its current location and that they be paid damages for the infringement which has occurred to date.

[19] There are three legal principles relied upon by the applicants and these are riparian rights, nuisance, and negligence. They say that the Valade dock interferes with their riparian right to access the waters of Rocky Lake without obstruction. As an alternative they rely on the tort of nuisance and say that the Valades have interfered with the use and enjoyment of their property in a manner that is both substantial and unreasonable.

[20] As a further alternative the Days rely on the tort of negligence and say that the Valades owe a duty of care to them as neighbouring land owners. Their conduct in installing the wharf and dock is said to be unreasonable because it does not comply with the terms of the permits issued by the government authorities, has obstructed their access to the lake, and presents a potential danger.

Respondents

[21] Rose and Serge Valade say that the wharf and dock do not interfere with the Days' right of access to Rocky Lake. They say the Days have access to navigable water from every point on their shore, which is all they are entitled to. To the extent that the wharf and dock restrict the sailing activities of the Days, this is a potential interference with the public right of navigation but not the Day's riparian rights.

[22] The Valades say that the wharf and dock do not infringe on any legal rights of the Days nor is there any evidence to suggest that their property has been damaged or its market value decreased. For these reasons the claims in nuisance and negligence cannot succeed.

Riparian Rights and Public Navigation

[23] A person who owns lands on the shore of a body of water such as Rocky Lake is entitled to exercise what are known as riparian rights in relation to that water, including the right of access. These rights were described in *Corkum v. Nash*, [1990] N.S.J. 423, as follows:

44 The plaintiff, whose land adjoins the harbour, is a riparian owner. I refer to *Water Law in Canada - The Atlantic Provinces* (Ottawa: Queens Printer, 1973) by *Gerald V. Leforest and Associates* at p. 200:

The owner of land adjoining a river, stream or lake has certain rights respecting the water therein whether or not he owns the bed. These rights arise from his ownership of the bank, and from the Latin word for bank, *ripa*, they derive their name of riparian rights. The owner is similarly referred to as a riparian owner.

It is sufficient for the land to be riparian that it comes in contact with a body of water for a substantial part of every day in the ordinary course of nature, but such contact need not continue for the whole of the day. Thus land that comes in contact with the sea or a tidal stream at high tide is riparian land, and its owner is entitled to riparian rights in respect of it.

Riparian rights include the right of access to the water, the right of drainage, rights with respect to the quality of the water and rights relating to the use of the water.

45 The main complaint of the plaintiff relates to her impairment of access. LaForest states at p. 202:

A riparian owner has a right of access over the shoal waters of a lake to the deeper waters where navigation practically begins. *No one, not even the Crown, can erect any structure on the shore or otherwise permanently obstruct a riparian owner's right of access.* For example, a permanent boom of logs in front of a riparian owner's land or a neighbouring wharf that blocks his access would entitle him to a right of action.

The riparian owner's right of access exists in a direct line from every point along the whole frontage of his land on the water. It is, therefore, no answer to an action for damages for obstruction of the right that the owner can get to and from the water from another part of his land. (emphasis added)

46 In *Byron v. Stimpson*, [1878] S.C.R. 697, the defendant built a smokehouse and wharf in front of a 40-foot portion of the lot the plaintiff leased which had a 100-foot boundary on the high water mark of Possamaquoddy Bay and which obstructed access. It was the defence of the defendant that this was an arm of the sea and that navigable waters were common to all. The plaintiff was found to be a riparian proprietor because of his ownership in the bank of the bay and had rights of property beyond the rights of other subjects of Her Majesty and it is the same right enjoyed by those who abut a highway. At page 707, Fisher, J. comments:

Again he says a man who has a house opening upon a highway has a right to step from his house on the highway, and whether the highway be a highway of solid earth or a highway of water seems to be perfectly indifferent.

The court went on to find that the plaintiff, as riparian proprietor on the bank of the bay, an arm of the sea, had the unobstructed right of access from his land to the navigable waters of the bay. Although title to the shore was in the Crown, he had an unobstructed right of access from his land on the shore to the navigable waters when the tide was out. The plaintiff was awarded damages.

[24] The issue in *Corkum* was whether the wharf constructed by the defendants, below the high water mark of Glace Bay Harbour, interfered with the plaintiff's riparian right of access. The court concluded that it did for the following reasons:

48 From these general statements, it can be seen that regardless of whether the foreshore is owned by Cape Breton Development Company Limited, the Crown or by the defendants by reason of adverse possession, the plaintiff still has the right of access to the waters of Glace Bay Harbour. It also appears that the plaintiff may use any wharves or fill land to obtain access but she is not required to do so. If the structures prohibit access from any point on the boundary of her land and the harbour, she has a good cause of action. It is clear from the evidence, including the photographs and the plan, that there has been an infringement of the plaintiff's right of access to the waters of Glace Bay Harbour.

[25] The court interpreted the right of access to mean that the riparian owner was entitled to get to the navigable waters adjacent to their property without interference.

[26] It is important to distinguish the riparian right of access with the right of public navigation. In *Nicholson v. Moran*, [1949] B.C.J. 102, the British Columbia Supreme Court dealt with a dispute between two neighbouring riparian owners where one constructed a marine railway and floating dock, making it more difficult for boats to access the other's boat house. The general nature of the issue was described by the court as follows:

2 The parties admit each other's titles to their respective riparian lands, to the foreshore leases, and the position of these as separated by the 40-foot strip as well as the fact that the defendant has filed the plans of his works in the proper land registry office and has received approval of his works under the *Navigable Waters' Protection Act*. It appears from the evidence that the plaintiff can at all stages of the tide in safety pass and repass to deep water with his present 18-foot boat. It is also, I think, established that a 30 to 40-foot boat with a draught of 3½ to 5 feet is a boat of reasonable size to use in safety in the adjacent waters, being the waters of the Gulf Islands, on practically all occasions, but smaller boats are used perhaps by a majority of the people using these waters from time to time. It is, I think, clearly established that at all stages of the tide there is sufficient depth of water and width of channel to take a 30 to 40-foot boat through the available channel left without difficulty and in safety, subject to extremes of weather or conditions, due to wind, ground swell, and fog, but also that the width of channel which would be available in such cases and which would increase the safety of manoeuvre in rounding the reef is lessened by the construction of the defendant's works.

3 It is, I think, established that while the manoeuvre of backing of a 30 to 40 foot boat from the plaintiff's boat-house and heading her out through the channel to the deep water outside of the reef could be done, I think, reasonably safely in any water

at which such a boat could be moved from the boat-house, the area available for the manoeuvre is restricted and the manoeuvre made more difficult by the marine railway as constructed.

[27] The court relied on a number of English authorities which discussed the distinction between the riparian right of access and the public right of navigation. This is illustrated in the following passage:

15 The distinction between obstruction of access and right of navigation is found in *Chaplin & Co. Ltd. v. Westminster Corpn.*, *supra*, in these words:

A person who owns premises abutting on a highway enjoys as a private right the right of stepping from his own premises on to the highway, and if any obstruction be placed in his doorway or gateway, or if it be a river, at the edge of his wharf, so as to prevent him from obtaining access from his own premises to the highway that obstruction would be an interference with a private right. But immediately he has stepped on to the highway and is using the highway, what he is using is not a private right but a public right.

16 An instance of obstruction of access is found in *Ratté v. Booth*, to which I have referred.

17 In *Baldwin v. Chaplin*, *supra*, the judgment of Hodgins J.A. refers to the authorities which I have mentioned above, but before doing so states the general principle as found in *Halsbury's Law of England*, vol. 28, p. 395, par. 752 [2nd ed., vol. 33, p. 560, par. 949] as follows:

Interference with the private right of access is actionable without proof of special damage; but if the interference complained of is an interference with the right of navigation, which thereby affects the right of access, then special damage must be proved, for interference with the right of navigation which only renders access more difficult, but not impossible, is an interference with a public and not a private right and special damage must be proved by the riparian owner who complains of such interference.

18 Hodgins J.A. quotes from the judgment of Sir W. Page Wood. V.C. in *Atty-Gen. v. Thames Conservator*, *supra*, the following (the particular case with which the Vice-Chancellor had to deal being one of access to a wharf):

‘But, in truth, the access is not blocked up. The wharf will not be as readily and easily approached, and perhaps not at all by the same route; but that is a mere interruption to the navigation of the river which they enjoy in common with the public, and not as part of their special right of access.’

[28] Although sympathetic to the complaints of the plaintiff the court in *Nicholson* concluded that the interference created by the defendant's structures was not actionable.

[29] The relationship between the riparian right of access and the public right of navigation arose in the Ontario Court of Appeal decision in *Drake v. Sault Ste. Marie Pulp and Paper Company*, [1898] O.J. 30. The plaintiff was a fisherman living on a small farm located three miles from the mouth of an navigable stream which flowed into Lake Superior. He used his sailboat to travel to the lake and on to Sault Ste. Marie. He was sometimes hired by neighbours to deliver supplies and provisions. The defendants left large booms of timber at the mouth of the stream which cut off boat access to Lake Superior for an entire summer. The court concluded that the plaintiff had suffered damage peculiar to himself beyond that suffered by the rest of the public who were entitled to use the river and as a result awarded compensation. Because the plaintiff's access to the stream at his property was not affected there was no breach of his riparian rights. The court explained this conclusion as follows:

19 It is to be observed that the obstruction in the stream was not in front of or opposite to the plaintiff's property, and did not therefore interfere with his immediate access to and from it to the water. His rights as a riparian proprietor in that respect were not touched. He was able to take boat from his own land and to proceed by it a [25 OAR Page258] long distance down the stream before he encountered the obstruction. In these respects his case is different from the class of cases of which *Rose v. Groves* (1843), 5 Man. & Gr 613, and *Lyon v. Fishmongers Co.* (1876), 1 App. Cas. 662, are examples. The river is a highway, and as regards obstructions there appears to be no distinction between it and a highway on land. And it is well settled that an obstruction in front of one's own premises, preventing or interfering with one's access to or from the highway, gives a special or peculiar right of action.

[30] Based upon these authorities I am satisfied that the riparian right of access entitles the land owner to get to navigable waters from every point on their shoreline without having to travel around a manmade obstruction. What is meant by navigable waters will depend upon all of the circumstances, including the nature of the body of water and the land uses associated with the riparian lands. In this case Rocky Lake is a self contained body of water, bounded in part by residential properties. Land owners use the lake for a variety of recreational purposes including swimming, fishing, and boating using small private watercraft such as kayaks, canoes, paddle boats, and sailboats. Because of their centreboards, sailboats will require a greater depth of water than other vessels. According to Mr. Day his sailboats draw approximately three feet of water when the centreboard is down.

[31] The Days' riparian right of access entitles them to place a boat in the lake at any point along their shoreline and travel directly out from the shore to reach a depth of at least three feet. If the Valade wharf and dock obstructs them from doing so, it

is a breach of their riparian rights. It is clear from the sounding plan prepared by Mr. Giovannetti and the photographs attached to the Day and Valade affidavits, that a boat launched at any point along the Day shoreline can reach depths in excess of four feet without any interference by the wharf and dock.

[32] There was much discussion in the parties' written materials and at the hearing about the significance of the extended boundary line as drawn by Mr. Giovannetti. The Days argued that this represents their "direct line" access to Rocky Lake as that term is used in *Corkum*. In my view such access refers to travelling in a direction that is perpendicular to the shore. The Day/Valade boundary forms an angle of approximately 45 degrees with the high water line, which means that the extension crosses the front of the Valade property. That is the reason for its intersection with the wharf which runs perpendicular to the shore. In this case the boundary extension drawn by Mr. Giovannetti is irrelevant in determining the limits of the Days' riparian right of access which does not include travelling at a 45 degree angle from shore in front of the Valade property. As a result I must dismiss this aspect of their claim.

[33] The Days did not argue that the Valade wharf and dock interfered with the public right of navigation resulting in special damages to them, nor does the evidence presented suggest this to be the case. At most, the wharf and dock would make sailing to and from the centre of Rocky Lake more challenging in some weather conditions. I believe that the East and West Rocks define a reasonable channel for access to and from the Day property. While Mr. Day said that he had sailed between the West Rock and the shore, the photographs and Giovannetti plan make it clear that this area has a number of exposed and submerged rocks and is relatively shallow. Sailing in that location would be a challenge for all but the most experienced person. I doubt that Mr. Day would permit his daughter to go in that area as a junior sailor once she starts going out on her own in a few years.

[34] The placement of the Valade wharf and dock reduces the width of the available channel between the rocks by approximately 12 feet or 14 percent of the total distance. In my view this limited restriction could not support a special damage claim.

Nuisance

[35] The tort of nuisance provides a remedy where a party uses their land in a manner that interferes with another's use or enjoyment of their property. In order to be actionable the interference must be both substantial and unreasonable.

[36] When advancing a claim in nuisance a party must first establish the threshold requirement of showing a substantial interference before the court will consider whether that interference is unreasonable. The Supreme Court of Canada described this approach in *Antrim Truck Centre Limited v. Ontario (Transportation)*, 2013 SCC 13, as follows:

22 What does this threshold require? In *St. Lawrence Cement*, the Court noted that the requirement of substantial harm "means that compensation will not be awarded for trivial annoyances": para. 77. In *St. Pierre*, while the Court was careful to say that the categories of nuisance are not closed, it also noted that only interferences that "substantially alte[r] the nature of the claimant's property itself" or interfere "to a significant extent with the actual use being made of the property" are sufficient to ground a claim in nuisance: p. 915 (emphasis added). One can ascertain from these authorities that a substantial injury to the complainant's property interest is one that amounts to more than a slight annoyance or trifling interference. As La Forest J. put it in *Tock v. St. John's Metropolitan Area Board*, [1989] 2 S.C.R. 1181, actionable nuisances include "only those inconveniences that materially interfere with ordinary comfort as defined according to the standards held by those of plain and sober tastes", and not claims based "on the prompting of excessive 'delicacy and fastidiousness'": p. 1191. Claims that are clearly of this latter nature do not engage the reasonableness analysis.

23 In referring to these statements I do not mean to suggest that there are firm categories of types of interference which determine whether an interference is or is not actionable, a point I will discuss in more detail later. Nuisance may take a variety of forms and may include not only actual physical damage to land but also interference with the health, comfort or convenience of the owner or occupier: *Tock*, at pp. 1190-91. The point is not that there is a typology of actionable interferences; the point is rather that there is a threshold of seriousness that must be met before an interference is actionable.

24 I therefore find that a private nuisance cannot be established where the interference with property interests is not, at least, substantial. To justify compensation, however, the interference must also be unreasonable. ...

[37] The Days' complaint about the Valade wharf and dock as set out in Mr. Day's affidavit is that it impedes access to and from the center of Rocky Lake by sailboat. There is no reference to any onshore activities which are impacted, although he does make the following general statement:

34. The Dock prevents me and my family from using our Property and the Lake abutting it in the way in which we intended when we purchased the Property. It negatively affects our way of life and creates an impediment for our use and enjoyment of Huckleberry Cove and the Lake.

[38] In his cross-examination at the hearing Mr. Day also said that the wharf and dock affects swimming and fishing in that specific area. He also expressed the additional concern that there was less privacy because people on the dock had a better vantage point to see into their backyard.

[39] Having concluded that the Days' riparian rights are not infringed, any impact of the wharf and dock on the public right of navigation is not an interference with their property interests. Even if it were, the limitation is modest and not substantial.

[40] The concerns with respect to swimming, fishing, and privacy, were not important enough to include in Mr. Day's initial affidavit. I have no evidence to explain the significance of swimming or fishing at the specific location of the wharf and dock or why it is no longer possible to do so. I also have no information to suggest that people on it have engaged in any activity which would disturb or interfere with the Days' peaceful enjoyment of their property. The fact that the dock provides a vantage point whereby someone could see their yard is not a nuisance. Anyone exercising the public right of navigation on Rocky Lake would have the same or better opportunity.

[41] The evidence presented by the Days does not demonstrate a substantial interference in their property interests, which is the threshold requirement in order to establish a nuisance. For this reason this aspect of their claim will be dismissed.

Negligence

[42] In order to succeed in a claim for negligence, a person must establish that a duty of care exists, that there has been a breach of the standard of care, and that this breach has caused them some injury or loss. The requirement to prove causation and loss is described by Lewis Klar in *Tort Law, 5th ed.* Toronto: Carswell, 2012, at page 477:

In order for there to be liability, a defendant's negligence must have caused the plaintiff some injury or damage. Once a defendant is found liable, the extent of its responsibility to the plaintiff for its losses must be determined.¹⁴¹ Although there is the tendency to treat both of these issues together as part of one causation inquiry, it is useful to keep them distinct and thereby to avoid confusion.

Harm or damage is the gist of the action for negligence. In order for the defendant to be held liable in negligence, the defendant's negligence must have injured the plaintiff, thereby violating the plaintiff's right to the integrity of its person or property.¹⁴² It is the fact that the defendant caused damage to the plaintiff that gives rise to the defendant's liability. It creates the obligation falling on a specific

defendant to compensate an individual plaintiff for that injury. The inquiry is basically an historical one. It looks at what happened. As well, once it is proved, on the “but for” or a modified test, that there was a causal connection, this is accepted as a given fact. Conversely, if it is not proved, it is taken that there was no connection. There is no middle ground. It is an all or nothing proposition.

[43] My conclusions with respect to the lack of a substantial interference with the Days’ property interests are equally applicable to the element of causation and loss in negligence. The Days have not established that they have suffered some injury or damage as a result of the Valade wharf and dock and therefore the claim of negligence cannot succeed.

Conclusion and Disposition

[44] The Days have made it clear that they are not happy with the Valade wharf and dock. They believe it adversely affects their enjoyment of Huckleberry Cove. While I accept that these beliefs and concerns are genuinely held, they are not sufficient to support an injunction requiring the Valades to move their wharf and dock. There is no interference with their riparian rights to access Rocky Lake, nor any substantial interference with their property interests. The Days have not established a legal basis for an injunction or damages and as a result this application is dismissed.

[45] If the parties are unable to reach an agreement on costs they may make written submissions.

Wood, J.