

NOVA SCOTIA COURT OF APPEAL
Citation: *Rafuse v. Swinimer*, 2010 NSCA 10

Date: 20100217
Docket: CA 314264
Registry: Halifax

Between:

Lena Rafuse, Glenn Rafuse and Wendall Rafuse

Appellants

v.

Craig Donald Swinimer and Shelly Lynn Rafuse

Respondents

Judge: The Honourable Mr. Justice Jamie W.S. Saunders

Appeal Heard: February 16, 2010

Subject: Right-of-way. Mode of usage. Damages. Standard of Review.

Summary: A dispute between neighbours over a right-of-way led to wrecked gardens, torn up rose bushes, access blocked by boulders and steel girders, and emergency calls to the police. After a three day trial the judge found that the original grant of right-of-way was intended for pedestrian use only and that the evidence fell short in establishing any change in use over the years to permit the operation of motor vehicles. General damages were awarded for deliberate interference and nominal damages for destruction of bushes and shrubs. The judge ruled that the evidence failed to establish any loss of enjoyment or access to property. The appellants appealed.

Held: Appeal dismissed. No error of law or palpable and overriding error or fact, or erroneous assessment of damages.

<p>This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 4 pages.</p>
