

**IN THE SUPREME COURT OF NOVA SCOTIA**

**Citation:** Hoyt v. Loew, 2008 NSSC 29

**Date:** 20080130

**Docket:** S.K. 187793

**Registry:** Kentville

**Between:**

**Russell Fraser Hoyt and Sandra P. Hoyt**

Plaintiff

v.

**Raymond W. Loew, Janet Ann Loew and Donald Blenus**

Defendant

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**LIBRARY HEADING**

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**Judge:** The Honourable Justice Gregory M. Warner

**Heard:** November 23<sup>rd</sup>, 26<sup>th</sup>, 27<sup>th</sup>, and 28<sup>th</sup>, 2007 at Kentville,  
Nova Scotia

**Subject:** Nuisance, Riparian Rights, Civil Assault

**Issues:** (1) Whether construction of a woods road by  
Defendants above and near Plaintiffs cattle pond caused  
nuisance and interfered with their riparian rights.

(2) Whether Plaintiff civilly assaulted Defendant  
contractor during course of removing the roadway

**Summary:** The Defendant land owners hired the contractor to build a  
woods road to extract logs from the back of their property  
to build a residence. The Plaintiff claimed that the  
creation of a dam and pond, where the roadway crossed a

gulch on the mountainside near their pond, interfered with their spring fed pond used to water their cattle and resulted in the need for them to bring in a power-line and install a drilled well to their cattle barn. They claimed special and general damages. The Defendants denied the pond was spring fed or that they interfered with, or caused harm to, the Plaintiffs' pond. The contractor claimed that the Plaintiff assaulted him when, three (3) years after the road construction and before the Plaintiff spent money on the power-line and well, he was on the Defendants' land removing the dam and pond created by the roadway.

**Result:**

The Plaintiffs did not establish that the dam was spring fed. The Plaintiffs did not establish that the quantity of water to the pond was interfered with by the Defendants' road but did establish that the manner of construction of the road was unreasonable and that erosion from that construction interfered with the quality of the water in the Plaintiffs' pond until it was removed.

The contractor was removing the roadway (dam and pond) before the Plaintiffs spent money on the power line and well, but a civil assault by the Plaintiff on the contractor scared him off and interfered with the remediation. The expenditure on the power-line and well would not have been necessary but for the wrongful conduct of the Plaintiff. Therefore the Defendants are not liable for the special damages claimed (power-line and well) but are liable for general damages for causing harm to the pond for three (3) years before attempting remediation. The Plaintiff is liable in general damages for a civil assault on the Defendant contractor.

Damages were assessed.

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