

SUPREME COURT OF NOVA SCOTIA

Citation: Mader v. Hatfield, 2010 NSSC 261

Date: 20100630

Docket: Syd 294584

Registry: Sydney

Between:

Darren Mader and Susan Mader

Plaintiffs

v.

Linda Hatfield

Defendant

Judge:

The Honourable Justice Cindy A. Bourgeois

Heard:

February 1, 3, 4, 5, 8, 9, 10, 11, 12, 17, 25, March 23, 24
and 25, 2010, in Sydney, Nova Scotia

Written Decision:

June 30, 2010

Counsel:

Vincent Gillis for the Plaintiffs
Cynthia Scott for the Defendant

By the Court:

Introduction:

[1] The parties to this action are members of a large and extended family. Sadly, it appears that this dispute has served to polarize what had been in the past, a very close and supportive family. The Plaintiff, Darren Mader and his wife Susan, have brought action against his paternal aunt, the Defendant Linda Hatfield. Several members of the Mader family provided evidence to the Court, on behalf of both sides. It is regrettable that this dispute could not have been otherwise resolved.

a) Nature of the Claim and Properties in Question:

[2] The Plaintiffs currently reside at 1919 George Street, also known as the Mira Road, in the Cape Breton Regional Municipality. The home was built by Darren Mader's father, Edward Mader ("Eddie") in 1970, who continued to live there until his death in 2005. Following Eddie's death, his home property was initially held by all of his children. Darren and Susan Mader received a deed to the property in

November of 2006. They moved into the property in April of 2007, intending to raise their family there.

[3] After becoming the sole owners of the property, the Maders discovered that the actual deed conveyed to Eddie in 1970 was for a much smaller piece of property than what they believed he owned, and in their view, had always occupied. It is this land, outside the boundaries of the deed description which is the subject matter of this dispute. It is not disputed that legal title to these lands rests with Linda Hatfield.

[4] Linda Hatfield was Eddie's youngest sister. In fact, she was the second youngest of the ten children of Guy and Mary Mader. In the 1940's Guy and Mary Mader purchased a tract of land on the Mira Road, described as being approximately 30 acres. For a time, they farmed on the property, and also ran a heavy equipment business from the homestead. Although Guy Mader died in the late 1970's, Mary Mader lived a long life, being blessed with seeing her many grandchildren grow up, and some have children of their own. Mary Mader continued to reside in the homestead property until her death in 2006. At that time, Linda Hatfield became the sole owner of the remaining homestead property by

virtue of being named as a joint tenant on an earlier prepared deed. This would include all of the property originally purchased by Guy and Mary Mader, except for the property previously conveyed to Eddie.

[5] It is not disputed that at some point in the 1960's, Guy and Mary Mader permitted Eddie to place a small home on their property. The homestead property was a long and narrow rectangular shaped tract of land, fronting on the Mira Road, and extending a significant distance northeasterly, back into undeveloped wood land. The home of Guy and Mary Mader was located close to the Mira Road, and an extension of their driveway, situate close to the easterly boundary of their lot, ran for some distance, serving to provide access to the rear portion of the property. When Eddie placed his original home on the homestead, it was located generally behind the home of his parents. In 1970, Eddie built a new bungalow, and was given a deed by his mother Mary. Although in a slightly different location than the original home, the new bungalow was also generally behind the home of his parents. Eddie's subsequent usage of the property outside the bounds of his deeded parcel are critical to the dispute before the Court. As only one indication of the importance of this determination to the parties, clearly a significant portion of the septic system servicing the Mader home is outside the deeded boundaries.

[6] Relying upon the *Limitation of Actions Act*, R.S.N.S. 1989, c. 258, Darren and Susan Mader are seeking a declaration that they, by virtue of Eddie's possession and usage of certain areas of land outside his deeded boundaries, have occupied said area adversely to the interests of legal title owner Linda Hatfield. They are seeking a permanent injunction preventing Linda Hatfield from entering upon the claimed land, and further claiming damages against her for alleged acts of trespass and for emotional distress.

[7] Linda Hatfield vigorously contests the claims made by her nephew and his wife. She asserts that in those areas where Eddie used property outside of his deed description, it was with the express agreement of her mother, Mary Mader. As such, Eddie's occupation cannot be considered adverse, and does not constitute foundation for the claim being advanced by the Maders. Linda Hatfield has counterclaimed against Darren and Susan Mader alleging they have trespassed upon her lands, have intentionally caused damage to her property, and purposefully conducted themselves in a fashion intended to intimidate and harass her. She is seeking the Court's assistance to prohibit such conduct from continuing, and

resulting monetary damages. As part of the relief claimed, Ms. Hatfield is seeking removal of the septic system servicing the Mader home from her property.

Summary of the Evidence:

[8] This matter was heard over 14 days of trial. At the outset, both parties agreed to enter as exhibits in the proceedings a series of aerial photographs depicting the property in question in 1969, 1971, 1983 and 1993. Additionally, each of these photographs were enlarged, and overlaid with a Plan of Survey prepared by Mr. Kenneth Cormier, N.S.L.S. dated September 27, 2007, also entered with consent of the parties. These exhibits were referred to extensively in the course of the testimony, and were very helpful to understand the evidence relating to the lands in question and the usage described by the parties and the witnesses called.

[9] The parties testified, as did a number of witnesses called in support of their respective cases. Given the extent of the testimony, it is not reasonable to exhaustively review all of the viva voce evidence presented to the Court. Below is

a summary of the most salient aspects of the evidence presented by the parties and their witnesses.

a) Darren and Susan Mader:

[10] Darren Mader is 40 years old, and lives at 1919 George Street, Sydney. This is the home previously owned by his father Eddie. Darren Mader and his wife Susan acquired the property in 2006, following his father's death in January of 2005. They did not move into the property however, until April of 2007. The property is Darren Mader's childhood home.

[11] Mr. Mader testified that in 1990, he moved to western Canada for work. He would return home to Sydney for vacations. He kept in close contact with his father during this time frame via regular telephone calls. In 2001, Darren Mader and his family moved home to Sydney. Mr. Mader continues to work in Fort McMurray as a heavy equipment operator, but this involves several weeks "on and off" which permit he and his family to reside in Sydney. From moving home in 2001 until his father's death, Mr. Mader testified that he had regular and frequent contact with Eddie, and they had a good relationship.

[12] Mr. Mader testified as to his understanding of the size of his father's property. He had always understood that the property boundaries ran from a line of hedges between Eddie's home and that of his grandmother's property, over to the Gaudet side line, along the Gaudet line to a point well within a swampy area to the rear of Eddie's home, over to the Elworthy side line, and back to an extension of the hedge line. Mr. Mader testified that his father maintained a lawn within these lines, mowing up to the edge of the swamp, and in the front of his home, to the fence/shrub line towards his grandmother's home. Mr. Mader testified that his father was very particular about the condition of his lawn, keeping it well groomed, which included utilizing the efforts of his sons in their younger years. Mr. Mader stated that he started mowing at his father's direction when he was approximately 10 years of age, and would often be directed to mow his grandmother's lawn after he finished at home. He stated there was a clear distinction between what was his father's lawn, and that of his grandmother's. It was marked by a fence in earlier years, and later by a row of shrubs, which he always understood was the boundary between the two properties. Mr. Mader testified that he recalled a conversation with Linda Hatfield, during the course of which, she acknowledged that the fence/shrub line, was intended to be a boundary line. Mr. Mader, although not

certain of the exact timing of the conversation, indicated it took place while Ms. Hatfield was still married to her former spouse.

[13] Mr. Mader was unaware of the dimension of the lot originally conveyed to Eddie Mader until after his death, and in fact, after he and his wife obtained the property. The lot size as outlined in the deed was not reflective of the area actually used by his father. In addition to the lawn maintenance as noted above, Mr. Mader testified that his father regularly utilized the property outside the deed boundaries on an ongoing basis including the placement of the septic field, a large shed his father obtained from the airport, and the building and maintaining of a circular driveway. To the rear of the home, Mr. Mader testified his father would regularly store fire wood in the area behind the airport shed.

[14] Mr. Mader testified that he had some knowledge of the placement of the septic system and weeping tile system servicing the home. He indicated that in 1995, he assisted his father in digging up and replacing the weeping tile around the foundation of the home. The pipe directing the water away from the home was not replaced, they merely tied the new piping into it. Mr. Mader testified that the weeping drainage runs across the back lawn, emptying somewhere into the

swampy area behind his father's home. The output of the system is not visible to his knowledge.

[15] Regarding the septic system, Mr. Mader testified that the outflow also runs into the swamp, but in a different directional angle than the weeping tile. He testified that the system, as long as he can remember, has always been in the same area. A significant portion extends well beyond the deeded boundaries of the property. Mr. Mader testified that several years prior to his father's death, he and his brother Wesley assisted Eddie with the removal and replacement of the old septic tank. This process involved using heavy machinery to dig the tank out, and took place over the course of two days. The outflow pipe leading from the tank to the swamp was not replaced. They simply connected the new tank to the original outflow pipe. Mr. Mader indicated that at no time did his father ever advise him that the septic system was to be temporary in nature, or that it would have to be eventually moved.

[16] Mr. Mader testified that he was completely unaware of any issues regarding the ownership of his father's property until following his father's death. He indicated that his relationship with his aunt Linda has significantly deteriorated,

describing the situation as being a "nightmare", effecting the whole family. Mr. Mader testified that his first indication of a problem arose when Linda Hatfield began asserting that there was a 66 foot right of way adjacent to his property, and specifically that the airport shed, and looped driveway were within the right of way. He intended to replace his father's airport shed with a new one. He asked Linda Hatfield if he could burn the old shed in the back area of her property. She declined the request. Mr. Mader testified that he became angry with his aunt relating to this exchange, not due to the declined request to burn the shed, but rather her assertion that she owned the airport shed and the property on which it had always been located. He acknowledged that he used offensive language with his aunt, but that she did as well. Things became further heated when Mr. Mader brought a new shed onto the property, and cut a limb off a tree adjacent to Ms. Hatfield's home which was too low hanging to permit the equipment to pass. Ms. Hatfield insisted that the new shed be placed within the boundaries of the deed description. Mr. Mader indicated he complied with this request, wanting to keep peace with his aunt, and de-escalate matters.

[17] Unfortunately, Mr. Mader testified that matters have escalated to almost daily confrontations between himself, his spouse, children, and Ms. Hatfield. She

has had fences constructed on the property which he believes he, and his father before him, owns. Mr. Mader alleges that Ms. Hatfield trespasses on the property he is claiming by driving on the lawns, and she frequently contacts the police when he parks in the circular driveway which his father built and used for years. Mr. Mader further alleges that his aunt's behavior has been threatening on several occasions, describing an incident where he was mowing adjacent to the swamp and she approached him in her vehicle, and stopped within feet of him, "gunning" her motor. Further, Ms. Hatfield on one occasion, took his son's bicycle and that of his friend, and kept them in her home. It took police assistance to have the bicycles returned to the children. She has also had a barbed wire fence constructed along the Gaudet sideline. This was of concern to Mr. Mader, as it blocked a path running from the Mader property, across Gaudet's land. This path had been used for many years by neighbourhood children, including his son who enjoyed riding his bicycle across it. Mr. Mader acknowledged that he did on one occasion, cut that portion of the fence which was across the pathway. He denied doing damage to the other two fences erected by Ms. Hatfield.

[18] Mr. Mader testified that his health has suffered from the stress associated with the conflict, now requiring medication for anxiety, and that both of his

children, a 16 year old daughter, and 9 year old son, are displaying the negative effects of the conflict. The stress in the household has impacted negatively on the relationship between he and his spouse.

[19] Susan Mader is 39 years of age, and is married to Darren Mader. They met in highschool, and dated for a period of time. Darren moved to British Columbia for work in 1990, and she joined him in 1991. They moved home to Sydney to reside permanently in 2001. Mrs. Mader testified that from 1991 to 2001 they would return home for vacation every second summer, and would stay both with her parents and with Eddie. Mrs. Mader testified that when dating Darren, she recalled driving him home and being able to visibly see the boundary of his father's property, and that of his grandmother. It was marked by a row of shrubs.

[20] After they were married, Mrs. Mader became more familiar with Eddie's usage of the property. She testified as to what areas Eddie maintained, and that he kept it "beautiful". Mrs. Mader was aware that Eddie had hip problems, and that some days it would slow him down. Other times, he was able to do just about anything he wanted. Mrs. Mader pointed out on Exhibit 4, the 1993 aerial overlay the areas of lawn where Eddie mowed. This included down to the fence/shrub line,

over to the Gaudet line, back to the edge of the swamp behind his house, and over to the Elworthy line.

[21] On the same exhibit, Mrs. Mader identified two circular marks, testifying that these are poles, and that Eddie maintained a clothesline between them. She recalls that they have always been in Eddie's yard as long as she has gone to the property, both being cemented into the ground. She still uses the clothesline. She also identified the airport shed, testifying that it had been struck by lightning since they moved to the property and was in poor shape. They wanted to remove it, but haven't been able to due to "complications" with Ms. Hatfield.

[22] Mrs. Mader testified that in the past, she and her husband enjoyed a good relationship with Linda Hatfield. Unfortunately, this has deteriorated significantly. Mrs. Mader indicated that after they moved into the home in April of 2007, conflict arose and escalated significantly. There have been numerous unpleasant exchanges between the parties. Mrs. Mader indicated that there has been an exchange of foul language between the parties, and that she never wanted matters to unfold as they have. Mrs. Mader testified that the conflict commenced with the planned removal of the airport shed, and their intent to place a new shed in the same spot. At that

time, Ms. Hatfield asserted that the land belonged to her, as did the land behind the house leading to the swamp. Mrs. Mader acknowledges that Ms. Hatfield asked them to stop using the lands, specifically not to park in the loop, pile snow against the shed and to move their children's trampoline from the area in dispute. As this was land which they believed Eddie had always owned and occupied, Mr. and Mrs. Mader felt they did not have to comply with these requests. This prompted the situation to further deteriorate, leading to confrontations, police involvement, the erection of fences by Ms. Hatfield, and ultimately, this legal action.

[23] Mrs. Mader testified that matters have escalated to the point where on one occasion, her son Jordan was almost struck by a vehicle driven by Ms. Elaine Mader, who drove erratically in the Mader yard while the children were outside playing. On the same day, Elaine Mader and Linda Hatfield physically moved their trampoline to an area within the deeded parcel, and moved other items from around the airport shed, onto property contained in the deed. Photographic evidence was entered depicting that day in particular. Mrs. Mader took the photographs from her doorstep. She had a cast on at the time due to having broken her leg. She recalls Ms. Hatfield and her sister Elaine calling her daughter and son, 14 and 8 at the time, a "whore" and "bastard". Mrs. Mader testified that she regrets

purchasing Eddie's home, as she never wanted this type of conflict to develop within the family.

b) Linda Hatfield:

[24] The Defendant Linda Hatfield was born in 1956, and was raised on her parents' homestead. By virtue of a deed granted by her mother in 1988, she became a joint tenant of the property, and subsequently the sole owner upon her mother's death. Ms. Hatfield is currently disabled, having suffered a number of health problems in the last several years. Prior to that, she was her mother's primary care giver for over 20 years. She also assisted with the care of Eddie's boys when they were young.

[25] Ms. Hatfield described that although she had some conflict with her brother Eddie in the past, they loved each other unconditionally. In the last 20 years of his life, she would have seen him on an almost daily basis. She described how Eddie's health failed following a cancer diagnosis, and that in the last 6 months of his life in particular, she assisted him with care, and making final arrangements. In recent years, they were the best of friends.

[26] Ms. Hatfield testified over a period of several days, and about a number of topics covering a time frame from 1960 to present. She conveyed to the Court her knowledge and recollection of Eddie's occupation of the property in question, and the intentions of her parents with respect to its ownership. She asserts that her parents intended to convey to Eddie only the property outlined in his 1970 deed, and that any occupation beyond those boundaries by him was with the express permission of her mother. Ms. Hatfield also testified that Eddie was fully aware that he only owned to his deeded boundaries, and that he fully understood that his usage outside of his deeded lot was with permission.

[27] Regarding the septic system servicing Eddie's home, Ms. Hatfield testified that when the house was built in 1970, her brother was unable to pay for a proper system to be installed within the boundaries of his property. Her parents agreed to permit Eddie to have the system run across their property and into the swamp. There was a very definite agreement however, that Eddie would have to eventually have the system removed from their property and placed fully within the bounds of his deeded property. This was a subject matter of discussion in 1988 when Eddie, his son Wesley, Mary Mader and Linda Hatfield became engaged in a conflict over

the ownership of a portion of property occupied by Wesley. At that time, Eddie promised to remove the system. Ms. Hatfield was aware that Eddie had work done to the septic system in 2000. However, she did not raise with Eddie his previous promise to have it removed from her property. She indicated that at that time she had too much "on her plate" with caring for her mother to raise this with Eddie.

[28] Ms. Hatfield provided further evidence regarding the nature of the dispute in 1988 involving her nephew Wesley. This arose due to Eddie and Wesley asserting that they owned from behind Eddie's house, back to and including the area where her nephew had built a garage. Ms. Hatfield testified that her mother had been unhappy with Wesley's usage of the property and the high volume of traffic that was driving past her home. In order to help resolve matters, Ms. Hatfield engaged surveyor Horace Lovell to undertake a full survey of Eddie's boundaries. The survey showed the boundaries as she had understood them to be. She provided Eddie with a copy of the survey. She indicated that given the conflict that had occurred, which included physical altercations, she planned to erect fences on the boundaries at that time, but decided not to, as Eddie begged her not to "fence him in". Ms. Hatfield testified that the dispute was eventually resolved with the parties entering into two separate agreements. One has become lost, however, Ms.

Hatfield testified that neither specifically referenced the agreement regarding the septic system.

[29] Ms. Hatfield further testified that besides the Lovell survey, her property was surveyed on three other occasions. In 1981, Mr. Whyte surveyed the property. The Elworthys were undertaking a survey of their property, and suggested to Mary Mader that it may be economical, given their shared line, for her to have her property surveyed as well. In 1991, Mr. Hardy undertook a survey due to a dispute arising with neighbours, the Burtons. They resided adjacent to the Mader homestead, fronting on George Street. In issue was whether the Mader driveway, moved from its original location, encroached upon Burton lands. Finally, in 2005, Mr. Astephan surveyed Eddie's lot following his death.

[30] Ms. Hatfield testified regarding Eddie's usage of the property in dispute. She refuted that Eddie mowed his front lawn to the edge of the fence/shrub line, but rather to two pine trees which were placed very close to his deeded boundary. She testified that she would mow her lawn, including past the shrub line. She also would mow once she and Eddie obtained a ride-on mower to the rear of Eddie's home, to the edge of the swamp. She indicated that on occasion, Eddie would also

mow in this rear area, but it was to provide assistance to her, not as a sign of ownership. She testified that she did not believe that Eddie ever placed a garden in this area. Ms. Hatfield testified that for many years after Eddie built his home, this area was a hayfield, only becoming grassed in recent years. She testified she would often store her wood in this area. She also frequently traveled over this area to dump grass clippings and yard waste in an area close to the edge of the swamp. Ms. Hatfield testified as to the erection of the fence between the two homes in the 1980's and that it was never intended to represent a boundary. Her mother wanted to create a "backyard", and the erection of the fence was purely for esthetic purposes.

[31] Regarding that area to the side of Eddie's home, Ms. Hatfield acknowledged that her brother made some use of her mother's land, but it was with her permission. He had Mary Mader's permission to place the airport shed in this area, and asked permission to build and asphalt the circular driveway. Ms. Hatfield testified that Eddie rarely used the circular driveway, as he always parked his vehicle on his own property, close to his back door. Eddie would have infrequent visitors, so the circular driveway was not used often. Ms. Hatfield advised the Court that at the time they decided to give Eddie his property, her parents had

discussed retaining a 66 foot right of way in order to explore future development of the back area of their property. She further testified that she had considered doing the same in the past, but those plans went by the wayside when she married.

However, Ms. Hatfield testified that since her mother's death she has reconsidered potential commercial development of her property, and is considering several possible ventures to the rear of the property.

[32] Ms. Hatfield testified regarding the difficulties she has experienced in the last several years. Her health has not been good, having suffered a back injury as well as a stroke. Further, she testified as to difficulties she experienced with the unauthorized burning of debris on her property, resulting in the gating of the driveway, posting of No trespassing signage, and the installation of video surveillance. She has also had other acts of vandalism, some very serious, most notably the cutting of the line leading to her oil tank. Ms. Hatfield testified that she has suffered direct harassment and intimidation from Darren and Susan Mader, their children and friends since they moved into Eddie's home in 2007. This behaviour has been very upsetting to her, and she feels it has impacted negatively on her health.

[33] Ms. Hatfield testified as to the numerous incidents where the Maders, or others at their direction trespassed upon her property. This forced her to erect fences, but still the objectionable behaviour continued. The police have been called on numerous occasions. She is seeking the Court's assistance to prohibit the Maders from further entering upon her lands, and damages arising from their ongoing acts of trespass and vandalism.

c) Non-party witnesses:

[34] ***William Mader, Sr.:*** William Mader, referred to as Billy by others in the proceeding, was called by the Plaintiffs. He is the eldest child of Guy and Mary Mader. As such, he is the brother of Linda Hatfield and Darren Mader's uncle. He is 78 years of age. Mr. Mader testified that he is very familiar with the properties in question, given that he grew up on the homestead. After he married and left his parents' home, he continued to reside locally, being a frequent visitor there, as well as at Eddie's home.

[35] Mr. Mader testified that he recalled Eddie placing a small home on the property somewhere between 1956 and 1960. Eddie subsequently built the current

Mader home in 1970, and the witness testified that he was present for much of the building process. Mr. Mader was aware of the nature of the septic system installed when Eddie built the house in 1970, and that the overflow pipe extended into a swampy area behind the property. To his knowledge, the septic system installed in 1970 was not intended to be temporary in nature, nor was he aware of any agreement between Eddie and his parents that the septic system would need to be removed and placed within the confines of Eddie's property. He always understood that the septic system was placed on Eddie's land.

[36] In describing his understanding of what Eddie was given by his parents, Mr. Mader described the parcel as running from the Elworthy line on the west, to the Gaudet line on the east. He understood that the property extended at least to the edge of a swampy area behind Eddie's home, and towards his parents' home. Mr. Mader indicated that Eddie always mowed to a certain point towards his parents' home, which was subsequently marked over the years initially by a fence, and later by a row of shrubs. He testified that he always understood that the fence/shrub line was the boundary between Eddie's property, and that of his parents'. Further, Mr. Mader understood that his parents, as well as Linda Hatfield recognized that line as being the boundary between their properties. He recalled Linda Hatfield verbally

acknowledging the shrub line during a conversation with him as the boundary between the properties. This was during Eddie's lifetime.

[37] In terms of Eddie's usage of the property, Mr. Mader testified that his brother developed and then maintained his property. This included mowing to the shrub line, behind his house to the edge of the swamp, and over to the Gaudet side line. Eddie built and maintained a circular driveway, which the family used for parking. In the 1970s and into the 1980s, Eddie planted gardens on the property. He would rotate the location of the gardens, alternating from placing it adjacent to the Elworthy side line, to a location behind his house, towards the swamp. Mr. Mader testified that he was unaware of the deed description granted to Eddie in 1970 until after his brother's death, and he was surprised that it was much smaller than what he thought his parents gave to him, and what Eddie always used.

[38] ***Dorothy Trenholm:*** Dorothy Trenholm was called by the Plaintiffs. She is the third eldest child of Guy and Mary Mader. As such, she is the sister of Linda Hatfield, and Darren Mader's paternal aunt. Mrs. Trenholm advised the Court that she had suffered from a bout of encephalitis in the past. This has left her with concentration difficulties, but her memory is intact.

[39] Mrs. Trenholm was raised on the Mader homestead. She left the home of her parent's in 1960, and for a period, lived outside of the province. She returned to Sydney in the 1970's and for a time, again lived in her mother's home. She has remained in the local area, and has had frequent contact with her mother, Linda Hatfield, Eddie and his children over the years. She is very familiar with the properties in question.

[40] Mrs. Trenholm testified as to her knowledge of Eddie's property. When she left home in 1960, Eddie had already placed his first small home on the property behind their parents' house. She testified that she was still at home, and present, when her parents discussed with Eddie the placement of his first home on the property, and what they intended to give him. She recalls that her parents described that Eddie was to receive "an acre".

[41] Mrs. Trenholm also described her understanding of Eddie's boundaries, which substantially mirrored the evidence of that of her brother Billy. Namely, she understood that Eddie's property extended from a line presently marked with a line of shrubs, back to the swampy area, and from the Elworthy line on the west, to the

Gaudet line on the east. She testified that Eddie maintained all of this area by building up lawns, mowing and planting gardens. She specifically recalled Eddie having gardens both beside his house, and in the rear, between his house and the edge of the swamp.

[42] Mrs. Trenholm further testified that until recent years, she had a close relationship with her sister Linda, having spent considerable time at the family home assisting with the care of their mother Mary Mader. Never was she aware that either her mother, or Linda Hatfield viewed the property being occupied by Eddie as being owned by them. Further, she had never heard any indication that there was a concern about the placement of Eddie's septic system.

[43] ***Kevin Elworthy***: Kevin Elworthy resides at 1915 George Street, Mira Road, and was called by the Plaintiffs. The southeasterly boundary of his property abuts with the Hatfield and Mader properties. Other than a year he spent away for post-secondary education, Mr. Elworthy has resided on his property all of his life. It has been in his family for a significant period of time. He advises that he is very familiar with the individuals involved in this matter, and the properties. Given his age, he grew up with Linda Hatfield and Eddie's older boys, and he knew Eddie

well. There is a family connection between Mr. Elworthy and the Maders - his grandmother was Mary Mader's sister.

[44] Mr. Elworthy indicated that from his home, he could see the Mader homestead, although in recent years, trees have grown up along the boundary. He spent time on the Mader homestead at various times. When asked his understanding of what Eddie Mader owned, Mr. Elworthy's description was the same as provided by other witnesses. Eddie Mader occupied from a line of shrubs between his home and the Mader homestead, over to his sideline, back to the swampy area, and then over to the sideline of the Gaudet property. The witness described that Eddie maintained the property by mowing and also recalled him having gardens, including in the area to the rear of his home, running towards the edge of the swamp. Mr. Elworthy further recalled that at one time the swampy area had small ponds, and that Eddie and his son Greg worked in this area, and filled them in.

[45] Mr. Elworthy indicated he had no reason to believe that Linda Hatfield or Mary Mader owned any of the property which he had viewed Eddie occupying and using. He testified that he had never seen either Mary Mader or Linda Hatfield

using the property in question in a fashion which would suggest they owned it. Further, Mr. Elworthy testified that he had never seen Linda Hatfield mow any of the disputed land, except within the last few years, following Eddie's death. He recalled that while in highschool, he had asked Eddie permission to travel across Mader property in order to access a woodlot. Permission was granted by Eddie for Mr. Elworthy to travel across the property in a truck. This was described as being on Eddie's back lawn, close to the edge of the swamp.

[46] **Gregory Mader:** Gregory Mader was called by the Plaintiffs. He is the second oldest son of Eddie Mader, and is 47 years of age. He is Darren Mader's older brother, and a nephew to Linda Hatfield. Mr. Mader testified that he is very familiar with the lands comprising the Mader homestead, including the property occupied by his father. After highschool, Mr. Mader testified he worked in western Canada for a year. He subsequently returned to Sydney, and has, other than a few short periods away, remained. During his father's lifetime, Mr. Mader indicated that he was a frequent visitor at Eddie's home - up to 4 to 5 times each week.

[47] Mr. Mader testified that he could recall when his father built the new house in 1970, and the installation of the septic system at that time. He recalled that there was a tank placed about 15 to 20 feet from the house itself, with the septic bed extending away from the house, and into the swamp where it drains. Mr. Mader was not directly involved in undertaking repair work to the septic system, in or around the year 2000. He is aware that his father removed the old tank, and replaced it with a new one. They used a backhoe to undertake the excavation, and the job was undertaken over the span of two days. He testified that the drain leading from the weeping tile around the foundation of the house also runs down to the swamp. Although the weeping tile around the foundation was replaced several years ago, the outflow pipe was not replaced or altered in the repairs. Mr. Mader indicated that he was unaware of any type of agreement that the septic system on his father's property was intended to be temporary in nature. Neither his father, nor anyone else had ever made that known to him.

[48] In describing the area that he believed his father owned, Mr. Mader's evidence was entirely consistent with that of the previous witnesses. Further, he testified that Eddie had put considerable effort into creating a lawn following the construction of the house in 1970, and once built, it was maintained by him until

his death. Eddie consistently mowed up to a line of shrubs between his property and Mary Mader's home. In earlier years, a fence was along this line, which Mr. Mader had always understood was the boundary line between the two properties. Eddie would rotate his garden, and would seed over the area when the garden was moved to a new area. Mr. Mader testified that his father did, on occasion, have a garden planted to the rear of the house, running towards the swamp.

[49] Mr. Mader indicated that his father was "fanatical" about the upkeep of his property. He was a heavy equipment operator at the Sydney Airport, and did a lot of finish work. Both at work, and at home Eddie enjoyed doing landscape-type work. In later years, Eddie, Mr. Mader and Linda Hatfield purchased a ride-on mower for their respective usage. Prior to that purchase, Eddie would use a push mower, or borrow a mower from his employer. Mr. Mader indicated that his father would also borrow heavy equipment from work to grade the driveway leading to the property, and would regularly do maintenance work to it when required. Eddie built a loop, which eventually was asphalted for parking at his home. In the center of the loop was a grassy area, which Eddie protected from getting rutted by traffic by building a fence. Mr. Mader acknowledged that on occasion in the last years of his father's life, he and his son Mitchell did assist in the mowing of Eddie's lawn.

He believes Linda Hatfield may have assisted in the same fashion when Eddie was ill.

[50] *Frank Gaudet*: Mr. Frank Gaudet is 71 years of age and was called by the Plaintiffs. He currently resides at 1949 George Street, which is to the southeast of the Mader/Hatfield properties. His home was formerly owned by his parents, and he grew up on the property. He has known the Mader family since his childhood. Mr. Gaudet testified that he recalled when Guy and Mary Mader bought their property and the family moving next door. He went through school with Eddie, and he described them as being very good friends from the time they were young boys, until Eddie's death.

[51] Mr. Gaudet testified that in 1956 he left his parent's home and worked for a period in Halifax. He returned to Sydney in late 1958, and stayed until 1962 when his employment took him to Gander, Newfoundland. From December of 1963 until January of 1967, Mr. Gaudet was posted overseas. In 1967 he was relocated to Moosejaw, Saskatchewan, and later to Winnipeg, Manitoba. In 1977, Mr. Gaudet returned to Sydney, and has been residing in his current home since that time. With the exception of the years when he was overseas, Mr. Gaudet continued

to return to his parent's home on an annual basis for summer holidays. He testified that he had contact with Eddie during those visits home, and their childhood friendship remained intact.

[52] Mr. Gaudet testified that he recalled when Eddie, shortly before his marriage, was attempting to obtain his first home. It was an existing bungalow that was being relocated due to the development of the Sydney watershed. The witness further testified that he was present for a conversation between Eddie and his father Guy Mader, when it was discussed that Eddie would receive a "parcel" of land from his parents. Based on this exchange, Mr. Gaudet stated that it was his belief that Eddie's property would begin at the rear of the maintenance garage where Guy Mader and Eddie operated "Mader & Son", their construction business. Mr. Gaudet identified the maintenance garage on Exhibit 1, the 1969 photograph/survey overlay. By referencing Exhibit 6, a 1971 aerial photograph, Mr. Gaudet confirmed that the garage had been removed from the Mader property by that time. Mr. Gaudet further testified that he recalled being home during the summer of 1970, and assisted Eddie and his former spouse in tarring the foundation of the new bungalow.

[53] After returning to Sydney to reside in 1977, Mr. Gaudet testified that he had frequent contact with Eddie. He visited at his home often, and is familiar with Eddie's usage of the property in dispute. Mr. Gaudet testified that Eddie planted vegetable gardens, and that he would rotate the location. This alternated between an area adjacent to the Elworthy side line, and an area behind Eddie's house, running down towards the swamp. Mr. Gaudet testified that the area to the rear of the house was particularly good for gardening, as it sloped downwards towards the swamp. He recalled one year in particular when Eddie placed the garden in that area, but he oriented the "drills", or rows so that the water did not drain well. When Eddie rotated a garden, he would reseed the area, and turn it back into lawn.

[54] Mr. Gaudet testified that Eddie was very particular about his lawns and carefully maintained them, describing them as being like "someone with a brush cut". There were areas that were not originally grassed, and Eddie, with the help of his boys, picked rocks, levelled and seeded until it was a lawn. He described the areas in which Eddie mowed, initially with a push mower, and then later with a ride-on. His evidence was consistent with that provided by the previous witnesses. The witness described how Eddie further maintained his driveway, including a circular loop, with grass in the center. Eddie kept his lawn mower and other tools

in a shed that was located on the property. Mr. Gaudet testified that the shed, which he identified on Exhibit 3, was placed on the property around 1982 or 1983 by Eddie, who obtained it from the airport. Mr. Gaudet testified that the shed has remained in the same location, and he always felt Eddie not only owned the shed, but that it was on his land.

[55] Mr. Gaudet indicated that he was unaware of the dimensions of Eddie's deed description. He further indicated that he was unaware of any agreement about Eddie using the land with his mother's permission. Mr. Gaudet believed Eddie owned the land he was using. He was unaware that the septic system servicing Eddie's home was intended to be temporary, or had to be moved in future.

[56] **Mary “Elaine” Mader:** Elaine Mader was called by the Defendant. She is the older sister of Linda Hatfield, and as such, is Darren Mader's paternal aunt. She was born in 1954, and grew up on the property in question. Although she has resided in Ontario for significant periods of time, she testified that she has spent significant time visiting with her mother Mary Mader at her home. She maintained a very close relationship with her mother and sister, and asserts she is familiar with

not only the property in question, but events relating to the usage by various individuals.

[57] Ms. Mader testified that she has been very concerned regarding the harassment and intimidation that her sister Linda has suffered at the hands of Darren and Susan Mader. This has resulted in Linda suffering ill health and frequent damage to her property. She has witnessed such events, most notably during the summer of 2007 when she was home visiting, and is also aware of other incidents from her frequent telephone contact with her sister.

[58] Regarding the property given to Eddie, Elaine Mader testified that she clearly recollected what her parents told Eddie he was to receive. It was as described in the 1970 deed description. Eddie's boundaries were only a few feet past his door step, and her brother knew and respected this. If Eddie did anything with the property outside his deed description, it was with the permission of his mother. As for mowing, Ms. Mader testified that Eddie never mowed past the boundaries as outlined in his deed description, and often would not mow even up to that point. It was Linda who was responsible for mowing in the area between the row of shrubs up to Eddie's property line, which was marked by two pine trees.

In the rear, Eddie only mowed his lawn up to where his clothesline poles were located. He did not mow down to the swamp, as this had always been used first for strawberries, and then as a hayfield. Eddie never planted a garden in this area.

[59] Ms. Mader testified regarding her knowledge of the septic system at Eddie's home. Specifically, she relayed that her parents had remained concerned about the nature of the system Eddie had installed to service his home, in that it was "an open septic bed" running into the swamp. She indicated that she was aware of an agreement between her parents and Eddie that he would eventually put in a proper septic system. Her parents kept telling Eddie to rectify the situation. In 2000 or 2001 she was home visiting and witnessed work being done to the septic tank at Eddie's home. She testified that she mentioned this to Linda Hatfield, and whether the septic should be removed from "our property". Reportedly, Linda expressed she had too much on her plate at that time to take on that issue with Eddie.

[60] Ms. Mader testified that the area to the rear of Eddie's home, and in particular the portion which the septic pipe ran, was to be her property. She indicated that she was to receive a two acre parcel by virtue of both the terms of her mother's Will, and verbal promises Mary Mader made to her in her lifetime. A

portion of the property being claimed by Darren and Susan Mader, specifically that to the rear of their home running into the swamp area, is the land which her mother intended for her to have. Linda Hatfield has promised her that this parcel will be conveyed to her.

[61] Elaine Mader testified about a specific series of events which took place in the summer of 2007, during her vacation home. She was staying with Linda Hatfield, and in the course of assisting Linda with cleaning out her mother's belongings, they found important documentation in a trunk. Ms. Mader testified that she and Linda found deeds, her mother's Will and other documents which clearly confirmed that the property being claimed by Darren and Susan Mader was in fact owned by Linda. Ms. Mader testified that she became very angry upon this discovery, as clearly her nephew and his wife had no right to be harassing her sister. She relayed that she left Linda's home and went to confront her brother Billy with this information. Elaine Mader was angry and upset with her brother, as she viewed him as inappropriately supporting Darren and Susan Mader in their claim to the property. She told him he should be supporting Linda Hatfield in light of the documents she had found. Ms. Mader then proceeded to return to the Mader property, and went immediately to the home of her nephew. She testified that she

drove on the grass, but asserted that it was her sister's property and she was tired of her nephew unreasonably asserting ownership over it. Ms. Mader indicated she was "in a frenzy", very mad at her nephew. She denies that she almost hit her grandnephew Jordan on this occasion. She then, with Linda Hatfield's assistance proceeded to move a boat and trampoline belonging to Darren and Susan Mader from the property owned by her sister. She acknowledged that in the heat of the moment, she called her 16 year old grandniece "a tramp".

[62] Elaine Mader indicated that her sister had suffered greatly from the ongoing trespasses and harassment of Darren and Susan Mader and their children. She indicated that the Mader children had recently started crossing Linda's property and created a path across property owned by Mr. Gaudet. Ms. Mader did not recall a path existing on the Gaudet property in the past, and asserted that there had always been a barbed wire fence along that boundary, maintained by Mr. Ernest Gaudet to keep children off his property. She asserted that the pathway now being used by the Mader children and their friends, was recently created by them, as part of the trespassing over Linda Hatfield's property.

[63] **Jane McMullin:** Jane McMullin was called by the Plaintiffs. She is the spouse of Jeff Mader, a son of Eddie Mader. She is a sister-in law to Darren and Susan Mader. Ms. McMullin testified that she has known Jeff Mader for about 24 years, 20 of which they have been a couple. She has always resided in the Sydney area, and indicated she is very familiar with the property in question, and Eddie Mader's usage of it.

[64] Ms. McMullin testified that based upon her observations of Eddie's usage of the property, she always believed that the boundary between his property and that of Mary Mader was the line of shrubs. She indicated that she could recall a fence being originally in this area, which she testified, clearly marked the boundary between the two properties. Ms. McMullin further testified that Eddie, or the boys at his direction, would mow the lawns down to that fence or shrub line. He also consistently mowed to the rear of his home, down to where a swampy area began. She described Eddie as always having an interest in maintaining his yard, and doing this type of work notwithstanding problems he had with his hip from time to time.

[65] In the course of her testimony, Ms. McMullin further identified a circular parking area which Eddie utilized as his driveway adjacent to his home. He kept the circle fenced and maintained a grassy area in the middle. She also testified as to the location of the clothesline Eddie utilized, and that it has been in the same location for as long as she can remember. The airport shed, has also been always on the property, and used by Eddie for storage. She also recalled Eddie on occasion, having a garden to the rear of his home.

[66] Ms. McMullin testified as to a number of recent observations. Specifically, last winter, she was present at Darren and Susan Mader's home. The driveway had been ploughed and a bank of snow was pushed up against the airport shed. She testified that this is where snow had always been piled in the past when the driveway was cleared at Eddie's direction. While there, a truck arrived and proceeded to knock down the snow bank and push it over onto the lawn area. The truck got stuck, resulting in the Mader's lawn being torn and rutted. Ms. McMullin testified that the driver advised he was acting at the direction of Linda Hatfield. The witness further recounted an incident when she was at the Mader home for Jordan's birthday party. On that occasion, she witnessed Linda Hatfield back her vehicle onto the Mader's lawn in the area of the trampoline where several children

were playing. On another occasion, she witnessed Linda Hatfield driving across the Mader's property, stopping within a few feet of their doorstep.

[67] **John Worrell:** John Worrell was called by the Defendant. He knows Linda Hatfield, as she is a friend of his sister. He testified that he was contacted by Linda regarding the construction of two fences on her property. He provided evidence regarding the work he did at Ms. Hatfield's request, including a wooden privacy fence to the front of the Mader home, and a post and wire fence to the rear.

[68] Mr. Worrell testified that for the first several days he was on site, he was watched closely by Darren Mader, who followed him silently. After a few days, Mr. Mader apologized for his behaviour and the uncomfortable situation. Mr. Worrell understood there was a boundary line dispute between the Maders and Ms. Hatfield. He testified that Mr. and Mrs. Mader offered him water and cold beverages while working on the property.

[69] **Horace Lovell:** Horace Lovell was called by the Defendant and is a Nova Scotia Land Surveyor. He testified that in 1988 he prepared a plan at the request of Mary Mader. The plan was entered into evidence. Mr. Lovell testified that to his

recollection, the purpose of the assignment was not to establish or mark the boundaries of the property, but to locate certain items or features of concern. The witness agreed that given a garage is depicted on the plan, with dimensions noted, that it was likely a feature of interest at that time. The plan references a 66 foot wide right of way, but the witness could not recall the source of that information.

[70] **Garrett MacDonald:** Garrett MacDonald was called by the Defendant and is a security system installer. Linda Hatfield is a customer of his company. Mr. MacDonald testified that 2 years prior, he installed a basic security system, including surveillance system at Ms. Hatfield's home. The invoice for this work was entered into evidence. The surveillance system is intended to monitor a back gate and side lawn to the rear of the property. The camera does not move, but is stationary on that particular view. Mr. MacDonald testified that the recorded view is not designed to view the shed adjacent to the gated roadway, and that snow piled up against the shed would not obstruct the view of the gate itself.

[71] **Linda Chiasson:** Linda Chiasson was called by the Defendant and is a friend of Linda Hatfield, having met her in 1988. Mrs. Chiasson testified that she had, the previous summer, witnessed an interaction between Ms. Hatfield and

Darren and Susan Mader. Mrs. Chiasson advised that she and her husband attended at Ms. Hatfield's home as her husband was asked to do some work on the property. In the course of the visit, the three of them drove down the roadway behind Ms. Hatfield's home to a gate. They got out of the vehicle and walked in an area behind a shed, and further back on the property. She noted that there were people videotaping them at the time. Mrs. Chiasson testified that they returned to the vehicle and proceeded to drive back towards the Hatfield home. They pulled into an area on the lawn, beside a wooden fence. This was on the side of the fence closest to Ms. Hatfield's home. She stayed in the vehicle, but someone from the Mader home approached her window with a camera. One of the individuals called Linda Hatfield a "crazy bitch" and threatened to call the police. Mrs. Chiasson testified that she felt intimidated by this behaviour.

[72] On cross-examination, Mrs. Chiasson acknowledged that she "gave the finger" to the person with the camera. She also recalled that on that day there were a number of people, including children in the Mader yard.

[73] **Cory Ashe:** Mr. Ashe was called by the Defendant and works as a labourer in the construction field. He is an acquaintance of Linda Hatfield, having met her

through his sister. Mr. Ashe testified that in February of 2008 he undertook some jobs at Ms. Hatfield's property at her request. He was paid \$200.00 for this work. Mr. Ashe testified that he replaced some locks on a gate across a roadway on the property, as well as on a baby barn. He also installed wire to fence posts which had been placed to the right of the driveway, and also assisted in posting signs on the fence. He also recalls replacing some boards which had been damaged on another fence located behind a shed by Darren and Susan Mader's home. Mr. Ashe indicated that while working on the fence, Susan Mader provided him with hot chocolate and was friendly with him.

[74] ***Kristen Mader:*** Kristen Mader was called by the Defendant. She is 26 years old, and is the daughter of Greg Mader. She testified that when attending elementary school, she was babysat in the afternoons by her grandfather Eddie and his girlfriend. When asked about her recollection of where her grandfather mowed, she indicated that he would mow to the "bushes" between his house and Linda Hatfield's home. She was not certain as to where Eddie would mow in the rear of the property, but indicated that she thought it was to the rear of his red and white shed. Ms. Mader testified that she was aware that in addition to her grandfather, she knew her father mowed the lawn on occasion, as did her brother Mitchell. She

testified that Linda Hatfield may have also helped mow Eddie's lawn when her grandfather was sick. Ms. Mader testified that she recalled Linda Hatfield mowing on her side of the bushes to her house, and out to George Street. She always understood, that her grandfather owned to the line of the bushes between his home and Linda Hatfield's.

[75] ***Leonard Chiasson:*** Leonard Chiasson was called by the Defendant. He is the spouse of Linda Chiasson, and testified about the same visit to Linda Hatfield's property as did his wife. His evidence was substantially the same. He did not note Linda Hatfield to be acting in an inappropriate fashion towards the Maders, nor driving in a concerning fashion.

[76] ***Wesley Mader:*** Wesley Mader was called by the Plaintiffs. Born in 1960, he is the eldest son of Eddie Mader. Mr. Mader testified that he has resided in British Columbia since 1991, however, from 1984 to 1990, he operated a heavy equipment business from the property in question. After moving to British Columbia, Mr. Mader returned to Sydney every two to three years to visit his father. He also kept in regular telephone contact with Eddie, and they had a very

close relationship. Mr. Mader testified that his father discussed everything with him, including finances, health and other major issues.

[77] Mr. Mader testified regarding the history of his father's occupation of the property. He recalls the original house, and when it was replaced by the current home in 1970. He was present when his father installed the septic system to serve the new home. He testified that his grandfather, Guy Mader was present as well, observing the process from his wheelchair. The septic system had an outflow pipe which ran into the swamp behind his father's house. Mr. Mader testified that from his childhood, he recalled his father working the property to improve and maintain it. Eddie put his sons to work as well, the oldest boys in particular picking rocks, raking, seeding and assisting their father in creating a lawn from what was originally the driveway leading to the old home, and a hayfield in the rear of the property. He testified that his father also reclaimed land in the swamp, filling it in, and expanding the lawn area behind his new house. He recalled that there was originally a 3 foot drop to the swamp, and his father brought in loads of fill and levelled this area out. Mr. Mader testified that there was only ever one survey marker on his father's property, identifying it as being located on the Elworthy line, under an apple tree.

[78] Mr. Mader testified that his father continued, since the building of his new home in 1970 to develop and then maintain the same area. He identified the area on an aerial exhibit as running from the shrub line between his home and that of Mary Mader, over to the Elworthy line, back into the swamp and over to the Gaudet line. He testified that his father planted a garden for several years, with the location alternating from adjacent to the Elworthy line, to an area to the rear of the home, adjacent to the swamp. His father developed a circular driveway, and maintained a grassy area in the middle. Mr. Mader testified that his father built a fence in this area to protect the grass and that he, his brothers and visitors to their home would park in this loop. He recalled his father obtaining a shed from the airport in approximately 1980, and he placed it on the property and used it for storage. It has remained in that position since that time.

[79] Mr. Mader testified regarding the existence of a pathway from their property, across the Gaudet property, identifying it on the 1983 aerial photograph. He recalled using that pathway as a young child, throughout the years. He testified that he could never recall it being blocked off, or being prevented from crossing

over the Gaudet property. There was an old barbed wire fence along the Gaudet boundary, but it was broken down, and didn't create any type of barrier.

[80] Mr. Mader was asked about his own usage of portions of the Mader homestead. He testified that in 1986, his grandmother Mary Mader, advised him that she would give him a parcel of land, in order to build a garage for his heavy equipment business. Mr. Mader proceeded to build in 1986. The building, still existing, is located generally to the rear of the Eddie Mader home, on the other side of the swampy area. It is described as being in the "pit area", and is serviced by the same roadway which serves as the driveway into the Mader home. Mr. Mader testified that in 1988 a dispute arose regarding this arrangement between himself, his father, his grandmother and aunt Linda. He believed he was to be given a parcel of land, which ultimately did not occur. Mr. Mader testified that his father was angry that he did not have the parcel deeded to him, as he had expended considerable money having the garage built. Mr. Mader confirmed that agreements were ultimately reached providing for his rental of the property and payment of money to him should the property ever be sold. He testified that he did not wish to take his grandmother to Court over the issue. From his perspective, this dispute did not impact on his relationship with either his grandmother or aunt Linda. He

pointed to the fact that both of them visited him in British Columbia in 1997 for an extended stay.

[81] ***Mitchell Mader***: Mitchell Mader was called by the Defendant. He is the 17 year old son of Greg and Jeanie Mader. He was in Grade 6 when his grandfather Eddie passed away. He testified that he had a good relationship with his grandfather and spent a fair amount of time at his home. Mitchell advised that he is quite close to his great-aunt Linda Hatfield and that she and his grandfather always seemed to get along well.

[82] Mitchell provided evidence as to mowing activities on the property. He testified that Linda Hatfield would mow up to the line of bushes between her house and his grandfathers, and sometimes she would mow around the other side of them. His grandfather mowed in the front of his home only to the line of two pine trees, but not further. In terms of mowing in the rear of his house, Mitchell testified that his grandfather only mowed to his clothesline poles, but did not mow behind the airport shed due to a lot of junk being there. Mitchell could not recall his grandfather ever having gardens, indicating he could not "picture his grandfather farming".

[83] Mitchell testified that he has helped his aunt Linda Hatfield with yard work, including trimming the shrubs in her yard. He testified that Darren Mader videotaped them on one occasion. Mitchell identified an area in the swamp where yard waste was deposited by himself and his aunt. This was a different area than noted by Linda Hatfield in her evidence. Mitchell identified an area of the swamp close to the location of Wesley Mader's garage, as being where Mrs. Hatfield would dump her yard waste.

[84] ***Michael Astephan:*** Michael Astephan was called by the Defendant. Mr. Astephan is a Nova Scotia Land Surveyor and testified that in 2005 he was commissioned by Wesley Mader to undertake a boundary survey of the lands of Edward Mader. His resulting plan was entered into evidence. Mr. Astephan testified he placed new survey markers on the corners of the Edward Mader lot pursuant to his survey. He testified that the arrangements for the survey were made through Linda Hatfield, as Wesley Mader lived in British Columbia. Mr. Astephan recalls being asked to subsequently attend at the property by Ms. Hatfield who expressed concerns about one or more of his survey markers being

moved. Upon checking, Mr. Astephan did not find that any of his placed markers had been removed from where they were originally set.

[85] *Jeanie Mader:* Jeanie Mader was called by the Defendant. Mrs. Mader is the wife of Greg Mader, and the mother of Kristen and Mitchell, all of whom also testified in the proceedings. Mrs. Mader testified that she visited at Eddie's home frequently, and that her husband Greg would be there on an almost daily basis. Mrs. Mader testified that Eddie had a very positive relationship with his mother Mary and sister Linda. She further advised the Court that Linda Hatfield was a very giving person, who took care of her mother in her later years. She had also been a significant source of help to Eddie in caring for his four sons, and was close to them all. Linda's love of family has extended to her great nieces and nephews, being particularly close to Mrs. Mader's children.

[86] Mrs. Mader testified that until the last two years of his life, Eddie's health was good. He had a long term hip problem that did cause him to drag his foot and caused him pain, but she testified that this problem did not impede him in any way from maintaining his home or yard. Mrs. Mader testified that Eddie's sons did assist with tasks on occasion, as did her son Mitchell. When questioned about the

areas where Eddie mowed, Mrs. Mader testified that he did mow in the rear of his home down to the edge of a swampy, overgrown area, but couldn't say for sure how close he got to it. In terms of the front, Mrs. Mader indicated that there was some kind of trees or hedges and that Eddie always mowed to there.

[87] She recalls Linda Hatfield and Mary Mader taking walks "down back" behind Eddie's home, and Linda dumping grass clippings and yard waste in the swamp, past where a little brook crosses the road. Mrs. Mader testified that she was aware that there may be a problem with the extent of the property owned by Eddie, as she had heard that his driveway may not be on his property. When asked when this comment was made, she testified that it was after Eddie's death.

[88] ***William Mader, Jr.:*** William Mader, Jr. was called by the Plaintiffs. He is a cousin to Darren Mader and Linda Hatfield is his great-aunt. He testified that as a child, he spent time at the property, visiting Mary Mader and attending family gatherings. He was close to Linda Hatfield when he was a child, and has become close to Darren Mader and his wife in recent years.

[89] Mr. Mader testified regarding his knowledge of Eddie's usage of the property. He recalls Eddie storing wood behind the airport shed. It would be split in that area and put in the basement window. He further identified on an aerial exhibit a path that ran from the Mader property, across the Gaudet property, over to another neighbour's property. He testified that he and his cousins used this path frequently as a child playing in the area. He recalled there being an old broken down barb wire fence along the Gaudet line, but it did not impede the use of the pathway.

[90] Mr. Mader testified that he had some interaction with Linda Hatfield on one occasion while mowing Darren and Susan's lawn. He testified that during that period, Susan had broken her leg and Darren was away working. To help, he mowed the lawn. In the process of doing so, Linda Hatfield approached and stood in front of the mower. Mr. Mader testified that she swung her cane at him, and told him he was mowing on her property. As this area was always where Eddie had mowed and maintained in the past, Mr. Mader continued mowing. He testified that on another occasion, he was at the Mader home alone. He noted Linda Hatfield walking about behind the home. Aware of the conflict between the Maders and Ms. Hatfield, he decided to photograph Ms. Hatfield as she was clearly within the

property owned by his cousin. He testified that he believed Ms. Hatfield was unaware of his presence. The photograph was entered into evidence.

[91] Mr. Mader testified that he recalled Eddie Mader mowing his property down to the swampy area in the rear of his lot. In the front, Eddie mowed to the line of shrubs between his house and that of Mary Mader.

[92] *Judy Wile:* Judy Wile was called on behalf of the Plaintiffs. Ms. Wile testified that she knows all of the parties quite well. In approximately 1999, she hired Billy Mader to undertake some work at her home. Through this, she met Linda Hatfield, and they became very good friends. Ms. Wile testified that she spent significant time with Linda Hatfield at her home, including visiting with Eddie. Ms. Wile testified that she was invited by Linda Hatfield to attend family events such as Christmas and Easter dinners at Ms. Hatfield's home. She would often sit with Mary Mader when Linda was required to run errands.

[93] Ms. Wile testified that Linda Hatfield expended considerable effort in carrying for Mary Mader in her later years. Linda herself has also had her own health difficulties, and Ms. Wile has driven her to many doctor appointments.

Although very close friends in the past, Ms. Wile testified that for several reasons, their friendship has deteriorated since 2007.

[94] Ms. Wile testified that she was aware of Linda Hatfield having difficulties with her property, including an incident where debris was burned in the back area. The witness testified that she assisted Linda Hatfield in putting up "No Trespassing" signs after that incident. She was also aware from discussions with Ms. Hatfield that she was having conflict with Darren and Susan Mader after they moved to Eddie's former home.

[95] Ms. Wile was asked about her knowledge of Eddie's use of the property in question, and specifically where he mowed. Ms. Wile testified that she had the opportunity to see Eddie mow many times. He would mow up to the row of shrubs between his home and Linda's property. When Mary Mader was ill, Eddie would also assist Linda by mowing her lawn as well. Ms. Wile testified that on one occasion she asked Linda the whereabouts of her boundary. Linda Hatfield advised Ms. Wile that her parents had given Eddie the property and that the boundary was identified by the line of shrubs.

Applicable Law:

[96] The law of adverse possession is well settled. The often referred to test is described in LaForest, Anger and Honsberger *The Law of Real Property*, 3rd Edition (Canadian Law Book: Ontario, 2006) at pages 29-16 and 29-17:

The possession that is necessary to extinguish the title of the true owner must be "actual, constant, open, visible and notorious occupation" or "open, visible and continuous possession, known or which might have been known" to the owner, by some person or persons not necessarily in privity with one another, to the exclusion of the owner for the full statutory period, and not merely a possession which is "equivocal, occasional or for a special or temporary purpose".

[97] This definition has been cited by Nova Scotia courts repeatedly. Some of these include: *Spicer v. Bowater Mersey Paper Co.* [2004] N.S.J. No. 104 (C.A.); *Palmer v. Nova Scotia* (Attorney General), [1988] N.S.J. No. 536; *Board of Trustees of Common Lands v. Tanner*, [2005] N.S.J. No. 367; *Fralick v. Dauphinee*, [2002] N.S.J. No. 646; and *Conrad v. Nova Scotia (Attorney General)*, [1994] N.S.J. No. 564 (C.A.).

[98] In order to trigger the operation of the *Limitation of Actions Act*, R.S.N.S. 1989, c.258, the person claiming adverse possession must establish all of the

elements of possession, as well as the commencement date for said acts.

MacIntosh, in *Nova Scotia Real Property Practice Manual*, writes at page 7-7:

In order to succeed under the Statute, a party claiming a possessory interest ***must be able to establish a commencement date for his or her acts of physical possession, so that the limitation period may be computed.*** [emphasis added]

[99] MacIntosh continues at page 7-9, citing *Teis v. Ancaster (Town)* (1997), 35

O.R. (3d) 216 (C.A.) at page 221 for the following:

To succeed, the acts of possession must be open, notorious, peaceful, adverse, exclusive, actual and continuous. If any one of these elements is missing at any time during the statutory period, the claim for possessory title will fail.

[100] Anger and Honsberger, *The Law of Real Property*, supra, states at page 29-24.1:

Time of dispossession or discontinuance begins to run when all facts which must be established as part of the adverse possessor's claim have occurred, and when those facts reasonably should have been known to the true owner.

[101] A successful claimant's possessory title will be confined to the specific portion of land he or she openly, notoriously, continuously and exclusively possessed. Possession of part of the land is not possession of the whole.

[102] The duration of possession required in Nova Scotia is a continuous 20 years. This time period is found in the *Limitation of Actions Act*, R.S.N.S. 1989,

c. 258. The relevant provisions are:

10 No person shall make an entry or distress, or bring an action to recover any land or rent, but within twenty years next after the time at which the right to make such entry or distress or to bring such action first accrued to some person through whom he claims, or if such right did not accrue to any person through whom he claims, then within twenty years next after the time at which the right to make such entry or distress, or to bring such action, first accrued to the person making or bringing the same.

...

13 No person shall be deemed to have been in possession of any land, within the meaning of this Act, merely by reason of having made an entry thereon.

...

22 At the determination of the period limited by this Act to any person for making an entry, or distress, or bringing any action, the right and title of such person to the land or rent, for the recovery whereof such entry, distress, or action respectively might have been made or brought within such period, shall be extinguished.

[103] Anger and Honsberger, *The Law of Real Property, supra*, describes factors which should be taken into consideration when determining the sufficiency of possession at page 29-19:

Whether there has been sufficient possession of the kind contemplated by the statute is largely a question of fact in each case in which due regard is to be had to the exact nature and situation of the land in dispute. Possession must be considered in every case with reference to the peculiar circumstances, for the facts constituting possession in one case may be wholly inadequate to prove it in another. The character and value of the property, the suitable and natural mode of using it, the course of conduct which the proprietor might reasonable be expected to follow with a due regard to their own interests, are factors to be taken into account in determining the sufficiency of possession.

[104] In *Ezbeidy v. Phalen* (1957), 11 D.L.R. (2d) 660, this Court described the nature of required possession in the following oft-quoted passage:

[18] Possession may be roughly defined as the actual exercise of rights incidental to ownership as such, that is, the person who claims to be in possession must exercise these rights with the intention of possessing. Where a man acts toward land as an owner would act, he possesses it. The visible signs of possession must vary with the different circumstances and physical conditions of the property possessed.

[105] It is clear from the case authorities that the consent of the title holder to property will defeat the actions of a trespasser which would otherwise constitute

adverse possession. See for example *Ford v. Kennie* (2002), 210 N.S.R. (2d) 50. It has further been recognized that there is a burden on the title holder to produce sufficient evidence of such agreement or consent where the acts of a trespasser would otherwise establish adverse possession. See *Burchell v. Nova Scotia (Attorney General)*, [2004] N.S.J. 453.

Findings:

a) Credibility assessment:

[106] There is conflicting evidence on a number of facts which are central to the determination of this dispute. As such, a credibility assessment is necessary. After considering the totality of the testimony, the evidence presented on behalf of the Plaintiffs was far more credible and compelling than that of the Defendant.

[107] I found the evidence of Frank Gaudet and Kevin Elworthy particularly credible and it served to greatly support the position advanced by the Plaintiffs. I accept fully, the evidence of Mr. Gaudet as being a true and accurate depiction of Eddie's usage of the property in dispute. I believe and accept Mr. Gaudet's

evidence that Guy Mader discussed with Eddie in his presence that the boundary of his lot would begin at a point just behind the rear of the Mader garage. From the 1969 aerial photograph, it is clear that the rear of the garage lines up very closely with where the fence and later shrubs were placed by Mary Mader and Linda Hatfield.

[108] I also accept the evidence of William Mader Sr. and Dorothy Trenholm as outlined above. Given their ages, they were in a better position to be aware of activities and arrangements taking place on the Mader homestead, than younger siblings Linda or Elaine relating to what Eddie was given, or how the land was occupied in the early years. Specifically, I accept Mrs. Trenholm's evidence that she was present when her parents advised Eddie that they intended to convey to him "one acre". The actual deed description, measuring 156 feet x 150 feet, is significantly less than an acre in size.

[109] The Court cannot view the evidence of Ms. Hatfield or Elaine Mader as being supportable in many important respects. Both women testified Eddie very seldom, or perhaps even never, mowed beyond the deeded boundaries of his lot. This is contrary to the evidence of numerous other credible witnesses. Similarly,

both testified Eddie never planted a garden in the area adjacent to the swampy area. Several credible witnesses testified to the contrary, and the aerial photographs also support the existence of a garden in this area. I readily accept the evidence of Mr. Gaudet, Mr. Elworthy and others on these important facts, over that of the Defendant and her sister. The same concern exists with the accuracy of Ms. Hatfield's and Ms. Mader's evidence respecting the existence of a pathway across the Gaudet property. The two sisters deny it ever existed, until Darren Mader's children created it in recent years. Yet Mr. Gaudet and others testified the pathway was longstanding and frequently used by many in the neighbourhood. The demonstrative evidence also supports the existence of the pathway going back at least to 1983. It troubles the Court that Ms. Hatfield and her sister would be unaware of this pathway given their assertions regarding their knowledge of how the property has been used over the years.

[110] I am also troubled by Ms. Mader's evidence regarding her claim of ownership to a portion of the land in dispute. She testified her mother intended her to have a two acre lot immediately behind Eddie's property and this was both promised to her verbally and within the provisions of her mother's Will. Later in the proceedings, Counsel for Ms. Hatfield sought, and was granted leave to

introduce the Will of Mary Mader. Although the Will references a gift to Elaine Mader of two acres, it is clearly in a location a significant distance from the area in dispute.

[111] The Court, given the above, as well as various other inconsistencies, must view the balance of Ms. Hatfield's evidence with great caution. Ms. Hatfield testified surveyor Horace Lovell undertook a boundary survey of Eddie's property in 1988. Mr. Lovell's evidence, which I accept, refutes this. Ms. Hatfield testified that surveyor Astephan was required to reset survey markers which were removed following his survey of Eddie's property. Mr. Astephan testified that upon returning to the property at Ms. Hatfield's request he did not discover any pins had been moved, nor did he find a need to reset any of his markers. I accept his evidence. Ms. Hatfield testified that her workmen, John Worrell and Cory Ashe were harassed and interfered with by the Maders. The evidence of the two men, which I accept, does not support this view. Ms. Hatfield testified that the banking of ploughed snow by the Maders served to obstruct the video surveillance of the gate across the roadway. Mr. MacDonald who installed the system testified that the piling of snow would not obstruct the surveillance of the gate. Ms. Hatfield asserted that the surveillance video she possesses would clearly show many of the

Plaintiffs' objectionable behaviours, including the piling of snow and how it obstructed the view of the gate, yet none of this was introduced into evidence. I accept the evidence of Mr. MacDonald that the piling of snow in the area described, would not obstruct the video surveillance of the gate.

[112] A critical determination to be made is whether Eddie placed his septic system across his parents' property with their permission, and with the express agreement that it would be removed and placed within the deeded bounds of his lot. I cannot accept Ms. Hatfield's evidence that such an agreement ever existed. None of Eddie's children, his friend Mr. Gaudet, nor his older siblings were aware of any such arrangement. If such an agreement existed, I would have fully expected it to have been documented in 1988 when serious conflict arose between Eddie, his mother, and Ms. Hatfield. Although other aspects relating to the properties were reduced to writing at that time, nothing was specified about the septic system. Further, Ms. Hatfield was aware of Eddie undertaking work on the system in 2000. She did not raise the alleged agreement then, nor at any time during the remainder of Eddie's life. Further, despite being aware that Eddie's children were considering selling the house following his death in 2005, she did not raise with them that the system would need to be moved. She did not raise the

issue regarding the placement of the septic system until July of 2007, after the Maders had moved into the home, and after she and her sister had found a variety of documents in her mother's trunk.

[113] I found Darren and Susan Mader to be credible witnesses. They readily acknowledged that they have had heated exchanges with Ms. Hatfield where they used profanity. They regret that they behaved in such a fashion, but assert they were pushed to their limits. Where the Mader's evidence regarding events and interactions conflict with that of Linda Hatfield, I prefer their testimony to that of Ms. Hatfield.

b) Factual Findings:

[114] Based upon the evidence, I find that from 1970 until his death in 2005, Eddie continuously expended significant effort in developing and maintaining not only the property described in his deed, but several areas beyond those boundaries. In particular, I find that Eddie with the assistance of his sons, built a lawn area in the front of his home. The aerial photographs clearly show that this area was not grassy, but rather rough terrain, particularly after the building of the home in 1970.

This area was developed into a well maintained lawn, extending to a fence erected by his mother, which was later replaced by a row of shrubs. I find that Eddie mowed up to this line, which was recognized by him, his mother and Ms. Hatfield as the boundary between their respective properties, notwithstanding the metes and bounds description in his deed. I accept that Linda Hatfield has in the past, acknowledged the fence/shrub line to be the boundary, and maintained this view until after Eddie's death in 2005.

[115] I further find that Eddie, commencing in 1970, consistently utilized the land behind his home. This included reclaiming a portion of the swamp by placing fill, and effectively expanding the area of lawn. Eddie after developing the lawn out of what was previously a hayfield, kept it mowed and maintained to the edge of the swampy area. On occasion he utilized this rear lawn for a garden, and when finished in this location, the open ground would be re-seeded, and reclaimed as lawn. He continued this usage, uninterrupted, until his death. I reject the evidence of Linda Hatfield that she mowed in this rear area, stored wood there, or utilized it in any fashion consistent with exercising ownership during Eddie's lifetime.

[116] The septic system servicing Eddie's home ran, in part, across this rear lawn area. I find that there was no plan on Eddie's part to ever relocate the system entirely within the confines of his deeded lot. In fact, I find it more probable than not, based on the evidence before me, that Eddie was unaware of the discrepancy between what was described in his deed, and what he occupied. Given the nature of the weeping tile and septic outflow pipe, I find that the ongoing and uninterrupted placement of this infrastructure, effectively prevented the use of the rear lawn for any other type of usage.

[117] I have considered the three surveys entered into evidence which took place during Eddie's lifetime. I am not satisfied that these would have made the discrepancy in the deed description and what was being occupied obvious to an individual untrained in matters of property measurement and description. I further reject that the commission of these three surveys would constitute acts of possession or ownership by Mary Mader or the Defendant over the claimed lands. These surveys were for purposes other than addressing the bounds of Eddie's land.

[118] I have also considered that Linda Hatfield, and her mother before her, likely paid the property taxes on the areas in dispute. The Court is aware that in some

instances, the payment of taxes may be a determinative factor in an adverse possession claim. In this instance, I find that it is not. Ms. Hatfield has been paying taxes on a parcel of land described as being approximately 30 acres in size. The size of the disputed areas are extremely small components to the taxed area. As is most readily seen in the photographic evidence, the areas in dispute are quite small, yet very important to the parties. I find there was no conscious determination by either Mary Mader or Linda Hatfield that they were paying taxes on these small areas as a sign of ownership. No evidence was presented to the Court whether such made a material difference to the size of their tax bill. In those circumstances, I cannot view the paying of property taxes on these areas by Ms. Hatfield or her mother as defeating Eddie's adverse possession.

[119] The Court heard evidence regarding the existence of a 66 foot right of way running from the Mira Road to the rear of the Mader homestead. The driveway leading to Eddie's home was purported to be within this right of way, although it was described as being only 15 to 20 feet in width. Other than the right of way being used as a reference relating to the boundary of Eddie's lot, the Court was provided with no further evidence as to the creation of the right of way. I find that Eddie had, since 1970, and likely since 1960, the unfettered and consistent use of a

much narrower driveway from George Street, extending to his property, and further back into the undeveloped back area of the Mader homestead. This was despite his usage of the right of way not being specified in his deed. Eddie did not have exclusive use of the driveway however, it was used by Mary Mader, Linda Hatfield and others on a regular basis until access was limited in recent years by Ms. Hatfield. The same cannot be said however, about the area falling between Eddie's deeded boundary and the driveway. Eddie made use of that area in several respects, namely building a circular driveway, locating a shed, building and maintaining a grassy lawn, and erecting a clothesline pole. I find Eddie consistently occupied and maintained this area, commencing in 1970, and used it as part of his property, to the exclusion of others, and in particular his mother and Ms. Hatfield. I reject the assertion of the Defendant that Eddie was permitted to use this area with his mother's express permission. I find that he used it as he wished, and in a manner suggesting to all that observed his actions, that he owned it.

[120] Given the family relationships involved, Mary Mader and Linda Hatfield would have had ample opportunity to traverse across the disputed areas, both to visit with Eddie, and for other purposes - such as going for a walk. I find however,

that such conduct would not have been intended to be exerting their ownership over the property, nor serve to interrupt the adverse possession of Eddie Mader in any of the disputed areas.

Conclusion:

[121] The Plaintiffs have successfully met the burden of proof required pursuant to the *Limitation of Actions Act, supra*, and are entitled to a declaration that they are entitled to possess as against Linda Hatfield the following:

- a) To the front of their property, that area from their deeded line up to the shrub line as depicted on the Cormier Plan of survey. In setting this boundary, the shrub line shall be extended in a northwesterly direction in a straight line until it meets the survey marker set at the intersection of the southwesterly corner of Eddie's deeded lot with the Elworthy side line;
- b) To the rear of their property, that area from their deeded line to a point within the swamp being 5 feet beyond the end of the outflow pipe of the septic system. This rear line shall start at the edge of the traveled portion of the existing roadway and run northwesterly in a straight line until it intersects with the Elworthy line;
- c) To the east of the Mader lot, that area from their deeded sideline up to the edge of the traveled portion of the existing roadway. It is intended that this will incorporate that area where the airport shed is located, as well as the entirety of the driveway loop.

[122] These parties need certainty with respect to the boundaries and the intent of the Court in rendering this decision. In order to provide a more definitive placement of the above boundaries, I direct the Plaintiffs to arrange for a surveyor, Mr. Cormier should they wish, to prepare a plan depicting the content of this decision. This will be reviewed, and if appropriate, approved by the Court as depicting the boundaries as established herein.

[123] Based on the above, Linda Hatfield has clearly trespassed upon the property of the Maders, by virtue of the erection of the two fences, and other conduct. It would also appear that a portion of Ms. Hatfield's shed may be on the property successfully claimed by the Maders. The Plaintiffs are entitled to a permanent injunction prohibiting Ms. Hatfield or others at her direction from entering upon the lands noted above, except with the express permission of the Maders. They are further entitled to an order that the wooden privacy fence and the post and wire fence behind the airport shed be removed by Linda Hatfield within 60 days of this decision. She is authorized to enter upon the Plaintiffs' lands solely for the purpose of the removal. If the two fences are not removed by Ms. Hatfield, the Plaintiffs are authorized to have the fences removed, including any necessary entry upon Ms. Hatfield's property for the purpose of removing said fences. Once the

plan has been submitted to the Court and approved, should it disclose that the Hatfield shed encroaches on the Mader property, she shall have it removed and placed entirely within the bounds of her property, within 30 days of the plan receiving the Court's approval.

[124] Although Darren Mader interfered with Ms. Hatfield's property by virtue of cutting a section of the fence placed along the Gaudet boundary, in light of the above findings, the other conduct complained of by Ms. Hatfield such as mowing, parking on the loop and the piling of snow, is all without merit. These were usages entirely consistent with the ownership established by virtue of Eddie's adverse possession. I recognize that Darren Mader also cut a low hanging limb from a tree over the driveway when bringing his new shed onto the property. I do not find that such is inconsistent with the reasonable usage of the right of way into his home, although I would suggest consent be obtained in future for any similar actions. For the single act of trespass and property damage noted above, I order the Plaintiff, Darren Mader, to pay the Defendant, Linda Hatfield, general damages of \$100.00. Linda Hatfield presented evidence with respect to other acts of vandalism and damage on her property. She has not met the standard of proof required to

establish that such acts were committed by the Plaintiffs or individuals at their direction.

[125] I find that Ms. Hatfield has unreasonably interfered with the Plaintiffs' use and enjoyment of their property. By virtue of his acts of possession, Eddie had extinguished any claim Linda Hatfield may have had to these areas in dispute well before his death, and specifically by 1990. In addition to the declaration regarding the property, I order Ms. Hatfield to pay the Plaintiffs general damages relating to her acts of trespass in the amount of \$2500.00.

[126] To be clear, the Plaintiffs have not established adverse possession over the driveway leading from George Street to their home, nor over the strip of grass between the driveway and the Gaudet sideline. As such, this area remains with Linda Hatfield. I am satisfied however, that the usage of the driveway since 1960, entitles the Plaintiffs to a permanent and unrestricted right of way over the traveled portion of the driveway, extending from George Street to a point adjacent to their rear boundary line as determined herein. Although I would like to see the parties reach an agreement that would not necessitate the removal of the gate located across the driveway to the rear of the airport shed, I am not hopeful that such is

possible given the animosity shown in this matter. As such, the Plaintiffs have the right to insist upon the gate being relocated to a point beyond where their back line meets the driveway, and if the parties cannot reach an agreement for it to remain in its current location (such as the Plaintiffs being provided with a key by way of example), then it shall be removed within 30 days of the Court approving the plan to be filed pursuant to this decision. Nothing shall prevent Ms. Hatfield from relocating the gate in a location beyond the section of driveway over which the Maders have been granted access.

[127] Again, to be clear for the benefit of the parties, the Plaintiffs are not being granted the right to access Ms. Hatfield's lands beyond the areas specified herein, and Ms. Hatfield retains the right to prevent them, or others, from accessing her lands unless they are legally entitled to do so, or have her permission. The Court also is not convinced that it would be appropriate to order the removal of the surveillance camera as requested by the Plaintiffs.

[128] The Plaintiffs did not bring this action under the *Quieting of Titles Act*, R.S.N.S. 1989, c. 382, and as such, notice has not been provided to the Attorney General and abutting owners. It is not appropriate accordingly to issue the

Plaintiffs a Certificate of Title to the lands referenced herein. However, the legal title of Linda Hatfield has been extinguished to those disputed areas described in paragraph 121 above.

[129] Should the parties be unable to agree, I will accept written submissions on the issue of costs.

J.