

SUPREME COURT OF NOVA SCOTIA
Citation: *Clouter v. Garrett*, 2026 NSSC 26

Date: 20260203
Docket: Hfx 519408
Registry: Halifax

Between:

Irene and Sheldon Clouter

Plaintiffs

and

Christopher and Carole Garrett

Defendants

TRIAL DECISION

Judge: The Honourable Justice Jamie S. Campbell

Heard: January 5-8 and 12, 2026, in Halifax, Nova Scotia

Counsel: Jacob Greenslade, for the Plaintiffs
Dianna Rievaj, for the Defendants

By the Court:

[1] Irene and Sheldon Clouter and Carole and Christopher Garrett have been neighbours since 2020. They live on Alaa Court, a cul-de-sac in the White Hills Subdivision in Hammonds Plains. This dispute is about water drainage. Looking at the pictures of Alaa Court during rain events, one can readily get the sense of why water drainage is such an important issue.

[2] Water drains from the Garretts' property onto the Clouters' property. The Clouters have done a considerable amount of work to their property to remediate water drainage issues. They say that the flow of water onto their land is a nuisance and they want to stop that flow so that some of the drainage ditches can be closed over making the land useable. The Garretts would be happy to oblige but anything they do, short of a substantial regrading involving the entire area of Alaa Court, would flood the property of their other neighbours along the street. Ms. Garrett said that they felt it would not be right to do that. And that seems to be the nub of the dispute. Mr. Clouter takes the view that each property owner is responsible for their own water problems and if the water causes flooding or pooling further down the street those property owners must find their own ways of dealing with it.

[3] In summary, the parties are subject to the natural water drainage patterns that existed before the subdivision was developed. Water runs toward the Clouters' property. The Garretts did not make that happen. The natural slope of the land did. Some of that water runs through a swale or a naturally occurring depression through which water runs as a channel toward the lower area. The developers did not dig the swale. The previous owners did not dig the swale. The Garretts did not dig the swale. It is a naturally occurring feature. The Clouters cannot impede that natural flow of water to push it back onto the Garretts' property and their other neighbours on the street. Raising the secondary culvert under their driveway has caused water to back up onto the Garretts' property. That is the nuisance in this case.

Causes of Action

[4] The Clouters sued the Garretts on November 29, 2022. They seek an order stating that the water flowing onto their land is a trespass and a nuisance. They seek a mandatory injunction ordering the Garretts to get a permit from Halifax Water to discharge their surface water into the roadside ditch on Alaa Court. They also seek an order permitting them to close a portion of the drainage ditch on their

property, which would have the effect of pushing the water onto the Garretts property, with implications for the upstream neighbours on Alaa Court.

[5] The Garretts filed a defence on January 13, 2023. They say that the water is flowing in its natural course so that it is not a trespass. There is no substantial interference with the Clouters' use of their property, so there is no nuisance. And they can't get a permit to tie into the ditch on Alaa Court because they cannot meet the criteria that doing so will not cause harm to their neighbours property upstream. The Garretts have counterclaimed against the Clouters for damages caused to their property because of changes that the Clouters have made on their land.

[6] The situation is a personal and legal quagmire for both couples. There seems to be no way out of it and no solution that would accommodate the expressed wishes of both, while not harming their other neighbours. That means that is important to consider the hard reality on the ground in the area around Alaa Court.

Alaa Court Water Drainage

[7] Alaa Court was developed by F.H. Construction as part of the Ridgewood Subdivision. A storm drainage plan was created by Terrain Group for that subdivision in 2004 and an approved plan of subdivision was filed in 2010. Christopher Boudreau was one of the engineers who worked on the storm drainage plan in 2004. He is now the president of Strum Consulting. He was qualified as an expert in this matter.

[8] Alaa Court runs in a northly direction off Sheeba Drive. The Clouters' property at 41 Alaa Court is at the top of the bulb of the cul de sac. Next to it, to the east, is the Garretts property, 37 Alaa Court. Next to the Garretts is 29 Alaa Court and on the corner, where Alaa Court meets Sheeba Drive is 11 Alaa Court.

[9] Mr. Boudreau explained that no storm drainage plan is required for individual lots in rural areas, like Alaa Court. The only requirement is that there be a storm drainage plan for the entire subdivision. That plan shows where stormwater from various catchment areas would flow. The municipality reviews the plan to make sure that the proposed water flow does not overwhelm the existing stormwater infrastructure. Mr. Boudreau noted that the drainage patterns on individual lots was contemplated to remain generally unchanged, other than the development of houses, driveways and other occupied spaces. How water drains from individual lots would not be part of the approval process.

[10] With a few exceptions that do not come into play here, the properties of Alaa Court are part of one drainage area. The drainage area is the low point, into which water in that area naturally flows. That is based on the topography of the land surrounding it. Water in the area of Alaa Court flows into that drainage area. That drainage area is immediately behind the Clouters' property at 41 Alaa Court. Running along the entire western boundary of their property is a Halifax Water easement containing a ditch that carries water into that drainage area. At the end of the Halifax Water easement there are a series of culverts that allow the flow of water out of that low point.

[11] Mr. Boudreau described the area including 41, 37, 29, and 11 Alaa Court as part of a "bowl". The eastern part of the area running along the backs of 41, 37 and 29, is higher than the rest of the area. There is a low swale or depression in the natural topography that crosses that area. It starts at 11 Alaa Court near Sheeba Drive, and slopes gently across 29, 37 and 41. It ultimately ends up in the Halifax Water culverts behind 41 Alaa Court, which is the Clouters' property. Mr. Boudreau said that the natural topographical feature, the swale, was there before any construction and is still there except in areas where it has been filled in by homeowners. Mr. Boudreau was on the site when he prepared the drainage plan in 2004 before the development of the area. He was in the best position to give evidence about the condition of the land before houses were constructed because he walked over the land when preparing the drainage plan. He was not a casual observer. He was paying attention to features that would affect drainage. That swale or depression was not noted on the plan, but Mr. Boudreau recalled taking notice of it when the plan was developed.

[12] The high point of the eastern side of Alaa Court is along the backs of 29, 37 and 41. The elevation decreases until it reaches the swale which is further down the slope closer to the street. Then between the swale and the street the elevation increases so that the elevation of the swale is lower than the road and lower than the centre of the roadside ditch. Water runs from higher elevation to lower elevation. It is caught in the swale and is channeled toward the drainage area. If the swale is blocked, the water would overflow the swale and be trapped in the area between the swale and the roadside ditch. That is what has happened.

[13] The water is "attempting" to flow across the Clouters' property to the Halifax Water easement or the land behind the Clouters' property near where the culverts are located in the drainage area. Mr. Boudreau noted that the water flowed in that way prior to construction. "The swale that runs through the properties was

NOT created by the subdivision developers or any of the homeowners on Alaa Court.” (Boudreau Report, page 4, emphasis in original)

[14] Mr. Boudreau’s opinion was that the development of lots on Alaa Court has not substantially changed the natural flow of water. It would have somewhat modified the specific route that water may be taking but there has been no significant change to the overall size and shape of the total drainage area. Mr. Boudreau did a site visit on March 24, 2025. He saw that since the storm drainage plan was created in 2004 all the lots on the east side of Alaa Court had been developed into private homes. Some areas had been in-filled, and several French drains appeared to have been installed. None of those changes, in his opinion, have substantially or materially changed the natural flow of water. The storm water that falls in that area still flows to the same destination, which is toward the Halifax Water property with the culverts behind the Clouters’ property.

The Clouters’ Property

[15] The Clouters bought their home from Highmark Custom Builders Limited in July 2017. There were evidently water drainage issues. The photographs from the time show significant amount of water on their land.

[16] They did a number of extensive landscaping projects in part to address these issues. In the fall of 2017, they hired a contractor to remove dead trees and in-filled a portion of their front yard. That area was about 90 square feet and took 10 loads of fill. That created an area to build a garage and a driveway to that garage. After the garage was built they removed dead trees and in-filled another 2,100 square metres on their property. In January 2019 they installed a French drain that runs behind their house to protect the property from water at the back. On August 30, 2019, they created a new private ditch that carried water from the output of their under driveway secondary culvert to the Halifax Water property located behind their property and roughly adjacent to the Halifax Water drainage easement.

[17] On March 6, 2020, the Clouters raised the culvert under their driveway. That impeded the flow of water through the swale that took water from the upstream or uphill neighbours over their property toward the drainage area. In April 2020, they in-filled a ditch that ran from the output of their secondary driveway culvert to the Halifax water drainage easement. It appears as though that ditch had been dug by Highmark Homes. That same month the Clouters installed a second French drain near the shared property line with the Garretts. It runs down the front yard to the Clouters’ secondary driveway culvert. The input from that drain discharges onto

their property, on their side of the swale that flows through the secondary culvert under their driveway.

[18] In 2018 they called Halifax Water to fix the drainage issues at the drainage area. The culverts were blocked and water was backing up onto the Clouters' lot. Halifax Water eventually cleared the culverts of debris and obstructions, and water began to flow out of the drainage area so that it no longer backed up into 41 Alaa Court. The Clouters then did the landscaping projects that for the most part seem to have alleviated the flooding and water drainage issues that they had experienced. But of course, that doesn't end matters.

The Garretts' Property

[19] The Garretts bought their property at 37 Alaa Court in August 2020. It was during the time of the COVID pandemic and they first went to the home on the day they took possession. Carole Garrett said that they were quite surprised by the amount of water on the property. Just prior to the Garretts buying the property the previous owner tried to install a form of drainage system between his property line and the driveway to run from the swale where water was gathering on his property. The Clouters objected to that and had their lawyer write the former owner and informed the Garretts about the issue when they bought the property. The Clouters installed a berm between their driveway and their shared border with the property now owned by the Garretts on September 29, 2021. In the late fall of 2021, the Garretts installed a French drain along the property boundary with the Clouters. A portion of that drain encroached on the Clouters land. That French drain takes water from the Garretts' property and directs it into the swale that runs between the Garretts' property and the Clouters' property between the roadside ditch and the secondary driveway culverts. That swale would direct water toward the Halifax Water easement just beyond the Clouters' property from where it would be intended to flow into the drainage area.

Landscaping and Other Work on Alaa Court

[20] The Clouters and the Garretts have done work on their properties to try to fix the drainage problem. But the basic problems of both topography and the laws of physics remain. Water runs downhill. The flow of water continues to be toward the drainage area next to the Clouters' property. That is the low point. The water runs from the ridge behind civic numbers 41, 37 and 29 toward the street and is captured in a depression that is between the houses and the ditch at the street. That

depression is the swale. Water would normally run through that swale into the drainage area, now through the Halifax Water drainage easement along the boundary of 41 Aala Court.

[21] Mr. Boudreau, who was one of two engineers who prepared the drainage plan for the subdivision in 2004, said that the development of the area has not changed the basic topography as it was before the subdivision was developed. Water runs downhill toward the drainage area. It runs into the depression or swale and makes its way in toward the drainage area. That depression or swale is 40 to 60 feet from Aala Court when it crosses under the driveways leading to the properties owned by the Garretts and the Clouters. If the swale is blocked, the water overflows into the area between the swale and street.

[22] The Clouters maintain that the swale was really a small ditch dug by subcontractors for the builders, Highmark Homes and that it directs water onto their property. They want to block it, to stop water coming on 41 Aala Court, so that some of the other ditching on their land can be filled in and the land made useable. In their view they are suffering the consequences of the drainage issues at the Garretts' property, 37 Alaa Court.

[23] Mr. Brett Kiley of Cogswell Engineering provided a report. He was qualified as an expert in this matter. Mr. Kiley said that the natural path of the water flow was disrupted by changes and displacement of the natural topography during the development of 37, 29 and 11 Alaa Court. The stormwater, in his opinion is no longer following its natural course. Mr. Kiley's opinion was that the private ditch system was collecting surface water from 37 Aala Court and from there it flowed onto 41 Alaa Court. His opinion was that the ditch or swale was dug. That was based on his physical observations of the current state of the property and Lidar imagery which he said showed the change.

[24] Mr. Boudreau said that the depression or swale was there before development in 2004. He did not have to base that opinion only the interpretation of contour maps and Lidar imagery or on current observations on the ground. He observed it in 2004 when the subdivision drainage plan was prepared. I accept Mr. Boudreau's evidence and his expert opinion that the swale predates the development of the lots. It may well have been made more defined but the course is the course that water has taken since before the subdivision was created. The culvert and ditches that have been constructed on the eastern Aala Court lots, except for Clouters property, "were generally constructed in very close proximity

to the location of the natural preconstruction swale. As such the water remains flowing in the same location as it was prior to any development” (Boudreau Report, page 5).

[25] The Boudreau Report addresses the work that has been done, specifically at 41 and 37 Alaa Court. The Clouters have made serious efforts to improve drainage on their property. Part of that involved in-filling a portion of their lot. Mr. Boudreau said that could affect the ability of the land to absorb and or drain stormwater. It could also affect patterns of erosion on that property or on neighbouring properties. They have also raised the level of the culvert on their driveway. The placement, width, and length of culverts are “critical elements” which determine how those culverts function. Changing them “will almost always have a direct impact on the flow of stormwater through them” (page 5). When a culvert is placed too high the water must first accumulate or pond deep enough to reach the bottom of the culvert before it can travel through. If the diameter of the culvert is too small for the volume of water the culvert will reach its capacity and force water to back up and accumulate.

[26] During a site visit on March 24, 2025, Mr. Boudreau saw standing water in various dips and crevices on the lower area of the Garretts’ property. A small pond had formed where the water flowing downhill from the start of Alaa Court pooled when it hit the barrier of the Clouters’ driveway. That was where the culvert had been raised. The culvert was now higher than the pooling water and it impeded the water from continuing across the Clouters’ property to the Halifax Water property behind it, “as I anticipated when I developed the Storm Drainage Plan in 2004”. The plan was that water would follow its natural course, from the areas toward the beginning of Aala Court, over the Clouters’ property and into the drainage area.

[27] There are no water easements in the area, other than the one Halifax Water easement running along the edge of 41 Alaa Court.

[28] The Clouters do not want to be responsible for other people’s storm drainage water. They want to stop it from coming onto their property and the “upstream” neighbours would have to regrade their properties to direct the water into the ditches around the street. If they do not, their properties will flood. Mr. Boudreau says that was never the plan. Deviating from the storm drainage plan established in 2004 would have a domino effect. Reports from Roach Engineering in 2023 and Able Engineering in 2025, confirmed by Mr. Boudreau, indicate that if the Garretts were to regrade their property in an attempt to direct storm water to the street and

away from the Clouters' property, it would cause flooding to their upstream neighbours on Alaa Court.

[29] Mr. Kiley, the expert retained by the Clouters disagrees with that assessment. He says that it can be done. He has not provided a specific plan for how that might be done without installing a pumping station at the first house on the corner of Aala Court. I accept the opinion of Mr. Boudreau, who agrees with the assessment of Roach Engineering and Able Engineering.

[30] Mr. Boudreau summarizes the situation by saying that it is important to remember that all water in that drainage area ends up at the same point. That is the Halifax Water Easement adjacent to the Clouters' property. It is that way now and it was that way prior to the development of the subdivision. It would be unethical to design a lot grading plan for the Garretts knowing with certainty that it would cause the neighbouring property to flood. If the Clouters were to lower the elevation of their driveway culvert and increase its diameter it would allow the stormwater to flow "along its natural course, as anticipated when the original Stormwater drainage Plan was drafted in 2004" (page 10). If that were done water would no longer back up and pool next to their driveway and the Garretts' property would not flood. "As a result of the in-filling completed by the Clouter's (sic) post development approval, I would expect that some earth re-grading would be required to permit water to exit the culvert and flow across the Clouters' lot towards the Halifax Water Easement" (page 10).

Law of Nuisance or Law of Trespass?

[31] Nuisance and trespass are different. Trespass protects a person's possession of land from wrongful interference. There is no requirement for proof of damages. Nuisance involves an indirect interference with the use and enjoyment of land. The interference must be both indirect and unreasonable. As Justice Bryson observed in *Halifax County Condominium Corporation No. 277 v. Halifax Regional Water Commission*, 2024 NSCA 1, para. 17, in practice, it can be difficult to say whether an interference is direct or indirect and therefore a trespass or a nuisance. Nuisance deals with an infringement of the plaintiff's property rights without direct entry by the defendant. It is concerned with unreasonable interference with the enjoyment of the plaintiff's land resulting from another person's actions elsewhere. Nuisance deals with reconciling conflicting interests in connection with the competing uses of land. *W. Eric Whebbly Ltd. v. Doug Boehner Trucking & Excavating Ltd.*, 2007 NSCA 92, paras. 127-128.

[32] Trespass is a direct entry on the plaintiff's land. In this case, the encroachment by the Garretts on the Clouters' land by locating a part of their French drain incorrectly over the property line has been acknowledged to constitute a trespass. Changes made on the land of either of the parties that are alleged to have caused damage to property of the others should be considered having regard to the law of nuisance. That involves the law as it relates to the drainage of surface water.

Storm Water Drainage as Nuisance

[33] Rights of drainage of surface water, as between neighbours, is "governed by the law of nature". *Edwards v. Scott (Rural Municipality)*, 1933 CanLII 188 (SKCA), [1934] 1 W.W.R. 33, 3 D.L.R. 793, (Sask. C.A.), affirmed *Scott (Rural Municipality) v. Edwards*, [1934] S.C.R. 332. That elegant statement from 1933 still applies. Water flows downhill. The owner of the downhill property must accept that surface water will flow downhill from the neighbour's land.

[34] But of course, things can never be quite that simple. This case involves the intersection of storm water drainage law and the law of nuisance. The flow of water over a neighbour's land can constitute a nuisance. So, that is the starting point. Justice Keith recently dealt with similar claims in *Josey v. Rodriguez-Demers*, 2025 NSSC 209. Justice Keith described the nature of the competing interests.

This dispute is rooted in the ancient proposition that an individual may use and enjoy the property which they own, provided that their actions do not infringe upon the equal rights of others to do the same. The outwardly smooth appearance of this simple idea becomes gnarled in everyday life because it hopes to strike a balance between the conflicting claims of landowners and, in turn, is based on a shared understanding of what it means for neighbours to treat one another fairly, reasonably, and with mutual respect. Finding that equilibrium point where one person's freedom to use their own property ends and another person's freedom to use theirs begins can be difficult. In this case, the parties disagree as to how these reciprocal moral and legal obligations are properly balanced. (para. 6)

[35] The two-stage test for private nuisance is set out in *Antrim Truck Centre Ltd. v. Ontario (Transportation)*, 2013 SCC 13. Any alleged injury of interference with the other person's land must be substantial. And if a substantial injury or interference is proven it must have been unreasonable. Applying the test, as Justice Keith noted in *Josey*, is highly contextual and extremely fact sensitive. The first part of the test is focused on the gravity or severity of the alleged injury or

interference. It must substantially alter the nature of the claimant's property or interfere with its use to the extent that it is more than a slight annoyance or trifling interference. The law of nuisance does not protect against trivial, minor or transitory interferences or those that are based on unrealized fears or abnormal sensitivities. Nuisances that cause physical damage are distinct from those that involve things like the aesthetic appearance of a neighbour's land.

[36] The second part of the test in *Antrim* is the balancing of the gravity of the harm against the utility of the defendant's conduct. When considering the utility of the defendant's conduct the court can be guided by a non-exhaustive list of three factors set out in *Antrim*. The character of the neighbourhood, both in terms of what a plaintiff might reasonably be expected to tolerate as well as the reasonable conduct of the defendant are one factor. A second factor is the nature of the injury or interference and related issues around whether the defendant's underlying purpose is reasonable in all the circumstances. The way the defendant conducted themselves in terms of provocation, harassment or malice, should also be considered.

[37] The Garretts argue that the alleged interference with the Clouters' land was not substantial. The Clouters have said that they do not want to host the Garretts' storm water in the ditch that they have dug to direct water back to the Halifax Water drainage are behind their property. That ditch is making a significant part of their land unusable for other purposes. The Garretts reply that Mr. Clouter, in evidence at the trial, said that the ditch was dug to protect their property from a potential overflow of the ditch contained in the Halifax Water easement that runs along the boundary of their land. Filling it in has nothing to do with the water that is running onto the property from the Garretts' land.

[38] Since the water drainage ditch known as the Highmark ditch, dug when the subdivision was developed was closed in, the Clouters' ditch does take some water that that comes onto their land from the Garretts' property. It is not a trifling or trivial interference.

[39] The more significant question involves the balancing interests. And in this case that directly engages the law that relates to water drainage.

[40] The reasonableness and utility of the defendant's conduct is assessed against the interference to the plaintiff's interests. One of the factors in considering the reasonableness of the actions taken by the defendant is the character of the neighbourhood in terms of what a neighbour might be reasonably expected to

tolerate. In this case the question is what a reasonable neighbour would expect in terms of storm water drainage in the area around Alaa Court.

[41] When the Clouters bought their home on Alaa Court the lot was a mess. There was a great deal of work to be done to drain that lot to make most of the land usable. The Clouters were up to the task and took it on, in a good faith effort to make their lot better. They spent a considerable amount of money and undertook a lot of work themselves to drain what was a wet area, next to Halifax Water drainage easement and bordering on the drainage area identified in the Subdivision Drainage Plan completed in 2004.

[42] That Subdivision Drainage Plan is an aspect of the character of the neighbourhood. Water naturally flows toward the back of the Clouters' lot. The intention of the Subdivision Drainage Plan was that water would flow from the higher elevation lots toward the drainage area. The Clouters as owners of the lowest elevation lot, the one adjacent to the drainage area, were going to have to deal with that reality. At the time that the plan was created, as Mr. Boudreau observed, there was a small stream that ran from what is now 11 Alaa Court to the area toward the fronts of what are now on 29 and 37 Alaa Court and continuing into the Clouters' property at 41 Alaa Court. It collected water from 11, 29 and 37 Alaa Court and ran it into 41 Alaa Court and from there it eventually made its way into the drainage area.

[43] The houses at 29, 37 and 41 Alaa Court could be accessed by a driveway only if culverts were installed in each driveway to let the water pass through. The primary culvert was at the intersection of the driveway and Alaa Court, allowing water in the roadside ditch to pass through. The secondary culverts allowed water from that stream to pass through. The installation of the driveway and culverts did not substantially change the natural flow of the water. The water then flowed onto 41 Alaa Court. To keep it drained a ditch needed to be dug to allow the water to flow into the Halifax water easement area adjacent to 41 Alaa Court.

[44] The stream was not created by the developer or by the subsequent owners of those houses. It was not by any means a large brook or stream, but it appears to have followed the same path for quite some time, and the level of water would vary by the season. It is a naturally occurring depression through which water flows, following its course toward the lower elevation.

[45] A lower landowner cannot complain of water that naturally flows or percolates to their land from a higher level. The lower owner can prevent or "bar

back” the flow of surface water on their land provide it is surface water that has no defined course.

I cannot but conclude that the weight of authority in the provinces of Canada where the English common law prevails is that the principles which apply to water flowing in a defined channel do not apply to surface water - water of a temporary and casual character - which does not flow in any regular channel and has no certain course but which merely squanders itself over the surface of the ground. (*Edwards*, para. 22)

[46] In the case of surface water a landowner can build on their land and prevent water from draining onto it, but that owner cannot collect the water by some artificial means and throw it back on the neighbour’s land. *Burpee v. Bernikier*, 2013 NSSC 272, para. 93, citing *Loring*. But when water flows in a natural watercourse in a well-defined channel the lower owner must accept it. *Loring v. Brightwood Golf and Country Club Ltd.*, 1974 CarswellNS 106, [1974] N.S.J. No. 192, 44 D.L.R.(3d) 161, 8 N.S.R. (2d) 431, para. 35.

[47] The law applies fairness having regard to the laws of nature. The water will flow downhill. If it does so, either as rain runoff or in a defined stream the lower neighbour cannot complain because the laws of nature have taken their course. In the case of rainwater that lands and disperses itself, taking the natural downhill course, the downhill neighbour can build a barrier to prevent that. What that neighbour cannot do it to artificially collect it and pour it back onto the upper neighbours’ land. That seems to make the distinction between the way that water flows naturally, dispersing itself broadly and the way that water would be artificially collected and sent back in a potentially more destructive way. When water flows in a natural defined course, running from higher to lower elevation, it cannot be blocked.

[48] On Alaa Court the depression that carries a stream of water from the higher elevation to the lower elevation is naturally occurring. It has a defined course. The water is not passing in a “sheet” from one property to the other but follows a defined course. The Clouters are on the receiving end of that stream and would not be permitted to stop it and cause it to flow back towards the Garretts property and the other neighbours further down the street.

[49] It is within that context that the nuisance must be considered. The Clouters own the lot at the lower elevation. The water naturally flows in a defined path under their driveway and onto their land. They would not be permitted to stop it so

that it floods the Garretts' property. And the Garretts are not sending water onto the Clouters' property.

[50] The second factor when considering the reasonableness of the defendant's actions in a claim of nuisance, as set out in *Josey*, is the nature of the injury or interference and whether the defendants' underlying purpose was reasonable. The Garretts installed a French drain which led water along the boundary and into the swale. That small stream was there before the development. The French drain took water in its natural course downhill into the swale from which it was carried onto the Clouters' property. The Garretts did not act in a way that was intended to cause harm to the Clouters and on the contrary their actions have been focused on avoiding harm to their other neighbours at 29 and 11 Alaa Court.

[51] Similarly, the Clouters' purpose was not to act in a meanspirited or spiteful way. Their intent was not and is not just to make life difficult for the Garretts at 37 Alaa Court, or the owners at 29 and 11 Alaa Court. Their understanding is just that each property owner should look after the storm water that lands on their own property by directing it to the street. There is a ditch that runs along Alaa Court, and they believe that each property owner should direct the water from their property into that ditch, which then leads to the water easement.

[52] The Clouters maintain that the Garretts should regrade their property so that water flows into the roadside ditch at Alaa Court. The engineering reports say that is not a reasonable solution. Halifax Regional Municipality will not permit the Garretts to tie into the municipal infrastructure unless it can be shown that the plan would not adversely affect other neighbours. Mr. Boudreau, Robicheau Engineering, and Able Engineering all confirm that there is no way that the property can be regraded without causing flooding on the neighbouring properties. Solving the Clouters' problem, creates a problem for the others. Mr. Kiley maintains that it can be done but has not provided any plan for how it could be done.

[53] The assessment of reasonableness must also have regard to the ways in which the parties have conducted themselves. There are allegations going both ways about different forms of harassment and rude behaviour. The Clouters have noted that Carole Garrett has done nothing of that kind while her husband has on occasions made rude gestures toward them and starred at them. They say that the Garretts are recording them, though there is only one still picture of Mr. Clouter as proof of that. The Garretts for their part say that on one occasion a few years ago

they saw someone looking out the Clouters' window watching them while they were in their hot tub. While the feud has been unpleasant for both, there is not enough evidence to heap blame at the feet of one family over the other. Entirely responsible people can sometimes behave in ways that they will later find to have been embarrassing.

Conclusion

[54] The Garretts did not contest and have not contested the Clouters' claim that their French drain encroaches on the Clouters' property and constitutes a trespass. They are ordered to remove the encroaching portions of that drain and return the land in which the drain was placed to its condition before the encroaching drain was installed. That work must be completed by June 1, 2026.

[55] The Clouters have not proven that the Garretts have committed the tort of nuisance by directing water onto their land. The flow of water before the properties were developed was through a naturally occurring swale or depression toward the drainage area, over what became the Clouters' property. The water that flowed through the swale flowed in a channel or a defined course. It was not dispersed over the land. The Garretts' French drain did not alter the flow of water. It took water into the swale where it would naturally go. From there it went onto the Clouters' property, as it would have done before the subdivision was developed.

[56] The Garretts have proven that the Clouters, by impeding the natural flow of water in the swale have committed the tort of nuisance. That has caused flooding to take place on the Garretts' property. The Clouters are ordered to lower the culvert in their secondary driveway to allow for water to pass in its natural course. That work must be completed by June 1, 2026. Because that work will restore the Garretts' property to the condition it was in before the flow of water was impeded no damages are ordered.

[57] The Clouters have not proven that the Garretts committed the tort of nuisance by making recordings of them. The only evidence of any recording is one photograph.

[58] Neither party will be ordered to pay damages for stress and anxiety. This matter has undoubtedly been the cause of considerable stress for everyone involved. Allegations of starring and swearing and the making of rude gestures do not descend to the level of behaviours for which compensation should be ordered.

[59] The Garretts have been the successful party and will be awarded costs. If the parties cannot agree on the amount of costs, they should contact the court within thirty days of this decision.

Campbell, J.