

B.C.'s Property Law Act Offers A Solution To Feuding Neighbours

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High fences make good neighbours. But if the fence, or a building, juts onto the neighbour's property, neighbourly relations may sour. This is especially true where the fence carves off a section of the neighbouring property, or presents a safety or aesthetic concern, as with a dilapidated retaining wall or building.

Section 36 of British Columbia's Property Law Act offers a solution where a building encroaches upon or a fence encloses part of the neighbouring property, and neighbourly relations have broken down. Either the neighbour whose fence or building crosses the property line, or the neighbour whose land is encroached upon, may apply to the Supreme Court for a resolution. The court has the power to order one of three remedies:

1. grant an easement over the part of the property enclosed or encroached upon by the fence or building, and order compensation for the easement;
2. give the encroaching neighbour title to the enclosed or encroached part of the property, and order the payment of compensation; or
3. order the owner to remove the encroaching or enclosing building or fence.

The court will decide whether to grant the order, and decide which of the three options is fairest, based on a "balance of convenience" analysis, along the following lines:

1. Knowledge: Was the encroachment accidental or intentional? The court will be more likely to order removal where the encroaching owner deliberately or deceptively built onto the neighbouring property;
2. Size: How much does the fence or building intrude? If encroachment is minimal, barely affecting property values or use, the court is more likely to grant an easement or transfer of title; and
3. Practicalities: How costly would the removal of the fence or building be for the owner, in terms of expense and use? Where the owner relies on the encroachment, or where the encroachment is solid and permanent, the court is more likely to grant easement or ownership rather than demolition or removal.

The neighbour applying to court generally presents evidence in affidavit form, rather than oral testimony. The evidence must include a survey showing the true property line with the building or fence jutting over it.

The application for relief under the Act is by petition. It is thus generally quicker and less expensive than a full legal action. The entire process can take one or two months between delivery of materials and the hearing.

As with all court proceedings involving a hearing, however, the process is not inexpensive. A prospective purchaser should proactively investigate possible problems by ordering a survey, especially where the neighbour's wall or building appears to intrude. If one discovers an encroachment, a negotiated and amicable neighbourly settlement, rather than full-scale litigation, is the best strategy. If no settlement can be reached, one should move quickly to protect one's property rights; delay will harm a later application under the Act. Ultimately, a letter from a lawyer, or the delivery of court materials, may convince the intruding neighbour of one's seriousness, and can often resolve the dispute without the full cost of a hearing.

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