

CANADA / JUDGMENT

Barrow v. Landry

1999 BCCA 143

COURT

British Columbia Court of Appeal

DECIDED

26 February 1999

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

Citation: Barrow v. Landry Date: 19990226 1999 BCCA 0143 Docket: CA024909 and CA025211
Registry: Vancouver COURT OF APPEAL FOR BRITISH COLUMBIA ORAL REASONS FOR
JUDGMENT: Before: THE HONOURABLE MADAM JUSTICE PROWSE February 26, 1999 THE
HONOURABLE MR. JUSTICE FINCH THE HONOURABLE MR. JUSTICE MACKENZIE Vancouver,
B.C. BETWEEN: HOLLIE ALBERTA BARROW PETITIONER (RESPONDENT) AND: WILFRED
JOSEPH LANDRY RESPONDENT (APPELLANT) G.A. Phillips appearing for the Appellant G.M.
Elliott appearing for the Respondent

- [1] PROWSE, J.A.: This is an appeal from the decision of Mr. Justice Clancy made July 3, 1998, relating to a dispute between two neighbours after they discovered that a retaining wall dividing the properties, which was built in 1973, encroached to a slight extent on the property of Mr. Landry. This was not discovered by Mr. Landry until 1996, when he had his property surveyed with a view to constructing an addition to his home.
- [2] Mr. Justice Clancy granted Mrs. Barrow, the respondent, an easement in perpetuity over the land on which the wall encroached, pursuant to s.36 of the Property Law Act.
- [3] Having reviewed the factums and having heard the submissions of counsel, I am not persuaded that Mr. Justice Clancy erred in the order which he made, and I would dismiss the appeal substantially for the reasons given by him.
- [4] I should add, however, that on appeal, counsel for Mr. Landry sought to raise for the first time allegations that Mrs. Barrow had either intentionally encroached on the neighbouring property for her own economic benefit or, alternatively, that she had been negligent in building the wall such that equitable relief should not lie. These are issues upon which one would reasonably expect evidence to be called to specifically address such allegations. No such evidence was called in this case. In my view, it would not be appropriate to deal with those issues for the first time on appeal in these circumstances.
- [5] As earlier stated, I would dismiss the appeal with costs to the respondent.
- [6] FINCH, J.A.: I agree.
- [7] MACKENZIE, J.A.: I agree. The Honourable Madam Justice Prowse

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/ca/99/01/c99-0143.txt>

CASE PAGE <https://chat.esheria.ai/case-law/canada/barrow-v-landry-1999>

Prepared on 29 October 2026 · Esheria