

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Cavanagh v. British Columbia (Hydro and Power Authority)*,
2024 BCSC 2309

Date: 20241219
Docket: S1648966
Registry: Prince George

Between:

James Cavanagh and Michael Cavanagh

Plaintiffs

And

**British Columbia Hydro and Power Authority, BC Hydro and Power Authority
and BC Hydro and Servants**

Defendants

Before: The Honourable Mr. Justice Tindale

Reasons for Judgment

Plaintiffs appearing on their own behalf:

J. Cavanagh
M. Cavanagh

Counsel for the defendants:

K.E. Jamieson, K.C.

Place and Date of Trial:

Prince George, B.C.
April 15 – 18, 2024;
June 27, 2024

Place and Date of Judgment:

Prince George, B.C.
December 19, 2024

[1] The plaintiffs James Cavanagh and Michael Cavanagh seek damages in relationship to the actions of the defendants in attending on their property located at 9603 Summit Lake Road (the “Property”) on May 15, 2014 and changing a power pole.

[2] The defendants British Columbia Hydro and Power Authority BC Hydro and Power Authority and BC Hydro and servants (“BC Hydro”) are opposed to the damages sought by the plaintiffs.

Evidence

Plaintiffs

Michael Cavanagh

[3] Michael Cavanagh testified that on May 15, 2014 he learned that there was damage done to the Property. When he attended the Property he saw that there was a hole that needed to be repaired on the driveway.

[4] Michael Cavanagh testified that he assumed whoever changed the power pole with BC Hydro Pole ID 23554770 (the “Old Pole”) did the damage to their driveway.

[5] Michael Cavanagh testified that he arrived at the Property between 7:30 and 8:00 p.m. He noted that there were two power poles on the Property.

[6] Michael Cavanagh testified that BC Hydro owned the new power pole BC Hydro Pole ID 2570990 (the “New Pole”) however the Old Pole was owned by the plaintiffs.

[7] Michael Cavanagh testified that he did not know when the Old Pole was put in though he thought it must have been in the 1970s.

[8] Exhibit 1 on the trial are a number of photographs of the Property. Picture 10 shows some damage to the driveway of the Property which Michael Cavanagh testified was not there before May 15, 2014.

[9] Michael Cavanagh testified that the Old Pole and the New Pole that was installed are 10 to 15 feet apart.

[10] Michael Cavanagh testified that the Old Pole was initially owned by his mother Ellen Griffin and his stepfather Cecil Griffin. He thought that Mr. Griffin bought the Old Pole though he testified that he could not find a receipt for the Old Pole.

[11] Michael Cavanagh testified that BC Hydro cut the top off the Old Pole and removed the light that was on the Old Pole. That light was installed by Mr. Griffin.

[12] Michael Cavanagh testified that the Old Pole was placed on the Property so that a light could be installed on it to light up the yard. Michael Cavanagh testified that the light was operated by a switch in a shop that was on the Property.

[13] Michael Cavanagh testified that the electricity to the Property went to the house and then to the Old Pole. BC Hydro put their lines on the Old Pole. The house on the Property was built in approximately 1964.

[14] Michael Cavanagh testified that in 2014 the power to the house was disconnected on the Property because the plaintiffs did not want it there due to the expense of the electricity.

[15] Michael Cavanagh testified that the culvert that ran beneath the driveway to the Property was broken after BC Hydro attended on the Property.

[16] Michael Cavanagh testified that he did not give any authorization to BC Hydro to install the New Pole.

[17] Michael Cavanagh testified that there was a new house built on the Property at some point and the Griffins lived in the new house. The Griffins redirected the electrical power from the old house though he does not know when that occurred.

[18] Michael Cavanagh testified that the new house had electrical power which came from the power line on the road. He did not know who gave permission to BC Hydro to connect electricity to the new house. He did not know if there was permission given to BC Hydro to use the Old Pole to connect the electricity to the new house.

[19] Michael Cavanagh could not find any documentation allowing BC Hydro or Telus to install the New Pole. He also testified that he did not have any documentation that BC Hydro purchased the Old Pole.

[20] Michael Cavanagh agreed on cross-examination that the Old Pole was 70 feet away from McMillan Creek and the New Pole was 10 or 15 feet away from the Old Pole.

[21] Michael Cavanagh testified that his mother passed away in 2009 and while she lived on the Property she had electrical power. He also said that the plaintiffs waited until 2021 to transfer the Property into their names.

[22] Michael Cavanagh testified that his brother James Cavanagh lived at the Property from 2009 until 2011 and was using electrical power during that time. Michael Cavanagh agreed on cross-examination that the plaintiff's plan was to eventually sell the Property.

[23] Michael Cavanagh testified on cross-examination that he believed there was an agreement with BC Hydro not to bring their vehicles onto the Property.

[24] Michael Cavanagh agreed on cross-examination that the culvert on the driveway was in two pieces.

[25] Michael Cavanagh testified on cross-examination that he wanted to be compensated for the light that was taken from the Old Pole.

[26] Michael Cavanagh agreed on cross-examination that there was no money spent to repair McMillan Creek and no work needed to be done to McMillan Creek.

[27] Michael Cavanagh agreed on cross-examination that he spoke to a Shane Smith from BC Hydro. Michael Cavanagh disagreed that Mr. Smith told him that BC Hydro tops their old power poles when they replace them and they leave the telephone lines and poles for Telus to remove.

[28] Michael Cavanagh agreed on cross-examination that the plaintiffs wanted fines pursuant to the *Fisheries Act* R.S.C. 1985 c. F-14 (the "*Fisheries Act*"), in the amount of \$4 million - \$11 million. He also agreed that they have not provided any estimates on the cost to repair the driveway.

James Cavanagh

[29] James Cavanagh testified that on May 15, 2014 his brother Michael Cavanagh came to his house and was very agitated. They went to the Property and saw that the New Pole was installed. James Cavanagh testified that he did not give permission to BC Hydro for the New Pole to be installed on the Property.

[30] James Cavanagh also testified that he saw ruts and a hole in the culvert on the driveway into the Property. James Cavanagh testified that he owns the Property and he needs protection from BC Hydro intruding on the Property.

[31] James Cavanagh testified that the Old Pole had a light on it which was now gone. James Cavanagh said that he assumed BC Hydro drove onto the Property to install the New Pole.

[32] James Cavanagh testified that his heart and soul were damaged by the actions of the defendant. He does not understand how they approved this theft from him. James Cavanagh said that BC Hydro committed forcible detainer.

[33] James Cavanagh testified that he wants all damages available to the plaintiffs up to \$11 million.

[34] James Cavanagh agreed on cross-examination that the Old Pole is 72 feet from McMillan Creek. He testified that the New Pole is 64 feet from McMillan Creek.

[35] James Cavanagh said that his mother purchased the Property in 1963 and he agreed that she passed away in 2009.

[36] James Cavanagh agreed on cross-examination that he was not living on the Property when his mother brought the electrical services to the Property. He said that he has no knowledge what agreements were made between his mother, Mr. Griffin and BC Hydro.

[37] James Cavanagh agreed that electrical services continued to be provided to the Property until 2014.

[38] James Cavanagh testified that after his mother passed away no one was living on that property though he would spend the night there from time to time. He agreed that he was unhappy receiving electric bills from BC Hydro for the Property. He agreed that his goal was to have the electrical service disconnected from the Property.

[39] James Cavanagh disagreed that he spoke to anyone from BC Hydro prior to the New Pole being installed. He specifically disagreed that he spoke to Mr. Simpson from BC Hydro about being the executor to his mother's estate.

[40] James Cavanagh agreed on cross-examination that he did receive any letters from BC Hydro with regard to the installation of the New Pole. He said that he thought BC Hydro would have put the New Pole in the same hole where the Old Pole was. He called this a "re and re".

[41] James Cavanagh testified that he went to the Property regularly before the New Pole was installed.

[42] James Cavanagh agreed on cross-examination he does not know when the culvert was installed on the driveway. He agreed that there are no witnesses who

saw vehicles come onto the Property. He also agreed that there were no pieces of the culvert or any debris in McMillan Creek after the New Pole was installed.

[43] James Cavanagh agreed on cross-examination that he did not have an estimate as to the cost to repair the driveway nor has he repaired the driveway.

[44] James Cavanagh agreed that his claim in part is for fines under the *Fisheries Act*. He also agreed however that the Department of Fisheries and Oceans Canada (“DFO”) was not interested in this litigation and there have been no problems identified by the DFO regarding McMillan Creek.

[45] James Cavanagh disagreed on cross-examination that Shane Smith on behalf of BC Hydro came to the Property after the New Pole was installed and explained that BC Hydro sets the pole and removes the electrical lines and then Telus comes to remove their telephone lines.

[46] James Cavanagh agreed on cross-examination that he blocked access to the Property so that Telus could not remove their lines. He also agreed that he has refused to allow BC Hydro on the Property since the New Pole was installed.

[47] Exhibit 3 Tab 1 contains a State of Title Certificate for the Property which shows that BC Hydro has two Statutory Right of Ways registered against the Property.

BC Hydro

Lee Simpson

[48] Lee Simpson is employed by BC Hydro as a Powerline Technician. He began working for BC Hydro in Prince George in 2009 and in 2011 he became the foreman for the Prince George distribution area.

[49] Mr. Simpson testified that a Powerline Technician’s main job is to restore power, maintain power and install power lines.

[50] Mr. Simpson testified that in 2014 he was responsible for job planning and organizing which crews would attend and complete those jobs. Mr. Simpson testified that if they had a lot of work they would use subcontractors.

[51] Mr. Simpson testified that he attended at the Property on a couple of occasions. On the first occasion he said he met someone at the Property who told him that they had disconnected the power to the Property. Mr. Simpson told them that they cannot disconnect power service themselves. He said at that time he noticed that the power pole needed to be replaced. The pole had a red dot on it which means that it was deemed to be rotten.

[52] Mr. Simpson testified if he had been told that the occupants of the Property did not want power connected he would have told them that they have to request that the Old Pole be removed and Telus would have to be notified to remove their lines.

[53] Mr. Simpson testified that pole replacement was conducted by a subcontractor All-Tec. He said that they had hired this particular subcontractor on many occasions and they did good work.

[54] Mr. Simpson was made aware of the complaint involving the culvert and the driveway at the Property. He met with the subcontractor with regard to this issue.

[55] Mr. Simpson testified that when a pole is changed they receive a job planning folder from a Design Maintenance Coordinator (“DMC”) who would highlight any red flags. If there were any access issues to the Property those would have been noted by the DMC which did not happen in this case.

[56] Mr. Simpson testified that he ultimately removed the meter and disconnected the power to the house on the Property on June 18, 2014.

[57] Mr. Simpson testified on cross-examination that it was not common practice to replace a pole in the same hole as an existing pole though that does occur on occasion.

[58] Mr. Simpson testified on cross-examination that when they set a new pole they try to place it as close to the old pole as possible without disturbing the ground.

[59] Mr. Simpson also testified on cross-examination that BC Hydro would not remove the Old Pole if Telus also had lines on it. They would set the New Pole with the electrical lines and cut down part of the Old Pole as a courtesy to Telus. Telus would remove the Old Pole.

[60] Mr. Simpson testified that the Old Pole had a BC Hydro customer identification on it which means that BC Hydro owned the pole. Mr. Simpson testified that BC Hydro never purchases a customer's existing pole nor does BC Hydro ever use a customer's pole to connect electricity to their property.

Shane Smith

[61] Shane Smith testified that he is employed by BC Hydro as an environmental specialist. He has been working for BC Hydro since 2013.

[62] Mr. Smith also worked for the DFO as a habitat biologist in the past.

[63] Mr. Smith testified that BC Hydro replaces thousands of poles every year. Mr. Smith testified that BC Hydro use a Distribution Design Environmental Checklist ("D-DEC") to determine the effects on any fish habitats when a pole is installed.

[64] The questions that are considered on the D-DEC have been developed in accordance with Federal and Provincial standards as to impacts on fish habitats.

[65] Mr. Smith testified that if any work that is to be done is within 15 metres of a watercourse there has to be consultation with an environmental expert. In the case of the pole replacement at the Property that work was not done within 15 metres of McMillan Creek.

[66] Mr. Smith testified that he attended at the Property on June 18, 2015 with regard to a complaint that a hydro pole was placed in a riparian area and there was a hole in the driveway.

[67] Mr. Smith testified that he attended at the Property with another employee of BC Hydro and they met the plaintiffs there.

[68] Mr. Smith estimated that the New Pole was 20-25 metres from the creek. He did not observe any disturbances from the pole replacement on the ground. He said there were no effect on McMillan Creek as a result of the installation of the New Pole.

[69] Mr. Smith testified that in terms of the driveway there was a small sinkhole there. He said that the culvert that was underneath the driveway was undersized for its use. He said that the culvert was in two pieces and there was a 15 cm gap between the two pieces.

[70] Mr. Smith testified that when he left the Property he contacted the DFO that day about the complaint. There was no follow-up from DFO in that regard.

Christopher Racz

[71] Christopher Racz is employed by BC Hydro as a civil field manager for construction services.

[72] Mr. Racz testified that as part of his job he estimates the costs for various jobs that need to be done by BC Hydro. This includes doing driveways and putting culverts in.

[73] Mr. Racz put together an estimate for the driveway repair and culvert replacement needed at the Property. This estimate can be found in Exhibit 3 Tab 11. This estimate does not include any work on McMillan Creek.

[74] Mr. Racz testified that the estimate to repair the driveway on the Property was \$7,459.

[75] Mr. Racz testified on cross-examination that he believed the repair to the driveway would take two days. He said that he allotted one dump truck full of

materials to repair the driveway. He also said that this estimate included the compaction of the driveway.

[76] Mr. Racz testified on cross-examination that his estimate did not include any environmental remediation because he was not aware of any need for that.

Tonia Stefan

[77] Tonia Stefan is currently the Joint Use Administration Manager at BC Hydro. She is an accountant and has worked for BC Hydro since 2004.

[78] The Joint Use Administration Department has existed at BC Hydro since 1971 and is a result of an agreement between BC Hydro and Telus as co-owners of poles for electricity and telecommunication services.

[79] Ms. Stefan manages intercompany billings between BC Hydro and Telus and their inventory of poles. In order to keep track of and identify the various assets of BC Hydro Ms. Stefan uses the Joint Use Application System (“JUAS”).

[80] Ms. Stefan testified that BC Hydro’s poles come with an identification number which is embossed into an aluminum tag which is attached to the pole.

[81] Ms. Stefan testified that when a field crew or contractor does work on a pole a work planning folder comes to her department and it is entered into JUAS. She testified that BC Hydro does the actual pole replacements and Telus who is the last party on-site would remove the old poles.

[82] Ms. Stefan testified that the Old Pole was owned by BC Hydro and Telus according to their records. She could not say exactly when the Old Pole was set because of some data issues BC Hydro had with their system in the past however she could say it was somewhere between 1975 and 1983.

[83] Ms. Stefan also testified that the manufactured year of the Old Pole was 1975 and BC Hydro typically does not keep inventory stockpile of poles beyond one or two years.

[84] Ms. Stefan testified that there were inspections of the Old Pole on the Property in 2005, 2009 and 2013. In 2013 the Old Pole failed its inspection which would trigger an action request to replace the pole.

[85] Ms. Stefan testified that BC Hydro's practice is to send out a letter one month in advance of any work on a person's property such as replacing a pole and then a further notification a few days before the work is commenced.

[86] Ms. Stefan testified that BC Hydro does not keep a record of the work reminders that are sent to their customers because they replace in excess of 20,000 poles per year.

[87] Ms. Stefan testified that the New Pole was replaced according to BC Hydro records on April 17, 2014.

[88] Ms. Stefan agreed on cross-examination that the plaintiffs owned the Property when the New Pole was installed. She also agreed that she did not know that the Property was vacant at the time the New Pole was installed.

[89] Ms. Stefan testified that BC Hydro's policy if a Hydro bill is not paid is generally to contact the property owner either by letter or phone call and if the bill is still not paid at some point they will cut off electricity to the property.

[90] Ms. Stefan testified on cross-examination that the Old Pole was purchased by BC Hydro.

[91] Ms. Stefan disagreed on cross-examination that the plaintiff's mother Mrs. Griffin purchased the Old Pole. She testified that BC Hydro does not sell poles to customers or rent them to customers.

[92] Ms. Stefan could not say on cross-examination when electrical service to the Property started because BC Hydro had problems with their records for the period prior to 1983. All of those records show a start date of 1983.

[93] Ms. Stefan could not testify on cross-examination as to whether a Hydro meter was on the Property when the Old Pole was installed.

[94] Ms. Stefan testified that BC Hydro replaced the Old Pole because they continue to do their job until a customer contacts them to disconnect the service. She said that the Old Pole was not safe and it needed to be replaced.

[95] Ms. Stefan testified that she did not know that the owners of the Property were deceased.

[96] Ms. Stefan testified on cross-examination that they would have sent out a letter to notify the owners of the Property about the work.

[97] Ms. Stefan testified that the design team would have decided where to place the New Pole.

Position of the Parties

Plaintiffs

[98] The plaintiffs argue that the Old Pole was owned by them. They acknowledge that they do not know who put in the Old Pole.

[99] The plaintiffs argue that it was not until 1990 when the new house on the Property was built that the Old Pole was then used to supply electricity to the new house.

[100] The plaintiffs argue that their stepfather Mr. Griffin used the Old Pole for lighting on the Property. This was when the old house on the Property was being used. The old house was built in 1963.

[101] The plaintiffs argue that they assume that Mr. Griffin purchased the Old Pole from BC Hydro. The plaintiffs conclude that Mr. Griffin must have purchased the Old Pole because the only purpose for the Old Pole was to put a light on it.

[102] The plaintiffs argue that they had ownership of the Old Pole from 1983 on.

[103] The plaintiffs argue that BC Hydro needs to pay them damages because the New Pole is on their land. The plaintiffs say that they should be paid \$11 million.

[104] The plaintiffs argue that they will look after the damage to the driveway because they do not want BC Hydro on the Property.

[105] The plaintiffs argue that it was incumbent on BC Hydro to produce an invoice from 1990 showing when the electricity was connected to the new house. BC Hydro did not produce such an invoice. I asked the plaintiffs if they sought an adjournment of the proceeding to obtain that document and they declined an adjournment.

BC Hydro

[106] BC Hydro notes that the plaintiffs allege that BC Hydro committed a trespass on the Property on May 15, 2014 and damaged their driveway.

[107] BC Hydro argues that they own the Old Pole and there is no dispute in the evidence that BC Hydro was supplying electrical power to the Property when the Old Pole was in service. BC Hydro argues that Ms. Stefan’s evidence in relationship to the record keeping policies of BC Hydro show that the Old Pole was jointly owned by BC Hydro and Telus.

[108] Ms. Stefan’s evidence also established that BC Hydro would not provide electrical service if BC Hydro did not own the pole and equipment. Further BC Hydro’s records confirm that the Old Pole was regularly inspected and maintained by BC Hydro.

[109] BC Hydro argues that s. 20 of the *Hydro and Power Authority Act*, R.S.B.C 1996, c 212 (the “*Hydro Act*”) grants BC Hydro the authority to enter onto land for any purpose relating to the use, construction, or maintenance of its infrastructure.

[110] BC Hydro argues that the plaintiffs provided no direct evidence on the issue of ownership of the Old Pole. Neither of the plaintiffs had any involvement or knowledge of the arrangements made between their mother, Mr. Griffin and BC Hydro when the electrical service was brought onto the Property.

[111] BC Hydro argues that the plaintiff's actions are not genuine because they stated that had the New Pole been placed in the exact same location as the Old Pole they would not have made a complaint. BC Hydro says that the plaintiffs complained that the New Pole was too close to McMillan Creek when BC Hydro visited the Property on June 18, 2014. The plaintiffs did not complain at that time that the New Pole was placed on the Property without their consent.

[112] BC Hydro argues that the evidence does not establish that BC Hydro's contractor caused damage to the driveway.

[113] BC Hydro argues that the evidence does not establish that any fines should be imposed for offences pursuant to s. 35 (1) of the *Fisheries Act*.

[114] The evidence of Mr. Smith confirmed that the installation of the New Pole was installed outside of the 15 meters range from McMillan Creek that would trigger any environmental work. Further when Mr. Smith attended at the Property he did not observe any environmental issues with McMillan Creek.

[115] BC Hydro argues that the plaintiffs readily acknowledge that they have blocked BC Hydro's access to the Property since the installation of the New Pole. BC Hydro argues that the plaintiffs had a duty to mitigate their loss and they have not done so.

[116] BC Hydro notes that the plaintiffs in their notice of civil claim cite ss. 338 and 423 of the *Criminal Code of Canada* which has no applicability to the case at bar.

Decision

[117] The plaintiffs pursuant to their notice of civil claim seek a fine pursuant to s. 35 (1) of the *Fisheries Act*, removal of the Old Pole and the New Pole and repair of their driveway.

[118] The plaintiffs also referred to s. 338 (1) and s. 423 (1) (d) of the *Criminal Code of Canada* and Qui Tam in their notice of civil claim.

[119] Also based on the plaintiffs' evidence it would appear the plaintiffs are seeking damages in trespass.

[120] It is clear that the plaintiffs are deeply upset that BC Hydro installed the New Pole on the Property however in my view the plaintiffs' emotions have interfered with their judgment in the conduct of this litigation.

Criminal Code

[121] Section 338 (1) of the *Criminal Code* reads:

- 1) Every person is guilty of an indictable offence and liable to imprisonment for a term of not more than five years or is guilty of an offence punishable on summary conviction who, without the consent of the owner,
 - a) fraudulently takes, holds, keeps in his possession, conceals, receives, appropriates, purchases or sells cattle that are found astray or
 - b) fraudulently, in whole or in part,
 - i. obliterates, alters or deface as a brand or mark on cattle, or
 - ii. makes a false or counterfeit brand or mark on cattle.

[122] It is not clear to me why the plaintiffs referenced this section of the *Criminal Code* in their notice of civil claim however there is no evidence on this trial which would support an offence in this regard.

[123] Section 423 (1) (d) of the *Criminal Code* reads:

- 1) Every one is guilty of an indictable offence and liable to imprisonment for a term of not more than five years or is guilty of an offence punishable on summary conviction who, wrongfully and without lawful authority, for the purpose of compelling another person to abstain from doing anything that he or she has a lawful right to do, or to do anything that he or she has a lawful right to abstain from doing.
...
(d) hides any tools, clothes or other property owned or used by that person, or deprives him or her of them or hinders him or her in the use of them.

[124] It is also not clear to me why the plaintiffs referenced this section of the *Criminal Code* in their notice of civil claim however there is no evidence on this trial which would support an offence in this regard.

Qui Tam

[125] The plaintiffs also referred to Qui Tam in their notice of civil claim. Qui Tam is not a cause of action and it is not clear on the evidence what that reference refers to.

[126] Further the plaintiffs did not make any arguments regarding Qui Tam on this trial.

Fisheries Act Fines

[127] The plaintiffs seek a fine pursuant to s. 35 (1) of the *Fisheries Act* which reads:

- 1) No person shall carry on any work, undertaking or activity that results in serious harm to fish that are part of a commercial, recreational or Aboriginal fishery, or to fish that support such a fishery.

[128] There is no evidence on this trial of any damage or alteration of McMillan Creek's fish habitat. The plaintiffs have not provided any evidence that there was any negative impact to McMillan Creek as a result of the installation of the New Pole.

[129] Further Mr. Smith testified that when he attended the Property he did not observe any damage done to McMillan Creek.

[130] I accept the evidence of Mr. Smith in this regard and dismiss plaintiff's claim for a fine pursuant to s. 35 (1) of the *Fisheries Act*.

Trespass

[131] The plaintiffs take the position that BC Hydro trespassed on the Property when they installed the New Pole and further that the Old Pole belonged to them.

[132] The plaintiffs did not provide any direct evidence as to the ownership of the Old Pole but rather their assumption was that it must have been owned by their mother or their stepfather Mr. Griffin.

[133] Ms. Stefan testified that the Old Pole according to BC Hydro's records was owned jointly by BC Hydro and Telus. Further Ms. Stefan gave evidence that BC Hydro would not use a property owners pole to connect electrical service to their property.

[134] Ms. Stefan also gave evidence that the Old Pole was regularly serviced by BC Hydro over the years.

[135] I accept the evidence of Ms. Stefan as to the ownership of the Old Pole and find that it was owned by BC Hydro and Telus jointly.

[136] Section 20 of the *Hydro Act* reads:

- 1) The authority may, by itself, or by its engineers, surveyors, agents, contractors, subcontractors or employees, for any purpose relating to the use, construction, maintenance, safeguarding or repair of its plants or projected plants, or for better access to them and without the consent of the owner, enter any land and
 - a) survey and take levels of it and make the borings, tests or sink the trial pits it thinks necessary,
 - b) cut down any trees that, in its opinion might, in falling or otherwise, endanger the conductors, wires or equipment or other plant of the authority, or that may obstruct the running of survey lines, and
 - c) make or use all roads, trails, bridges, wharves and other works and facilities, whether permanent or temporary, that may be required for the convenient passing to and from it survey lines, plants and projected plants.

....

[137] Both Michael Cavanagh and James Cavanagh were candid in testifying that they did not have any evidence as to what agreements were made between BC Hydro and their mother or step father.

[138] Further based on the authority of s. 20 of the *Hydro Act* I accept that that BC Hydro was entitled to enter the Property for the purpose of servicing their equipment which would include the Old Pole being replaced with the New Pole.

[139] I find that BC Hydro was authorized to enter the Property when they installed the New Pole. I also find that BC Hydro only entered the Property for the purpose of installing the New Pole and removing the Old Pole. The plaintiffs have not established the tort of trespass by BC Hydro as a result of the New Pole being installed.

[140] The evidence establishes that BC Hydro would install the poles however Telus would remove the old poles after they took their lines down. The plaintiffs did not allow either BC Hydro or Telus to remove the poles.

[141] The plaintiffs have also made it abundantly clear that they will not allow BC Hydro to attend at the Property with their machinery to remove the poles. In my view the plaintiffs have been wholly unreasonable in trying to mitigate the losses that they have claimed in trespass. I would decline to make an order that BC Hydro remove either the Old Pole or the New Pole at this point given the actions of the plaintiffs.

Damage to the Driveway

[142] The plaintiffs claimed damages to their culvert and driveway in their notice of civil claim. The plaintiffs did not produce any evidence on this trial as to an estimate to fix the driveway.

[143] The plaintiffs were not able to provide any direct evidence that BC Hydro or their subcontractors caused the damage to the driveway on the Property.

[144] The evidence establishes that the New Pole was installed on April 17, 2014 and the damage was not discovered by the plaintiffs until May 15, 2014. The evidence of the plaintiffs establishes that the culvert which was installed under the driveway was very old.

[145] The plaintiffs have not proven on a balance of probabilities that the damage to the driveway was caused by BC Hydro or even when the damage to the driveway occurred.

[146] The plaintiffs claim with regard to damage to the driveway is dismissed.

Conclusion

[147] The plaintiffs' claims in their entirety are dismissed.

Costs

[148] BC Hydro is entitled to their costs of this action.

“The Honourable Mr. Justice Tindale”