



# Civil Resolution Tribunal

Date Issued: July 16, 2024

File: SC-2023-002948

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Langston v. Telus Communications Inc.*, 2024 BCCRT 686

BETWEEN:

LINDA MARGARET LANGSTON

**APPLICANT**

AND:

TELUS COMMUNICATIONS INC.

**RESPONDENT**

---

## REASONS FOR DECISION

---

Tribunal Member:

Alison Wake

## INTRODUCTION

1. This dispute is about alleged trespass. Linda Margaret Langston says that Telus Communications Inc. (Telus) employees and contractors trespassed on her property, bullied her, and treated her disrespectfully. She claims \$5,000 in damages.

2. Telus acknowledges that it does not have a right of way agreement to access Ms. Langston's property, but says that she has unreasonably refused access to permit it to relocate equipment. Telus denies that Ms. Langston has suffered any damages and says that if she has, she has failed to mitigate them. Telus asks me to dismiss this dispute.
3. Ms. Langston is self-represented. Telus is represented by an authorized employee.

## **JURISDICTION AND PROCEDURE**

4. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). CRTA section 2 says that the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly.
5. CRTA section 39 says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Here, neither party requested an oral hearing, and there are no significant credibility issues. So, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Considering the CRT's mandate that includes proportionality and a speedy resolution of disputes, I decided to hear this dispute through written submissions.
6. CRTA section 42 says the CRT may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in court.
7. Where permitted by CRTA section 118, in resolving this dispute the CRT may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the CRT considers appropriate.

## **ISSUE**

8. The issue in this dispute is whether Telus is liable to Ms. Langston in trespass, and if so, whether it must pay her \$5,000 in damages.

## **EVIDENCE AND ANALYSIS**

9. As the applicant in this civil proceeding, Ms. Langston must prove her claims on a balance of probabilities, meaning more likely than not. While I have considered all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.

### ***Background***

10. Ms. Langston lives in an area where Telus provides internet and cable services. In July 2022, Telus began upgrading its cables in Ms. Langston's area from copper to fibre. Some of this work required access to two BC Hydro poles on Ms. Langston's property.
11. On two unspecified dates in early to mid-July, Ms. Langston says that Telus workers and vehicles were on her property to access one or both of the poles. Ms. Langston says that she permitted the workers to proceed with their work on these occasions, but asked that they contact her in advance for permission to enter her property in the future so that she could restrain her animals. Telus does not dispute this.
12. On July 29, Telus attempted to access Ms. Langston's property to test its equipment. The parties agree that Telus's worker parked in Ms. Langston's driveway and opened her gate, resulting in one of Ms. Langston's dogs getting out. An altercation ensued, and Telus left Ms. Langston's property without completing the testing.
13. On August 2, Telus contacted Ms. Langston to request access to her property the following day. Telus says that Ms. Langston agreed, but subsequently revoked her consent the following morning. Telus says that its employee acknowledged her

revocation and instructed its crews to “stand down” and keep clear of her property. There is no suggestion that Telus accessed Ms. Langston’s property on this date.

14. Ms. Langston contacted multiple Telus employees by email several times in August to complain about the July 29 incident. She said Telus was trespassing and endangering her animals, and asked that her complaint be escalated to senior management. While emails in evidence show that a Telus manager attempted to reach Ms. Langston by telephone, there is no evidence before me about whether and when the parties spoke directly. In any event, the issues between the parties continued, as described below.
15. Ms. Langston says that on September 15, 2022, a Telus technician parked in her driveway, left her gate open, and accessed one of the poles by ladder. Telus does not dispute this, and says that this technician was attempting to install services for one of Ms. Langston’s neighbours and was unaware of the ongoing discussions about access to Ms. Langston’s property.
16. On September 20, a technician left Ms. Langston a voicemail requesting access to her property on September 22 between the hours of 8:00 am and 5:00 pm. Ms. Langston responded by telephone on September 22 and said that this window would not work for her. She requested that someone from Telus contact her 24 hours before it needed access to her property so that she could tell them a time that would work for her.
17. In late September, a Telus technician arrived at Ms. Langston’s property, I infer without prior notice. Ms. Langston says that the technician said that they were there to schedule a time in October to hook up services for one of Ms. Langston’s neighbours. Ms. Langston says that she gave the technician permission to complete the connection right away instead, since they were there already. I note that Telus describes this as occurring on September 26 and Ms. Langston says it occurred on September 27. While nothing turns on the specific date, I will refer to it as occurring on September 27, as I find this is consistent with the parties’ emails in evidence.

18. On October 6, a Telus employee left a voicemail for Ms. Langston advising that a crew would be at her property around 9:00 am on October 11. There is no evidence before me that Ms. Langston responded to this voicemail, but I infer she agreed to Telus accessing her property at that time, based on the parties' subsequent emails as described below.
19. On October 11 at 9:31 am, Ms. Langston emailed a Telus employee saying that she had locked up her dogs and horses and had seen two Telus vehicles drive past, but no one had come onto her property. The employee responded at 10:08 am and advised that the crews had assessed the work that had previously been completed and had determined they did not need to access the pole on Ms. Langston's property. The employee said that they had attempted to reach Ms. Langston by phone as well but there was no answer. The employee confirmed that access would not be required and that Ms. Langston could release her animals.
20. Between November 2022 and January 2023, the parties attempted to negotiate a right of way agreement that would permit Telus to access Ms. Langston's property. However, these negotiations undisputedly stalled and there is no evidence before me that the parties ultimately reached an agreement.
21. In January 2023, Ms. Langston began asking Telus to remove its equipment from her property. She issued several invoices to Telus for its storage of equipment on her property. On February 6, Telus sent Ms. Langston an email saying that it would arrange for removal of the existing cables from her property, but would not pay the invoices.
22. On February 8, Telus emailed Ms. Langston a letter saying that it would be working on re-routing cables near her property beginning on February 13, but that it would not require access to her property.
23. On February 13, Ms. Langston emailed Telus and said, in part, that a crew was outside her property line and that a Telus truck had used her driveway to turn around.

24. Ms. Langston filed this dispute on April 27, 2023, seeking compensation for Telus's alleged trespass.

### ***Trespass***

25. I turn to the applicable law. In emails to Telus in evidence, Ms. Langston relies on the *Trespass Act*. Section 8 of that act allows the Provincial Court to order a person convicted of an offence under section 2 to pay restitution to another person for trespassing. The CRT is not the Provincial Court, and so has no jurisdiction to order restitution under section 8. However, I have considered Ms. Langston's claims at common law.

26. Trespass to land occurs when someone enters another person's land without lawful justification.<sup>1</sup> They must do so intentionally. This does not mean that they intended to commit a wrongful act, but that their actions were voluntary. Mistake is not a defence to trespass.<sup>2</sup>

27. However, consent is a defence to trespass. Consent can be express, through an agreement, or implied through conduct or acquiescence.<sup>3</sup>

28. While the parties agree that Telus's equipment remains on Ms. Langston's property, Ms. Langston specifically says that is a separate issue from this dispute. So, I infer that she does not claim damages for Telus's equipment's presence on her property, and I make no findings about that issue. My analysis below is limited to Ms. Langston's allegations of trespass for Telus's technicians accessing her property on several occasions to install or test equipment.

29. Here, there is no written agreement between the parties about access to Ms. Langston's property. Although Telus argues that the cable line was located on Ms. Langston's property prior to Ms. Langston's purchase of it, there is no evidence that Telus had her express consent to access the line. Further, there is no dispute that

---

<sup>1</sup> *Lahti v. Chateaufort*, 2019 BCSC 1081 at paragraph 6.

<sup>2</sup> *Lahti* at paragraph 8.

<sup>3</sup> *Lahti* at paragraph 7.

Telus did not have a right of way to access Ms. Langston's property at any relevant time.

30. I note that Telus provided in evidence three notices that it says it sent to current and prospective customers, advising about the fibre upgrade. Ms. Langston does not dispute receiving the notices that Telus says it sent on June 27 and 30, 2022. However, these notices do not explicitly state that Telus will require access to the recipients' private property. A third notice, sent on July 5, does say that Telus will require access, but Telus acknowledges that it was only sent to existing customers, so Ms. Langston did not receive it. So, I find Telus cannot rely on these notices, and Ms. Langston's lack of response to them, as evidence that Ms. Langston implicitly consented to it accessing her property.
31. For her part, Ms. Langston acknowledges that she consented to Telus accessing her property on the two early July dates, but says that she made it clear after that that she was not comfortable with Telus accessing her property without prior permission.
32. Telus relies on *Graham v. Golden Gate Developments Inc.*<sup>4</sup> in support of its argument that consent to trespass can be found where an owner had earlier consented and was "continuing to play a strategic game to secure an advantage and possibly compensation". In that case, the plaintiff argued that he did not consent to fencing being placed on his property during a neighbouring property's excavation. In support of this, he relied on a letter from his lawyers demanding the fence's removal. However, the court accepted the defendants' evidence that the plaintiff had specifically consented to the fencing placement due to safety concerns. The court found that the plaintiff had not advised his lawyers of this consent as part of his "strategic game".
33. I find the circumstances in this dispute are distinguishable from those in *Graham*. I accept Ms. Langston's explanation that she permitted access on the two early July occasions because she thought that the work would be done quickly. However, once

---

<sup>4</sup> 2013 BCSC 1890.

it became clear that Telus would require repeated access to Ms. Langston's property, I find Ms. Langston clearly communicated that she did not consent to Telus accessing her property without prior notice and permission.

34. Telus says that Ms. Langston's demand to be notified in advance when it required access to her property was impractical because it would require her contact information to be placed on all her neighbours' accounts, which could cause privacy concerns. However, there is no evidence that Telus communicated this concern to Ms. Langston. Further, Telus undisputedly did comply with Ms. Langston's request for advance notice on several occasions, so I find it was capable of doing so. In any event, even if Ms. Langston's demands were impractical, this does not mean that Telus was entitled to access her property without consent.
35. In summary, I find that Ms. Langston did not consent to Telus accessing her property without prior notice. I find this means that Telus committed trespass to Ms. Langston's property when its technicians opened her gate, parked vehicles on her property, and accessed the BC Hydro pole on July 29 and September 15, 2022.
36. However, I find Telus did not commit trespass on September 27, as Ms. Langston undisputedly allowed the technician access on that date.
37. While I accept that the October 11 incident, when Telus initially requested access to Ms. Langston's property but later determined access was not required, was inconvenient for Ms. Langston, I find this did not constitute trespass as there is no evidence that any Telus employees entered Ms. Langston's property on that date.
38. Finally, as Telus does not dispute that its technician turned a vehicle around in Ms. Langston's driveway on February 13, 2023, I find Telus committed a technical trespass on that date, though I find such trespass was trivial.

### ***Damages***

39. Damages for trespass can fall into three categories:
  - a. Nominal damages if Ms. Langston has not proven any actual loss,



- b. Actual damages suffered by Ms. Langston, or
- c. A sum that should reasonably be paid for the use of the land.<sup>5</sup>

40. Here, I agree with Telus's submission that Ms. Langston has not proven any actual damages. While I acknowledge Ms. Langston's concerns about her animals' safety, there is no evidence that any of her animals were harmed on any of the occasions noted above. There is also no evidence, and Ms. Langston does not suggest, that Telus caused any damage to her property. Telus's use of Ms. Langston's property on the occasions discussed above was also limited to the specific incidents described, and there is no evidence of the amount of profit, if any, that Telus has received as a result of its use of Ms. Langston's property.

41. So, I find an award of nominal damages is appropriate. In *Manak v. Hanelt*, the BC Supreme Court explained that the purpose of nominal damages is to recognize the infringement of a legal right.<sup>6</sup> Nominal damages are often only \$1, and can be higher amounts, but are still small figures.<sup>7</sup>

42. In *Greenwood v. Hoffer*<sup>8</sup>, the court found that the defendants' occasional driving across a small section of the plaintiffs' land while accessing their driveway was trespass but was "trivial in the extreme." It awarded nominal damages of \$1.

43. In *Manak*, the court awarded \$1,000 in nominal damages for a temporary fence that was on a small strip of the plaintiffs' land for approximately 8 months, along with a few incidents of construction workers trespassing on their property.

44. Here, I find Telus's conduct goes beyond that of the defendants' in *Greenwood*, but does not rise to the level of trespass in *Manak*. With the exception of the February 13 instance of a Telus truck using Ms. Langston's driveway to turn around, I find Telus's trespasses were not merely technical. Telus knew or ought to have known that it did

---

<sup>5</sup> *Manak v. Hanelt*, 2022 BCSC 1446 at paragraph 48.

<sup>6</sup> See *Skrypnyk v. Crispin*, 2010 BCSC 140 at paragraph 18.

<sup>7</sup> See *Manak* at paragraph 50.

<sup>8</sup> 2017 BCSC 884.

not have a right of way to access Ms. Langston's property, and yet its workers twice accessed Ms. Langston's property, including opening her gate, parking in her driveway, and accessing the BC Hydro pole, without prior warning or permission. However, the evidence is that these incidents were relatively brief and did not alter Ms. Langston's property.

45. As noted, Telus argues that Ms. Langston has failed to mitigate her damages. However, I find its arguments on this point are about Ms. Langston's refusal to allow it access to her property to retrieve its equipment. As noted above, in this dispute Ms. Langston is explicitly not claiming damages for Telus's equipment remaining on her property. So, I find Telus's arguments about mitigation do not apply here.
46. Considering all of this, on balance, I award Ms. Langston \$300 in damages for Telus's workers trespassing on her property on July 29, 2022, September 15, 2022, and February 13, 2023.
47. I note that Ms. Langston's Dispute Notice also says that Telus's workers bullied her and treated her disrespectfully. To the extent that this is a claim for harassment, I find no legal basis on which to make any award to Ms. Langston as there is no legally recognized tort of harassment in British Columbia.<sup>9</sup> I also find Ms. Langston has not established a legal basis for any damages resulting from the parties' negotiations for a right of way agreement. So, I dismiss Ms. Langston's remaining claims.

## **INTEREST, CRT FEES, AND EXPENSES**

48. The *Court Order Interest Act* applies to the CRT. As Ms. Langston is entitled to pre-judgment interest on the global award of \$300 in damages award from February 13, 2023, the most recent trespassing incident, to the date of this decision. This equals \$27.80.
49. Under CRTA section 49 and the CRT Rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable

---

<sup>9</sup> See *Anderson v. Double M. Construction Ltd.*, 2021 BCSC 1473, at paragraph 61.

dispute-related expenses. As Ms. Langston was partially successful, I find she is entitled to reimbursement of half of her CRT fees, or \$100. Telus did not pay CRT fees and neither party claimed dispute-related expenses, so I make no order for them.

## **ORDERS**

50. Within 30 days of this decision, I order Telus to pay Ms. Langston a total of \$427.80, broken down as follows:

- a. \$300 in damages,
- b. \$27.80 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$100 in CRT fees.

51. Ms. Langston is entitled to post-judgment interest, as applicable.

52. This is a validated decision and order. Under CRTA section 58.1, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. Once filed, a CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

---

Alison Wake, Tribunal Member