

by

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Where is our right to sunlight, now that we need it most? With solar power the hope for the future for home heating, the homeowner will need some assurance that his neighbour won't build a skyscraper stopping the sun's rays from reaching his solar collector. The Ontario government knows this, and completed a study months ago discussing ways to give the solar-heated home this protection, but the study appears to have been buried.

Canadians had a right both to sunlight and wind, inherited from English law as part of our British birthright, until late in the last century. The right to prevent a neighbour from obstructing sunlight and air was an easement (or right-of-way) called "ancient lights". If a homeowner could demonstrate that his greenhouse, windows or skykight had received sunlight for twenty years, he could sue to stop a neighbour from constructing a building that would block it.

But in a country with plenty of wide open spaces, the right was considered unnecessary and an impediment to progress. According to the Chief Justice of Ontario in 1877,

The law which provides that a man by the exercise of his rights on his own land shall thereby in the course of time acquire a right over the land of another, is not a law to be favoured in a new country where population is not so dense as in the older countries of Europe, and where the rapid growth of cities, towns and villages is without parallel in Europe.

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The Chief Justice pointed out that the neighbouring states of New York, Massachusetts, Maine, Connecticut, Maryland, Pennsylvania and South Carolina had abandoned the right to light as being "unsuited to the wants and circumstances of the country".

The government of the day apparently agreed, as Ontario abolished the rights to light and air three years later. Most of the other provinces followed suit. England, on the other hand, set up a committee in 1958 to review the need for a right to light and decided to retain it. The 1959 Rights of Light Act permits land-owners to register a claim to sunlight with the deed to their land.

Before the energy crisis, a right to unimpeded wind and sunlight was a matter of comfort and aesthetics - a civilized way to structure society but undoubtedly a nuisance to industrial and technological development. Today, the right is a matter of urgency, possibly even survival. With dwindling oil and gas supplies, a serious danger of air pollution from increased use of coal, and widespread fears about nuclear power plants, the sun and wind - renewable sources of energy - are logical alternatives.

However, few people will spend thousands of dollars on a solar heating system when a neighbour has an unfettered right to block their sunlight. Those who do will sooner or later precipitate a conflict. The crunch will come when the first solar-heated home

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is cut off from sunlight by a highrise next door. It hasn't happened yet, but there have been skirmishes.

The congregation of Holy Trinity Church were up in arms when Cadillac-Fairview and the T. Eaton Company announced their plans to build the Eaton Centre in 1965. The original proposal, consisting of four office towers, three apartment towers and a nine-storey store and parking garage, threatened to dwarf the church and cut off its sunlight. After lengthy negotiations, a compromise was reached which protected the Church's access to light. The University of Toronto fared less well against Ontario Hydro's 20-storey headquarters at University and College. When the University complained to its lawyers that the building would overshadow the Botany Department's greenhouses (used for experiments), it was advised that it had no right to stop the construction. Artificial lighting was installed in the greenhouses to compensate for the loss of sunlight.

So far, none of the cases have involved solar heating technology. Will Ontario be ready when the first conflict arises between a solar-heated building and a proposed development which would overshadow it? At the suggestion of the Canadian Environment Law Association the Ontario Ministry of Energy did a study of possible legislation to protect sun rights in 1977. The study has been completed for several months, but never released. The Ministry

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announced three solar heating pilot projects last November, but it has never announced that this study was being done.

In the meantime, according to Dr. Harry Swain of the federal office of Energy Conservation, neither the federal government nor any of the other provinces are drafting the needed laws. They are waiting for the results of the Ontario study. A letter from the Canadian Environment Law Association to Reuben Baetz, the Ontario Energy Minister, asking about the study, sent February 3rd, has never been acknowledged.

If Ontario is going to promote solar energy, it must also take some responsibility for protecting those who install solar collectors. Conditions have changed since 1877 when the Chief Justice urged the abolition of the right to light.