

IES 1002X

SUNLIGHT - THE LEGAL IMPLICATIONS

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of the law. In this paper I will attempt to outline the background material on which legislation will be based and discuss some of the legal complexities of the question.

The earliest recorded account of a ~~legislation~~ <sup>litigation</sup> involving sunlight goes back to a common law suit in 1610 in the King's Bench, England.

William Aldred brought an action on the case against his neighbour Thomas Benton who erected a building to contain hogs next to the hall and parlour of the house of the plaintiff. The basis of this action lay in the four ancient rights of dwelling protected by Tort Law:

- 1) habitato hominis - the right of free dwelling of a man.
- 2) delectatio inhabitantis - the right to the choice of inhabitants.
- 3) necessitas luminis - the necessity of light.
- 4) salubritas aeris - the health of the air. 1

The defendant pleaded not guilty, and at the assises in Norfolk he was found guilty of both the said nuisances, and damages assessed. And now it was moved in arrest of judgement, that the building of the house for hogs was necessary for the sustenance of man: and one ought not to have so delicate a nose that he cannot bear the smell of hogs for; lex non favet delicatorem votis the law favours not, the wishes of the meek;

1 Gray, O. S., Cases and Materials on Environmental Law, 1

(You should cite the case itself, rather than the text which contains it — i.e., go to the original report).

This sounds a bit silly, to put it in a case on quotations

the said windows, without any stopping of them, and so the prescription may have a lawful beginning: and Wray, Chief Justice, then said, that for stopping as well of the wholesome air as of light, an action lies, and damages shall be recovered 7 for them, for both are necessary, for it is said, et vescitur aura aetherea, and the said words horrida tenebritate et c. are significant, and imply the benefit of light. To these declarations Benton, the defendant pleaded not guilty, and was found guilty of the matter in the declaration: it was adjudged that the plaintiff should recover. 3

It wasn't until some two hundred years later that the first piece of legislation regarding sunlight was enacted. In 1832 the Second Session of the Parliament of the United Kingdom of Great Britain and Ireland formulated the Prescription Act which contains the following statute: *section?*

And it be further enacted, that when the Access and Use of Light to and for any Dwelling House, Workshop, or other Building shall have been actually enjoyed therewith for the full period of Twenty Years without Interruption, the Right thereto shall be deemed absolute and indefeasible, any local Usage or Custom to the contrary notwithstanding, unless it shall appear that the same

who is an owner of land over which light passes to a dwelling-house, workshop or other building may apply to the local authority in whose area the dominant building is situated for the registration of a notice under this section. 6

and:

Subject to the following provisions of this section, any person who, if such a structure as is mentioned in subsection (1) of this section had been erected as therein mentioned, would have had a right of action in any court in respect of that structure, on the grounds that he was entitled to a right to the access of light to the dominant building across the servient land, and that structure, shall have the like right of action in that court in respect of the registration of a notice. 7

In recent years there have been several battles in Toronto regarding sunlight. And while in some instances, as we shall see, the plaintiff was not always successful, the number of cases in this city alone, proves the necessity for further legislation in this area.

6 Ibid, 957

7 Ibid, 959

on the Church boundaries. The congregation of the Church, which contains many well-respected and influential citizens, was worried about the penetration of sunlight and consequently, this became the key issue of the dispute. A referendum in the Church called for a glassed-in mall so that Trinity could be visible from Yonge St. Swift and well-directed legal action and negotiations on the part of the Church kept them at even odds with the developers. Here plainly, perhaps more than anywhere else in Canadian legal history sunlight was a direct issue and previous litigation clearly demonstrated that the Church had a strong case.

Continued negotiations and wide coverage in the press kept the proceedings constantly in the eyes of the Toronto public who exerted their influence on city officials. On May 10, 1971 in a report prepared for the City Planning Branch, Chief Planner Dennis Barker called for the following:

- 1) direct access to the church from Yonge St.
- 2) protection for the church from being overpowered by a massive development.
- 3) public ownership forever of the pedestrian routes through the site.
- 4) preservation of other areas of public space at the heart of the \$250 million development.
- 5) development of Yonge and Queen Sts. for pedestrians, not cars, with a facade of small shops.

What previous  
litigation?

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candidate called the agreement, "a victory for common-sense negotiations", and felt that more of this kind of participation was needed in Toronto.

The strength in Trinity's argument was set down in an 1880 ruling in the case of Ecclesiastical Commissioners for England v. Kino. <sup>Chatham?</sup> Under the Act 23 and 24 Vict. c. 142, and an Order in Council dated the 23rd of October, 1876, the church of St. Dionis Backchurch, in the city of London, became vested in the Ecclesiastical Commissioners, upon trust to pull down the church, dispose of the materials, and sell the site.

In 1878, the Defendant entered into negotiations for a building lease of a set of very low buildings, opposite to the church. These negotiations were interrupted by a notice from the Commissioners of Sewers to purchase these houses for the purchase of some City improvements, and ultimately the Commissioners of Sewers bought them, and sold to the Defendant the freehold of so much of the site as was not required for the improvements.

The Defendant commenced building upon the land thus purchased a set of buildings which were to be of considerably greater height than the buildings which had previously stood there. The Ecclesiastical Commissioners thereupon brought their action to restrain him from carrying his buildings to

University of Toronto, and Ontario Hydro over the construction of Hydro Place located on the south-west corner of College St. and University Ave.

In 1973 when Hydro announced that they were going to construct a new 20 storey headquarters for their operations it came to the attention of a number of individuals in the Department of Botany that such a building would cut off a substantial proportion of sunlight from the greenhouse for a substantial portion of the year.

The University retained Gordon G. Dickson of the legal firm of Cassels, Brock, Barristers and Solicitors, Toronto, in order to determine whether the University had any legal rights which were being infringed by the construction of the new building. In a letter to F. J. Hastie, Chairman of the Planning Division of the Physical Plant Department, dated November 14, 1973, Mr. Dickson stated:

... At common law there was no inherent right to light. It was something which had to be acquired and could in general be acquired by a long period of enjoyment. The right thus acquired, however, was only to an "ordinary" amount of light. While there appears to be room for a very small amount of argument to the contrary, it seems that uses which require an "extraordinary" amount of light such as an

but this section does not apply to any  
such right acquired by twenty years use  
before the 5th day of March, 1880. 12

It was of the opinion of Mr. Dickson that these facts  
precluded the University from having even an arguable case  
that it was entitled to any right to light for the greenhouse,  
as far as any construction on the former Royal Conservatory  
property was concerned.

The Toronto Height By-Law may prove to be an effective  
piece of legislation pertaining to sunlight. After careful  
consideration, I feel that these are definitely provisions in  
the by-law (such as micro-climate) which would apply in this  
case.

The history of this application might be said to have  
commenced with a request from Mayor David Crombie shortly  
after his election, when on February 26, 1973, he wrote to  
the Buildings and Development Committee expressing his concern  
that the zoning by-law established in 1963 was inadequate  
for the purpose of creating orderly growth and stability.  
Concern was then expressed that the municipality was unable  
to "influence the form of development", and particular concern  
was expressed as to the lack of protection for low density  
residential areas exposed to large-scale development of a  
commercial or industrial nature. It was this letter which



- 4) appropriate location and type of open space
- 5) retention of buildings of historical and architectural merit
- 6) effects of municipal services
- 7) micro-climate
- 8) social needs
- 9) public review 14

Therefore the Council of the Corporation of the City of Toronto enacts as follows:

1. Subsection (2) of Section 16 of By-Law No. 20623 being "A law to regulate the use of land and the erection, use, bulk, height, spacing of, and other matters relating to buildings and structures and to prohibit certain uses of lands and the erection and use of certain buildings and structures in various areas of the City of Toronto", is amended by adding thereto paragraph as follows:

- 1) No person shall, within the area hereinafter firstly described, erect or use any building or structure having a height exceeding 45 feet above grade.

outdoor spaces.

Buildings have the potential of blocking out, or of collecting sunlight during those seasons of the year when it is desirable. They can also expose people to harsh sunlight or offer shelter from it in those seasons when one seeks relief. Buildings should at least permit winter sun penetration. Beyond that, it is desirable that they even collect and intensify it. 16

Increased planning in advance of development is absolutely imperative if we are to ensure that the present cities we are building will be habitable in the uncertain conditions of the future that we face.

