

# **In the Provincial Court of Alberta**

**Citation: Schneider v LTS Infrastructure, 2018 ABPC 125**

**Date:** 20180606

**Docket:** P1701600050

**Registry:** Drumheller

Between:

**Garry Schneider and Carmen Schneider**

Plaintiffs

- and -

**LTS Infrastructure Services Limited Partnership, Galloway Construction Group Ltd. and  
Telus Communications Inc.**

Defendants

**Decision of the Honourable Judge L.R. Grieve**

## **Summary**

[1] Homeowners sue because Defendants dug a lengthy trench through their yard to their home for an underground cable. Defendants admit they did not have homeowners' permission to do this. In addition to an ugly trench through the grassy yard, the homeowners say their irrigation system was ruined and the trenching caused a rainwater leak into their basement.

## **Facts**

[2] The Plaintiffs Garry Schneider and Carmen Schneider are a married couple who own a home acreage near Dalum, Alberta. Telus Communications Inc., (hereinafter simply referred to as "Telus") is a Canadian national telecommunications company with thousands of employees. LTS Infrastructure Services Limited Partnership (hereinafter simply referred to as "LTS") is a business that both undertakes and co-ordinates construction projects. Galloway Construction Group Ltd. (hereinafter simply referred to as "Galloway") is a business that undertakes construction projects.

[3] The Plaintiffs' acreage fronts on to Township Road 272. In 2007 this road was improved which necessitated that Telus move the underground telecommunications cable wiring. This

cable is capable of supplying internet service, television service and telephone communications. The main Telus communication cable ran underground parallel to the road in the space between the road and the privately owned land. This main cable in the road allowance would then splice off to the private homes. The cable would run underground from the main line to an above ground metal junction box called a “pedestal”. It would then normally run underground from the pedestal to the customer’s residence. Some construction debris from 2007 was left behind on the edge of the Plaintiffs’ property. From the pictures submitted by the Plaintiffs, the debris is some wiring and some lengths of metal. The Plaintiffs could have easily removed this debris with minimal effort.

[4] A temporary above ground cable was installed during the 2007 construction around the pedestal serving the Plaintiffs’ property before disappearing underground. The route it took from the pedestal towards the house underground was to follow the length of the Plaintiffs’ driveway. This temporary above ground portion of the telecommunications cable at the front edge of their property was a nuisance to the Plaintiffs. It was unsightly. They could trip over it. They had to take extra care when mowing the grass around it. Both the fact of the exposed cable and the debris left behind was the subject of complaints by the Plaintiffs to Telus for years. Telus did not respond to their requests, either due to oversight, or because the Telus employees receiving these complaints deliberately ignored the Plaintiffs because of Mr. Schneider’s aggressive manner and his unreasonable demand for \$5,000 compensation.

[5] On February 16, 2016 Mr. Schneider called Telus and Telus responded by arranging for a Cable Repair Technician, Luke Schille and another Telus employee to meet Mr. Schneider at his home. They met with Mr. Schneider on March 21, 2016 to inspect the residential property. The original cable ran underground adjacent to the driveway, then continued underground across the driveway and into the front of the home. Mr. Schille found water within the underground cable. He decided that the entire length of the cable needed to be replaced and that it would all be underground. Mr. Schneider had always wanted the entire portion of the Telus cable to be underground. At trial, however, there was a major divergence in the sworn testimony between the two men as to their conversation of March 21, 2016.

[6] Mr. Schille of Telus, testified that:

1. The best option was for the cable to come in from a different pedestal underground through the backyard into the rear of the home and he told Mr. Schneider this.
2. The electrical power lines also came to the front of the home underground near the old Telus telecommunications underground cable. Mr. Schille thought that digging up the Telus line near an underground power line was problematic.
3. Mr. Schille thought that most homeowners liked their services coming to the rear of the property, rather than to the front for aesthetic reasons.
4. Mr. Schille thought that the Telus cable could enter the rear of the home through an existing opening, so no drilling through the Schneider house foundation would be needed. Whereas if run underground to the front, drilling through the foundation would be necessary.
5. Mr. Schille thought that driving back and forth over the underground Telus cable under the driveway could lead to future problems.

6. Mr. Schille thought that the finished basement would not be disturbed with the cable entering the rear of the home. He believed the interior wire could be hidden in an accessible part of the ceiling.
7. Mr. Schneider did not consent to Mr. Schille's recommendation of the backyard route, but Mr. Schneider had no objection either.
8. In parting company, Mr. Schille said to Mr. Schneider that he (Schille) would draw up some plans and someone would be in touch with Mr. Schneider.

[7] The Plaintiff Garry Schneider, to the contrary, insisted under oath that:

1. He wanted the underground Telus cable, which entered the front of his home, to remain as it was with only the above ground portion being put underground and he told Mr. Schille this.
2. He wanted the cable to enter the front of his home and into his basement mechanical room as before, so no interior work would need to be done. Thus, his finished basement would not be disturbed with the new Telus cable.
3. He made it very clear to Mr. Schille that he did not want the cable put underground through his backyard to the rear of the home.
4. As for someone being in touch with them, Mr. Schille said that he would show the Schneiders a drawing/plan of the route before any work was done.
5. Mr. Schneider was expecting a signed contract between himself and Telus before any work on the underground Telus cable would commence.

[8] Both sides now rely on their memory of this oral conversation (two years earlier) and both sides want justice, although each side has a completely different memory of what was said, or not said. Each man had thoughts no doubt. The issue is, what was said out loud and what was merely thought of (not expressed to the other) which led to a misunderstanding? With Mr. Schneider being distrustful of Telus and Mr. Schille knowing how demanding the homeowners were, both men were reckless not to reduce their understanding to writing. Each man could have and should have sent written correspondence to the other outlining their understanding of what was to happen. Both sides had access to e-mail capability.

[9] Knowing that Mr. Schneider was a difficult man to please, Mr. Schille went to work immediately and completed a Buried Drop Order (BDO) in which the route was three times as far underground (at greater expense to Telus) to run to the rear of the home. This was a repair to the existing service. There would be no expense to the homeowners. Telus already had a service contract with the Schneiders. This family had been paying monthly for their Telus service. As far as Telus was concerned, there was to be no new contract just because an upgrade of the underground cable was needed.

[10] The next day after this meeting, on March 22, 2016 Telus left a voicemail for the Schneiders on their Telus landline telephone that the BDO was being issued. On April 1, 2016 Telus left another voicemail that the work was being fast-tracked to have the work done as soon as possible. On April 3, 2016 Telus left a voicemail advising that the project would be completed that summer. On April 4, 2016 Telus left a voicemail that the defendant Galloway would be doing the work during

the 2016 (summer) trenching season. On April 5, 2016 a Telus employee and Mr. Schneider spoke to each other with Telus confirming that the BDO would be completed during the 2016 trenching season (that summer). On May 14, 2016 Telus left another voicemail again confirming that the BDO would be carried out during the 2016 trenching season. None of the communications from Telus to the Schneiders specifically spoke to the route of the underground cable being changed to a backyard pathway.

[11] Mr. Schneider and Mrs. Schneider testified to not having any recollection of any of these voicemails, or communication from Telus. I find that Telus wanted to replace the entire length of the underground cable, but what the Schneiders wanted was \$5,000. I find that the Schneiders decided to ignore Telus's plan for the upgrade to the underground cable, confident in their (erroneous) belief that Telus needed a written contract to do the underground cable work. It was likely the Schneiders' position that they would not sign a contract (thus Telus could not upgrade the cable) unless the Schneiders received financial compensation. Thus Mr. and Mrs. Schneider did nothing to assist with Telus's plan for the underground cable upgrade. Ignoring Telus turned out to be at their peril.

[12] Meanwhile Telus had no idea the Schneiders were taking this position and continued with preparation for the underground cable replacement. LTS was hired to do this underground cable upgrade for Telus. LTS in turn hired Galloway to actually dig the trench and install the cable.

[13] As a sub-contractor Galloway took on the assignment to lay new cable underground to the Schneider home. This would involve a very lengthy trench, four inches/10 cm wide and 18 inches/46 cm deep. Galloway relied on Mr. Schille's BDO which showed a path through the side yard and backyard to the rear of the home. Galloway was ready to do the work according to the BDO drafted by Mr. Schille, however Galloway could not get in touch with either Mr. Schneider or Mrs. Schneider. Galloway needed to consult with them to ascertain a convenient date for this work to begin. The Schneiders had not given Telus any other phone number other than the Telus landline telephone number. Nor did Telus have an e-mail address to get in touch with them.

[14] Since Galloway could not reach the Schneiders on their Telus landline, they turned to Mr. Schille of Telus. He did not know of any other phone number for them or how to quickly contact them. Galloway was ready to do the work right then and there. Knowing that for years the Schneiders had pressed Telus to put the entire length of cable underground, Mr. Schille thought the Schneiders would not want the project delayed with Galloway leaving the area. Thus, he authorized Galloway to do the work, trenching through the backyard, even though neither homeowner had agreed to that plan. Galloway did the trenching work on July 26, 2016 while the homeowners were absent.

[15] As it turned out, the Schneiders were away on vacation during July 2016. The Schneiders knew that Telus wanted to do the underground work that summer, however they had not advised Telus of any time frame in which they did not want the work done. Nor had they specified that they wanted to be present when the work was being done. Nor had they given Telus any other way to contact them other than their landline telephone. While on vacation in Montana, U.S.A., they did not have access to the landline at their house for Galloway's telephone calls or messages left. They did not have a house sitter, or any friend/family to alert them to the July 26, 2016 construction happening at their property. When they returned in early August 2016, they saw the scar left by the

trench through their side yard and backyard to the rear of the home. They were very upset and immediately complained to Mr. Schille. Due to Mr. Schneider's angry manner, Mr. Schille referred the matter to his manager, Mr. Tom Parker.

[16] Mr. Schille had done exactly what he had advised Mr. Schneider, namely that he (Schille) would draw up some plans (the BDO) and someone would be in touch with the Schneiders (the numerous voicemails and the conversation on April 5, 2016). Although it was Mr. Schneider's misunderstanding as to seeing plans in advance of any work, he continued to be angry that the trenching work was done. Mr. Schneider is simply unable to accept that he contributed to the misunderstanding. His misplaced anger and misstatements about Telus also misled Mrs. Schneider regarding the blameworthiness of Telus.

[17] Telus could have referred this matter to LTS, but instead Telus handled the complaint directly. On August 8, 2016 Mr. Parker telephoned and spoke to Mr. Schneider offering to attend immediately to see what the company that their contractor LTS had hired, had done incorrectly. The Schneiders refused to let Telus onto their property. Mr. Schneider continued to demand \$5,000 compensation for the construction debris from 2007. Telus understood that they were not going to see any of the damages done unless the \$5,000 was paid first.

[18] The next day Mr. Parker and a fellow Telus employee drove by on the public Township Road 272, to see what could be seen from the road. Since the house and yard are some distance from the public road these Telus employees could not ascertain the problem. The Schneiders refused to allow Telus to inspect for many months, maintaining that they wanted to see a signed contract whereby they had consented to this work. Due to Mr. Schneider's unreasonable position, Mr. Parker consulted with his superior. Meanwhile, the Schneiders' list of complaints continued to grow.

[19] The Schneiders had not used their underground backyard water irrigation/sprinkler system in 2014, or 2015 because it was not needed due to adequate rainfall. Nor had it been used by mid-summer 2016 prior to the trenching work done by Galloway. The trenching work on July 26, 2016 did damage an above ground sprinkler head. A pressure test was then done by Mr. Schneider and the system did not hold pressure, indicating a break in the underground piping which he blamed on Telus.

[20] Later in the summer of 2016 there was significant rainfall. The Schneiders had a water leak in their finished basement. They testified that the leak was rainwater in the area of where the trench led to the rear of their home. The water leak soaked the basement carpet, which was removed and replaced. The cost to them was \$4,400 which they blamed on Telus.

[21] In 2017, with Telus refusing to pay any compensation unless it could visit the property, Mr. Schneider and Mrs. Schneider relented and a meeting was held on April 27, 2017. Mr. Schneider met with Mr. Schille and his superior, Mr. Parker. The two Telus employees viewed the scar left in the grass from Galloway's trenching work. They thought the grass would have grown over more thoroughly, but it would be just a matter of time before the grass did grow in and would cover the trench line. Telus offered to hire a landscaping service to add topsoil and grass seed to aid in the recovery of the grassy yard. Mr. Schneider refused this. Mr. Parker testified that it would likely be unnoticeable after a summer growth season in 2017 and 2018.

[22] As it turns out the soil in the Dalum area is “gumbo-type soil”, somewhat hard in substance. Grass grows much more slowly in that area. Grass sod of present day would not match the decades old grass. Although Mrs. Schneider resided in the home when the irrigation system was installed under the backyard in the 1990’s she did not testify as to how many summers it took for the scars of the 1990’s trenching work to disappear after the irrigation system was originally installed underground.

[23] At the April 27, 2017 meeting, Mr. Schneider additionally complained of the damaged irrigation system and so Mr. Parker asked him to turn it on, so all three could see how well, or how poorly the irrigation system worked. Mr. Schneider refused, maintaining that this was not necessary as he had done a pressure test and the irrigation system could not hold pressure. Mr. Parker asked Mr. Schneider to do a pressure test in their presence and Mr. Schneider refused. Mr. Schneider also declined to allow Telus into his basement to see where the leak had entered the home and see the replaced carpet. Mr. Schneider had much earlier disposed of the wet carpet before Telus was allowed back on the property. Mr. Schneider continued to maintain that they were owed \$5,000 for the debris compensation. Mr. Schneider’s concern seems to be being paid the compensation and not necessarily the removal of the debris.

[24] Telus wanted to settle this dispute, however it was difficult to reason with an unreasonable man. Instead, the Plaintiffs commenced this litigation.

[25] In his testimony at the trial Mr. Schneider maintained his original position, as reflected in the initial written Statement of Claim. He testified that neither Galloway, LTS nor Telus had permission to be on his property during the summer of 2016. He insisted that there was no signed contract to do any work on the telecommunications cable at his property. He also complained that the 2007 Telus construction debris still littered his property.

[26] At trial under oath, Mr. Schneider testified that between the summer of 2016 and the spring of 2017, he would not allow Telus to inspect the damage done unless Telus produced a signed contract showing that the Schneiders had granted permission for the trenching work. Since there was no such contract, Mr. Schneider conceded under oath that this meant Telus would not get to see the damage done by the sub-contractor their main contractor had hired. At trial, Mrs. Schneider conceded it was unfair to Telus. She could give no reason for this unreasonable position taken by them, other than they did not trust Telus.

[27] At trial, the Plaintiffs introduced many photographs from 2016 which clearly show the scar to the side yard and backyard left by Galloway’s trenching to the rear of the house. No photographs of how the yard looked after the 2017 summer were introduced. The summer of 2018 is yet to occur and the grassy yard is likely to fully recover someday. In terms of predicting when this will happen, the Defendants and this Court are limited by only having pictures taken during the late summer and autumn of 2016.

[28] At trial both Plaintiffs complained under oath that the Telus debris from the 2007 road construction still littered their land as they were testifying. On cross-examination, the Plaintiffs conceded that they were currently withholding permission for Telus to come on the property and clean up the debris. Telus had written to the Schneiders for permission to enter the land and effect

the clean-up. However, the Plaintiffs had not, at the time of the trial, granted such permission to Telus.

## Decision

[29] In a civil lawsuit like this, the Plaintiffs need only prove the case on a balance of probabilities. That is, produce reliable proof showing it is more likely than not that they are owed money. The Plaintiffs complain of no clean-up and yet deny Telus the opportunity to enter to remove the debris. Being unreasonable is a factor in considering the reliability of the Schneiders as accurate witnesses in this trial. Their testimony was replete with negative and disparaging comments about Telus. The Plaintiffs were completely biased when testifying as to what the facts were.

[30] The Plaintiffs' Claim for trespass is dismissed. By being a Telus customer, the Plaintiffs agreed to allow Telus to enter the property to install, maintain and repair Telus equipment. This is stated in the original service agreement and is common sense. Again, it is important to note that this work was done at the expense of Telus. The Schneiders were not to pay for it. The Schneiders could have declined the Telus service, forbidden Telus to upgrade the underground cable, or requested that Telus notify them in person before entering the land, but never did so. In fact the Schneiders initiated the work by complaining to Telus that they wanted the entire length of the cable put underground.

[31] Mr. Schille would never have directed Galloway onto the Schneider property had Mr. Schneider requested permission be obtained first. Mr. Schille had no idea that the Schneiders would ignore the voice mails from Telus (and perhaps even Galloway's calls) with the Schneiders hoping to leverage the desire by Telus to retrench the cable with the Schneiders' desire of compensation. Just because the Plaintiffs did not like the new trench location, that does not result in the workers becoming trespassers.

[32] Typically when a residential property has communication services, water service, sewer service, electrical service, or natural gas service and there is a problem that needs repair, there is no contract that is negotiated for the repair work between the company/municipality supplying the service and the homeowner. A contract could be demanded by one party, but that would be highly unusual. Mr. Schneider did not request a contract be signed before the work was done. In his mind he just expected one and without one, he believed Telus would be a trespasser. It was reasonable for Telus to conclude that they had permission to do the work on the property on the basis of the original service agreement, having heard nothing differently from the Plaintiffs.

[33] The Plaintiffs' Claim for a new irrigation system is dismissed. Underground irrigation systems in the Canadian climate are problematic. They need to be properly flushed out and drained each autumn. Any water in the pipes can freeze and crack the piping. The ground can freeze and shift causing the pipes to crack. Glue used to join piping together can fail after many years, resulting in leaks. The Schneiders' backyard irrigation system could be as old as 25 years. It was not used in 2014, or 2015, or in 2016 prior to the work on the underground cable. The Plaintiffs' claim that pressure tests conducted in the absence of Telus, is sufficient to show it does not work anymore. That may be, but that does not prove the problem was the result of the 2016 trench by Galloway. Had Galloway struck the irrigation piping while trenching, it would have been known to Galloway. While it is possible that Galloway did puncture the underground water piping, it is also probable that

the failure to hold pressure is unrelated to the trenching work. It is very probable that there would not have been backyard trenching at all, had Mr. Schneider been more co-operative.

[34] The Plaintiffs' Claim for water damage to the home is dismissed. They refused to let Telus see this damage. There are many causes when water leaks into a basement. Clogged roof gutters often cause water to spill over the gutter onto the ground and then seep into the house. Windblown rain can concentrate water against the foundation and it makes its way through the foundation. Concrete foundations can crack, leak water, then never leak again. It all depends on how much water is in the soil against the basement foundation. The Plaintiffs did nothing to waterproof the foundation to prevent future leaks and damage to the new carpet. Thus, they seem satisfied a basement leak will not occur again. I have no doubt there was a leak and they replaced the carpet. My doubt rests on their assertion that it was probably the fault of Galloway's trenching work.

[35] The Plaintiffs' Claim for compensation due to the trenching work by Galloway has merit. Having the telecommunications cable go underground through the side yard and backyard was very different from the original service to the front of the house. Clearly maintaining the original underground route to the front of the house was a better route in the eyes of the homeowners. I accept that Telus had good reason to pick the backyard route (all at much greater expense to them), however no one from Galloway or LTS or Telus had an agreement with the homeowners to do it this way. This is negligence and/or a breach of the standard of care that Telus owed to its customers, the Plaintiffs. It was done as soon as possible (without consulting the homeowners) after Galloway's call to Mr. Schille because the Schneiders were difficult customers. Even accepting Mr. Schille's version of the March 21, 2016 conversation with Mr. Schneider, Telus did not have Mr. Schneider's agreement to re-route the cable to the rear of the home. Had Mr. Schneider told Mr. Schille that the homeowners wanted to be present when any work was done, I doubt that Mr. Schille would have directed Galloway to go ahead in the homeowners' absence.

[36] As for Mr. Schneider's version of this same conversation, it is very unlikely that Mr. Schille would do the opposite of what Mr. Schneider wanted. It is much more likely that Mr. Schneider did not vocally oppose service through the backyard due to his misguided belief that Telus would need a signed contract to undertake a different route for the telecommunication cable. He likely would not sign such a contract, waiting for Telus to first pay \$5,000 compensation before he ever co-operated with Telus to upgrade the underground cable to his home.

[37] Clearly the Plaintiffs did not want the cable to reach their home via the route through the side and backyard. There was a scar left on the once pristine grassy area, which is deserving of compensation for the reduced enjoyment of the property. The property was diminished in value and there is a cost to restoring the property. I fix the compensation amount to be awarded to the Plaintiffs at \$10,000. There will be no costs awarded to the Plaintiffs. Telus always wanted to correct any problem and compensate for any mistakes made. The Plaintiffs were unreasonable to refuse inspection of the damage they claimed. Also the Plaintiffs have done little to help the grass rejuvenate itself which reduces the award.

[38] Telus will bear its own expenses in this litigation. Mr. Schille made a mistake in his assumption that the Schneiders would agree to the different route and that the work could be done without conferring with them. Mr. Schille was also wrong to think that the homeowners did not have the choice of being present while this work was being done. That option should have been



given to them. It was also careless of Mr. Schille not to communicate in writing with the Schneiders regarding this major change to the underground route of the Telus cable. Galloway is blameless as it followed the instructions of Mr. Schille. LTS is blameless in its role. Thus the Claim against Galloway and LTS is dismissed.

[39] I am grateful to both legal Counsel who appeared in court on this litigation. The Plaintiffs were initially self-represented. Had they not had the assistance of Mr. Goruk at trial, it is unlikely that they would be awarded any compensation. He was able to focus their complaint.

[40] Judgment will issue in favour of the Plaintiffs for \$10,000 against Telus Communications Inc.

Heard on December 1, 2017 and April 6, 2018 at the Town of Drumheller.

Dated at the City of Calgary, Alberta this 6<sup>th</sup> day of June, 2018.

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L.R. Grieve

A Judge of the Provincial Court of Alberta

**Appearances:**

J. Goruk  
for the Plaintiffs

M. Thorne  
for the Defendants