Electricity lines 1, trees 0

On seven occasions during an eight year period, pine trees growing in a commercial forest fell onto an electricity line running through the forest causing damage to the line. In a recent judgment, the Court of Appeal held that the owner of the trees was liable to the owner of the line for the damage caused.

The case confirms that landowners can be liable for damage caused by their trees despite the trees being outside the "growth limit zones" imposed by the Electricity (Hazards from Trees) Regulations 2003 and despite the owner of the electricity line not having a registered easement for the line.

The electricity line was constructed in the late 1960s or early 1970s by a predecessor electric power board to the current owner of the line, Unison Networks Limited. Section 22 of the Electricity Act 1992 permits Unison Networks to keep the line on the land, and section 23 allows Unison Networks to have access to the land to maintain the line. No registered easement is needed for the line.

The property was acquired by the current owner in the early 1990s and converted to forestry in 1994.

The Electricity (Hazards from Trees) Regulations 2003 sets growth limit zones measured out from electricity lines. The growth limit zone for the line here extended only for 2.5 metres. Under those regulations, line owners can require that tree owners cut or trim trees which extend into the growth limit zones. Here, however, the trees were located outside the growth limit zones, with damage to the line caused by trees falling over during or following adverse weather.

The Court of Appeal agreed with the earlier High Court judgment that the tree owner was liable to the line owner in "nuisance". A nuisance is an ongoing or recurring activity or state of affairs that causes a substantial and unreasonable interference with the plaintiff's land or the plaintiff's use and enjoyment of that land.

Normally a nuisance occurs in the context of neighbouring properties; the defendant will cause something to emanate from the defendant's land, like smoke or noise, which interferes with the plaintiff's use of adjoining land. Here, the lines and trees were on the same land but both the High Court and Court of Appeal were comfortable that the tort of nuisance could apply in this situation. As noted by the Court of Appeal, the trees were, in effect, emanating from Nottingham Forest's land and causing damage to Unison's property.

The key factor here was the repetitive nature of tree falls. A succession of trees, which had grown to a height greater than their distance from the line, fell onto the line and caused damage. Given the inevitability of tree falls, the Court of Appeal had no doubt that it was unreasonable for Nottingham Forest to allow trees to grow to the height at which they would cause damage to the line if they fell. By creating this state of affairs, Nottingham Forest was strictly liable for any resulting damage, and could not avoid liability by showing that all reasonable precautions had been taken.

This was a novel case, although it pulled together strands of settled law, and could have widespread application especially to commercial forest owners. It clarifies that the Electricity (Hazards from Trees) Regulations 2003 do not oust common law liability for damage to electricity lines caused by trees and that, in circumstances involving a series of events, landowners could be strictly liable for that damage. As shown in this case, liability can exist where the trees are outside the "growth limit zone" but within falling distance of the line, where the trees are otherwise healthy and where the line is protected by a statutory right rather than a registered easement.

[Julian Smith](#) from Greenwood Roche advised Unison Networks on this claim, and has advised other electricity lines companies on tree management issues – amongst other things – for more than 20 years. We can also advise forestry companies on their obligations here and the impact on potential plantable areas.

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