

CASE LAW UPDATE

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The Corporation of the Municipality of Meaford v Grist et al

2011 ONSC 5195 (Released September 21, 2011)

Shoreline Dispute – Public Highway – Summary Judgment – *Registry Act*

The Superior Court granted summary judgment dismissing the Township's action for declaratory relief against its residents in a dispute over the ownership of a strip of land running along the Georgian Bay shoreline. Although the motions for summary judgment were brought by only some of the defendants, the Court dismissed the plaintiff's action as against all defendants.

The defendants owned cottage lots located on Georgian Bay. The disputed road, which the Township asserted had been established by a pre-Confederation by-law in 1854 ("**By-law 11**") ran through the defendants' properties immediately adjacent to the water's edge. By-law 11 was not registered on title in respect of any land until after 2004, when it was discovered by the Township in the basement of the municipal offices. Upon discovery of By-law 11, the Township passed By-law 80-2007 which purported to accept the location of the public road as determined by a partial survey of the By-law 11 lands.

The Township asserted that the public road was established over the defendants' properties on several grounds: (1) the enactment of By-law 11; (2) as a result of the doctrine of dedication and acceptance of road, as evidenced by the expenditure of public funds on the road and the historic use of the road by members of the public; and (3) that the Township had acquired title to the land along the waterfront by virtue of a public highway that existed in the location prior to the enactment of By-law 11 in 1854. In the alternative, the Township asserted that By-law 11 gave it title to the disputed lands despite it not being registered on title until 2007. Moreover, the Township argued that it had acquired title in modern times by a presumption of dedication and acceptance.

The Court rejected all of the Township's arguments. The Court found no evidence to suggest that there was a shoreline road in existence prior to the enactment of By-law 11 in 1854. The Township also produced no records referring to the By-law 11 lands in the years following the passage of the by-law. The Court found that the Township had not met the test required to establish dedication and acceptance in the modern era. At its highest, the Township's evidence only suggested that persons who were using the disputed road were predominantly friends, visitors and invitees.

As By-law 11 had not been registered on title before the defendants took title to their properties, By-law 11 was unenforceable as against them. Prior to the 1865 amendments of the *Registry Act*, there was no requirement to register a by-law. While the Township was not required to register By-law 11 on title at the time of its enactment, actual notice of a prior interest in title was still required by the law of equity in order for any ownership interest created by the by-law to prevail over a subsequent registered transfer. In this case, the property owners occupying the disputed lands were only required to search title to their properties back 40 years prior to the date of purchase to identify any encumbrances on the title they were acquiring.

In passing By-law 80-2007, the Township preferred “the wishes of a small group of citizens to the concerns raised by its town planner” (para 177). It failed to carry out all proper inquiries and to give timely and adequate notice to affected property owners before the enactment of the by-law. By-law 80-2007 was void as it was not passed for a proper municipal purpose.

Finally, the Court noted that the Township had “slept on their rights for over 150 years” (para 184). The defendants acted in reliance on their justifiable belief the disputed lands were part of their private property. Given that the Township was not acting for the purpose of enforcing any legislation but rather was seeking to take away property rights, laches and acquiescence should apply in favour of the defendants.