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SCC Confirms Adverse Possession of Municipal Parkland in Ontario Remains Alive and Well

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Introduction

For years, many assumed that adverse possession claims against municipal parkland would almost never succeed given the high evidentiary bar and public policy concerns. On September 19, 2025, the Supreme Court of Canada ("**SCC**") undercut that assumption. In *Kosicki v Toronto (City), 2025 SCC 28*, a narrow 5 to 4 decision, the SCC held that Ontario's *Real Property Limitations Act*, R.S.O. 1990, c. L.15 ("***RPLA***"), does not categorically bar landowners from acquiring municipal parkland through adverse possession.

The decisions of the majority and dissent highlight the tension between statutory interpretation and the continued evolution of the common law. Ultimately, the ruling leave open the prospect of adverse possession for municipal parkland (where crystallized before the lands were converted to the Land Titles system).

The Test for Adverse Possession

To extinguish a registered owner's interest, the claimant bears the onus of establishing adverse possession. The *RPLA*, particularly sections 4, 5(1), and 15, codifies the legal requirements, which can be summarized as:

1. **Actual possession**: open, notorious, exclusive, adverse, and continuous possession for at least 10 years.

2. **Intention** : conduct showing an intention to exclude the true owner.

3. **Exclusion**: an effective exclusion of the true owner from the property.

Only when these elements are substantiated does the statute prevent the registered owner from recovering possession.

Case Summary

Background

In 2017, Pawel Kosicki and Megan Munro (collectively, the "**Appellants**"), purchased a property in the City of Toronto (the "**City**"). The Appellant's property had chain-link fence around their backyard, which dated back to 1971 (the "**Disputed Lands**"). Believing the Disputed Lands formed part of their lot, the Appellants had been paying property taxes calculated on a lot size that included it.

The Appellants later discovered that the Disputed Lands was not part of their registered title and in fact were registered as being owned by the City of Toronto, forming a part of what is known as Étienne Brûlé Park. The Appellants thereafter attempted to

purchase the Disputed Lands but the City refused, citing a policy against selling lands intended public parks and recreational opportunities. The Appellants then applied to the court for a declaration of possessory title.

Judicial History

At first instance, the Superior Court application judge found that the Appellants met the test for adverse possession but dismissed the application on public policy, cautioning that allowing a private landowner to fence off public lands and exclude the public from its use and succeed in a claim for adverse possession would be setting a dangerous precedent.

On appeal, the Ontario Court of Appeal similarly dismissed the claim. The majority held that municipal parkland should be treated as presumptively held for public benefit, effectively creating a rebuttable presumption against adverse possession. The Court emphasized that, although not expressly listed in s. 16 of the *RPLA*, municipal parkland ought to be shielded from such claims.

The Majority at the SCC

Writing for the majority, Justice O'Bonsawin noted that there was no dispute that the Appellants had satisfied the general statutory test for adverse possession. The central issue, then, was whether municipal parkland is immune. The majority also noted that the parkland in question was converted to the land titles system in 2001 and therefore the only claims for adverse possession for that parkland could be claims which matured prior to 2001.

Applying the statutory interpretation principle of *expressio unius est exclusio alterius* (the expression of one thing implies the exclusion of another), the Court noted that s. 16 of the *RPLA* clearly provides a closed list of exceptions to adverse possession – namely, waste or vacant Crown land, road allowances, and public highways. Municipal parkland is not of the listed exceptions.

The majority concluded that recognizing a common law immunity for municipal parkland would conflict with the plain text of the statute. No provision of the *RPLA* or any other Ontario statute creates such immunity. Accordingly, matured possessory claims against municipal parkland remain valid under Ontario law.

The majority also rejected the Court of Appeal's "presumption" approach, cautioning that it would effectively eliminate adverse possession claims against municipal parkland, which could not be reconciled with legislative intent.

Dissent

The dissenting justices take a contrary view in stating that the traditional explanation of adverse possession has limited resonance when the registered owner of the land is a public entity holding the property for the benefit of the community. It noted that the public would make a more socially valuable use of the Disputed Lands over time than could any one person. The Dissent echoes the Court of Appeal's findings that, in common law, land set aside by a municipality for the use of the public as a park should be shielded from adverse possession. To overturn this presumption, a claimant must show that the municipality has changed the "vocation" of the land from that designated for public use as a park or has acquiesced to its private use. Acquiescence generally requires proof of knowledge on the part of the municipality. The Dissent held that this common law rule has not been ousted by the *RPLA.* The Dissent concluded by the absence of municipal parkland in the list statutory exemptions did not lead to the inference that the legislature intended to oust any common law rule limiting adverse possession of parkland.

Implications

Essentially the Supreme Court of Canada has ruled that the test for adverse possession of municipal parkland is like that which applies to adverse possession between private landowners. While the implications of this case may be limited as most claims for adverse

possession of municipal lands would be barred by the *Land Titles Act* ("***LTA***") and registration system, it remains to be seen whether claims for adverse possession for municipal parkland are brought for lands where the claim matured before the lands were converted to the Land Titles system. This decision does not affect other municipal lands such as waste or vacant Crown land, road allowances, and public highways, which are explicitly exempted under the *RPLA*.

If you have any questions regarding this decision or any other municipal litigation matters, please do not hesitate to contact us.

The information and comments herein are for the general information of the reader and are not intended as advice or opinion to be relied upon in relation to any particular circumstances. For particular application of the law to specific situations, the reader should seek professional advice.

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