

Cottage islanders' association denied proprietary estoppel claim for control over municipal docks (Grape Island Property Owners Association Inc. v. Corporation of the City of Orillia)

Litigation | Litigation & Dispute Resolution

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The dispute in *Grape Island Property Owners Association Inc. v. Corporation of the City of Orillia*, 2025 ONSC 1480 involved a property owners association of cottagers and full-time residents of an island on Lake Simcoe, Ontario against the City of Orillia. For almost 60 years the association's members and the residents availed themselves of an affordable, reliable, private, and convenient means to access the island via two seasonal docks the association installed on land described as a "water lot" owned by the City, which extended out into the lake.

The City acquired the water lot in 1949 and showed little interest in the water lot or docks for more than half a century thereafter. The association was generally responsible for the installation, maintenance and removal of the water lot docks. For decades, island cottagers made use of the docks to access their properties and to bring across services and materials from the mainland.

In 2016, however, after a complaint, the City began to take steps to assert its jurisdiction over the water lot. After several failed attempts to find a permanent solution, the City ordered the association to remove its docks. The City then replaced the association's docks with a dock for public use, and imposed rules, which regulated the use of the City dock and other activities on the water lot.

The association applied for a licence of occupation, which was not granted.

Litigation ensued, with the association claiming entitlement to exclusive and permanent use of the docks under the equitable doctrine of proprietary estoppel. The association argued that the duration and nature of its use of the water lot, coupled with the City's actual knowledge of and acquiescence to the use of the water lot, entitled the association to: (i) a declaration that the City was estopped from excluding the association from placing its docks on the water lot; and (ii) an easement over the said water lot.

In support of its position, the association relied on the test for proprietary estoppel set out by the Supreme Court of Canada in *Cowper-Smith v. Morgan*, 2017 SCC 61, at paragraph 15:

An equity arises when (1) a representation or assurance is made to the claimant, on the basis of which the claimant expects that he will enjoy some right or benefit over the property; (2) the claimant relies on that expectation by doing or refraining from doing something, and

his reliance is reasonable in all the circumstances; and (3) the claimant suffers a detriment as a result of his reasonable reliance, such that it would be unfair or unjust for the party responsible for the representation or assurance to go back on her word.

In response, the City argued that even if the association had established a claim to a remedy under proprietary estoppel, any rights that might flow from that could not prevail against a municipality's rights to enact by-laws and to introduce and vary policy. For this, the City relied on the Supreme Court of Canada's decision in *Immeubles Jacques Robitaille inc. v. Québec (City)*, 2014 SCC 34, at paragraph 20, which held that "the doctrine of estoppel must yield in the public law context to an overriding public interest and may not be invoked to prevent the application of an express legislative provision."

The court reviewed the historical background leading to the dispute and the evidence adduced by both sides. While it expressed sympathy to the association's position, the court was not persuaded that the association had made out a claim for proprietary estoppel for several reasons.

First, the association's position was premised on a city council resolution passed in 1956 which stated that the island property owners "be permitted each year to erect a temporary dock" on the water lot. In the court's view, this was no more than a statement of intention, and a permissive policy that was not contractual in nature. The policy did not convey any legal or equitable interest.

Further, the permission was granted to "the property owners" on the island not to a specific association of owners. This meant that the permission was in favour of a group of persons that would inevitably be subject to changes over time.

The court found other technical deficiencies in the association's reliance on the 1956 resolution, in that it read very much like an informal permit or arrangement rather than a binding legal commitment that was supported by consideration. The policy had no expiration or end date, provided for the annual erection of "a" dock, not two as the association had done, and made no mention of the concrete pier which the City installed several years after making the policy.

Lastly, there was nothing in the policy to suggest that the City was surrendering or sharing its proprietary rights or divesting itself of any jurisdiction over the water lot. It did not grant exclusive use of the water lot or the exclusive right to install a dock to the islanders or their association, nor was there any language that could be construed as barring members of the public at large from making use of the water lot.

Overall, the court was not satisfied that there was any evidence that any City employee or representative provided the association with an unambiguous promise or assurance that the City would never enforce its rights over the water lot. There was no evidence that the 1956 policy was ever reviewed by the City or discussed with the association prior to 2016.

The association argued that the City's silence or inaction since 1956 meant that it had waived its rights. However, as determined by the Supreme Court of Canada in *Ryan v. Moore*, 2005 SCC 38, at paragraph 76, silence or inaction will only be considered as a representation if a legal duty is owed by the representor to the representee to make a disclosure, or take steps.

The court was not persuaded that there was any legal duty on the City, as "representor", to disclose or take steps to explain or clarify the nature, duration, import, or significance of the 1956 policy to the association as "representee". Rather, the 1956 policy was a simple statement of intention that did nothing more than permit the association to install its dock on the water lot on an annual basis.

While the City may not have taken any proactive steps until a complaint was made in 2016, this did not mean that it had waived its rights to do so. In other cases, the Court of Appeal for Ontario has held that it is not realistic to expect a municipality to monitor the entirety of its lands for encroachments or potential adverse possession claims: *Kosicki v. Toronto (City)*, 2023 ONCA 450, 167 O.R. (3d) 401, at paragraph 19.

The association's claim for proprietary estoppel was therefore **dismissed**. While the court noted that it must have been enormously frustrating and greatly disappointing for the association and the islanders not to have been granted a licence of occupation, and to have lost control over their historical mainland access to their properties, there was no remedy available in law or equity. Rather, "the City is answerable to its citizens, not to this court."

Appeal Dismissed

In January 2026, the Court of Appeal for Ontario dismissed an appeal of the decision, agreeing with the trial judge that the City's failure to take action earlier to enforce the 1956 Policy did not have the effect of overcoming the need for a clear and unambiguous promise or assurance that could give rise to a proprietary estoppel: *Grape Island Property Owners Association Inc. v. Orillia (City)*, 2026 ONCA 63. A PDF version is available for download [here](#).

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