

Court addresses “tort of ejectment” while granting injunction in property dispute (Saad Keval v. Hiep Nguyen)

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What can a property owner do when they have been excluded from their property? Ontario’s *Partition Act* addresses the forced sale of properties when an irreconcilable dispute has arisen between owners but it does not directly speak to interim possession of the property.

One potential remedy, based on the “tort of ejectment,” received rare judicial consideration by an Ontario court in *Saad Keval v. Hiep Nguyen*, 2025 ONSC 6127 (CanLII).

The dispute involved a property located in Kincardine, Ontario, which was registered in the sole name of the plaintiff.

The property was purchased by another individual in 2016 for \$205,000, with contributions from the plaintiff and the defendant. The arrangement between the parties involved the defendant obtaining a license to grow marijuana on the property for medical purposes. However, the licenses obtained were for personal use rather than commercial cultivation.

In 2021, the plaintiff paid \$441,000 to the registered owner to have title transferred to himself alone. The defendant’s evidence was that he contributed \$40,000 to the plaintiff and he resided at the property even though he was not on title.

In 2024, the defendant was charged with drug-related offenses, complicating his ability to obtain a marijuana cultivation license. The relationship between the plaintiff and the defendant deteriorated, with the plaintiff alleging that he was intimidated by the defendant during a visit to the property and that he observed damage to the property.

In 2025, the plaintiff sued the defendant and sought an injunction to obtain possession of the property so that he could sell it. The plaintiff provided an undertaking as to damages and agreed to pay the proceeds from the property’s sale into court.

In considering the injunction, the court applied the test from *RJR Macdonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311, which considers the questions of (a) whether there is a serious issue to be tried; (b) whether the moving party will suffer irreparable harm if an injunction is not granted; and (c) whether the balance of convenience favours granting the injunction sought.

Normally, the test on the first branch is whether there is a serious issue to be tried. However, in the motion judge’s view, the applicable test required the plaintiff to establish a strong *prima facie* case since the injunction sought would allow him to obtain possession and sell the property at issue.

The plaintiff met this higher threshold by demonstrating a strong *prima facie* case based on the tort of ejectment. The motion judge referred to the British Columbia decision of *Berscheid v. Ensign*, 1999 CanLII 6494 (BC SC), to outline the distinction between the tort of ejectment and the more commonly known tort of trespass:

[66] The tort of ejectment, now known as an action for the recovery of land, is an action to restore possession of land to a party lawfully entitled to it.

[67] The distinction between ejectment and trespass to land is that in trespass, the plaintiff always maintains possession of the land in question, as opposed to ejectment, where the plaintiff has lost possession of land lawfully his and must therefore sue for its recovery.

[68] Thus, to ground an action of ejectment, the plaintiff must first be dispossessed of property which is rightfully his. The facts demonstrating such dispossession must be pled, i.e. the plaintiff must show that lands to which he owns a possessory right are now possessed by the defendant.

In the case at hand, the plaintiff was the sole titleholder, and the evidence was that he had been dispossessed of the property to which he was lawfully entitled.

The defendant claimed an unregistered interest of 51% in the property based on the alleged agreement with the plaintiff to use the property for cultivating marijuana. However, the motion judge found that the alleged agreement to cultivate marijuana was not legally viable for the purposes of defeating the plaintiff's motion.

In that regard, while the agreement was to develop a site to cultivate marijuana for commercial purposes, this was never carried out as the licenses were all for personal use. Further, since his arrest in 2024, the defendant was incapable of legally carrying out this agreement. As a result, the motion judge reasoned that even if there was an agreement or other trust claim that would allow the defendant to challenge the plaintiff's legal right to the property, that agreement did not seem to be capable of being implemented.

Further, even if the defendant was able to establish the existence of an agreement, the plaintiff would still have some ownership interest in the property and would be entitled to seek partition and sale under the [Partition Act](#). Accordingly, even on the defendant's evidence, the plaintiff had a strong *prima facie* basis for requesting that the court direct the sale of the property.

The plaintiff argued that irreparable harm was established since he could not afford the mortgage without benefiting from the property. Further, the presence of marijuana plants on the property posed a risk of legal repercussions and property forfeiture which would be irreparable. The motion judge agreed that the illegal activity taking place on the property was, in and of itself, irreparable harm. Without the court's intervention, the plaintiff would be at risk of the property being seized.

Lastly, the motion judge determined that the balance of convenience favored the plaintiff as the harm he would suffer without the injunction outweighed the harm to the defendant. The defendant argued that the sale of the property would result in him having nowhere to live and render the agreement that he made with the plaintiff unenforceable. To balance this, the court provided the defendant with 30 days to move out and find alternative accommodation. The plaintiff's undertaking to pay the sale proceeds into court would address any potential damages arising from the disputed agreement.

In the result, the court granted the injunction, allowing the plaintiff to take possession of the property for sale, subject to conditions such as a 30-day period for the defendant to vacate. The issue of costs was deferred to the trial judge, as the merits of the case have yet to be determined. A PDF version is available for download [here](#).

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