

# KEEPING CURRENT

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## Squatter gains ownership of municipal parkland in Toronto (*Kosicki v. Toronto (City)*)

By Stephen Thiele

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In Ontario, the law recognizes that a squatter can gain legal ownership of the land of the true owner in certain limited circumstances. The squatter must have (i) continuously occupied the true owner's land for a minimum of 10 years, (ii) intended to exclude the legal owner from the land and (iii) effectively excluded the true owner from the land. In addition, the squatter's use of the true owner's land must have been open, notorious, adverse, peaceful and actual.

Since most lands in Ontario are now registered under the [Land Titles Act](#) (the "LTA"), they are generally protected from claims for adverse possession. In addition, provincial and municipally owned lands have long been thought to be exempt from adverse possession claims due to their special nature as public lands. In this regard, although it might be expected that municipal parkland would be exempt from a claim for adverse possession, the majority of the Supreme Court of Canada determined otherwise in [Kosicki v. Toronto \(City\)](#), [2025 SCC 28 \(CanLII\)](#).

In this case, the appellants acquired a residential property in 2017. The property backed onto a City of Toronto park. Behind the property was also a laneway and "backyard" with a fence running around it. The fence was erected between 1958 and 1971.

In 1958, a regional conservation authority had acquired the land that comprised the laneway and part of the backyard (or the land in dispute). In 1971, the conservation authority transferred this land to the City, who dedicated it for public parkland use. However, the fence effectively excluded the City's and the public's use of the disputed parkland.

The appellants paid property taxes on the disputed land and their children played on the land.

In 2021, the disputed land was registered as municipal land. The appellants then approached the City to buy the land, but the City refused to sell it.

This refusal prompted the appellants to claim that the disputed land belonged to them under the doctrine of adverse possession.

While the City conceded that the appellants met the common law test for adverse possession of the lands, the City argued that the common law precluded the appellants from gaining possession to the parkland because these lands were public lands. The City asserted that under the [Real Property Limitation Act](#) (the “RPLA”), which governed the rights of the parties, a common law protection for municipal parkland applied.

In contrast, the appellants argued that the RPLA contained a complete code governing adverse possession and that a list of exemptions found in the RPLA was exhaustive. Of significance, the exhaustive list in the statute did not expressly contain an exception for municipal parkland.

The majority of the Supreme Court agreed that based on amendments to the RPLA, which had occurred over time, and other exemptions found in other legislation, municipal parkland was not immune from a claim for adverse possession.

In the view of the majority, provincial lawmakers did not intend to exempt municipal parkland from the RPLA’s effects, and that any decision to find otherwise would undermine clear choices that had been made by them. The majority also found that [section 16](#) contained an exhaustive list of lands that were exempt from adverse possession.

[Section 16](#) provides:

Nothing in sections 1 to 15 applies to any waste or vacant land of the Crown, whether surveyed or not, nor to lands, included in any road allowance heretofore or hereafter surveyed and laid out or to any lands reserved or set apart or laid out as a public highway where the freehold in any such road allowance or highway is vested in the Crown or in a

municipal corporation, commission or other public body, but nothing in this section shall be deemed to affect or prejudice any right, title or interest acquired by any person before the 13th day of June, 1922.

The word “Crown” does not include a municipality. Municipalities are creatures of statute and are corporations.

The majority also noted that:

- [section 16](#) expressly included certain municipal lands;
- [section 4](#) of the RPLA, which contains the 10-year limitation period, applied to all “persons”; and
- [section 16](#) applied to “any land.”

This, the majority found, was broad language.

The word “land” was also defined broadly under [section 1](#) of the RPLA.

Similarly, [section 15](#) of the RPLA used the word “any” in establishing the true owner’s right to not be dispossessed from his or her land as a result of failing to bring an action to recover land within the 10-year limitation period.

With respect to the LTA, while the disputed land was converted to the land titles system in 2001, [section 44\(1\)](#) of this Act preserved the appellants’ possessory claim. Under this section, the appellants simply had to show that in the 10 years prior to the conversion of the lands from the registry system to the land titles system, they or their predecessors had established the requisite elements of adverse possession.

The minority of the Court held that [section 16](#) of the RPLA did not contain an exhaustive list of properties that were exempt from claims for adverse possession and that the common law, which was not displaced by the section,



presumptively protected lands designated for the use or benefit of the public from such claims.

The minority noted that the disputed land was part of the City's precious urban green space and that awarding this land to the appellants would deprive the community of a part of the park in perpetuity.

The minority further explained that to rebut the common law's presumption, the appellants needed to show that the City had changed the vocation of the disputed land or had acquiesced to its private use. Acquiescence required proof of actual or constructive knowledge.

In the view of the minority, the appellants were unable to rebut the presumption. However, the test developed by the minority of the Court is not the law.

This case shows how the same legislation can lead to two completely different interpretations and results.

Whereas the majority focused on the intent of the lawmakers by examining express exemptions under the [RPLA](#) and other provincial legislation to find that the list of properties exempt from a claim for adverse possession was exhaustive, the minority took a broader public policy approach to find that the list of exemptions was open ended and not closed. In this regard, the minority observed that the text of section 16 was silent as to whether its list was exhaustive or limited.

However, the only opinion that matters is that of the majority, and thus, as it currently stands in Ontario, municipal parklands can be subject to claims for adverse possession.

It remains to be seen whether other squatters will seek to claim adverse possession over similarly situated municipal parkland or whether the provincial government will amend the [RPLA](#) to expressly exclude municipal parkland or

land designated for public use from claims for adverse possession.

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