BLOG

Neighbourly accommodation is not a legal right: court rejects prescriptive easement over farm lane (Anghelescu v. Hunter)

Easement | Litigation | Litigation & Dispute Resolution | Real Estate | Real Property Limitations Act

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In rural areas, property owners may have long-held, informal arrangements with their neighbours to move livestock, equipment and crops across one another's land. In some cases, these arrangements may span generations and are rarely documented. Issues may arise when the properties change hands and the new owners do not share the same neighbourly views as their predecessors.

In Ontario, the issue of whether decades of use have ripened into a legal right often turns on the fine but fundamental distinction between a neighbour's acquiescence and permission.

This distinction was central to *Anghelescu v. Hunter*, 2026 ONSC 6289, in which the Ontario Superior Court of Justice dismissed an application for a prescriptive easement over a farm lane connecting two parcels of agricultural land.

The dispute arose between two farming families near Harrowsmith, Ontario. The applicant owned two farms, the "Home Farm" and the "North Farm," which had been owned and farmed by her family since the early twentieth century, including by her great-great-grandfather, who purchased them in 1908 and 1917. The respondents' property, which they purchased in February 2024, lay between the applicant's two farms. Previously, the respondents' property had been owned by the same family since the 1870s.

The applicant claimed that a farm lane or cattle path across the respondents' property had been used by her family for decades to move cattle between the farms and to transport tractors, ploughs, seed drills, balers, hay and other agricultural materials. There was a consistent pattern of two cattle drives each year: the dairy herd was moved to the North Farm each spring or early summer for grazing and returned to the Home Farm each fall.

Shortly after buying their property, the respondents told the applicant she could no longer cross it. The respondents' position was that the historical use had always been permissive and was part of a longstanding neighbourly accommodation between farmers.

The applicant sought a declaration that her property was entitled to an easement by prescription over the respondents' land under section 31 of the *Real Property Limitations Act* (*RPLA*) or the common law doctrine of lost modern grant.

The application judge noted that the same four criteria applied to both tests, citing the Court of Appeal for Ontario decision in *Murray-Leung v. Dyck*, 2026 ONCA 204, at paragraph 13:

1. there must be a dominant and a servient tenement;
2. the properties cannot be owned by the same person;
3. the easement must be reasonably necessary for the enjoyment of the dominant tenement; and
4. there must be 20 or 40 years of continuous, uninterrupted, open and peaceful use without the servient owner's permission.

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Because the land had been converted to the Land Titles system on July 19, 2010, the applicant was required to establish that the criteria were met before that date: *Hunsinger v. Carter*, 2018 ONCA 656, at paragraph 10.

A key distinction between the two tests lies in the timing of the use. Under lost modern grant, a claim based on 20 years of use is defeated by oral or written permission given during that period, whereas under section 31 of the *RPLA*, a right based on 40 years of use is absolute unless written permission was given: *Hydro One Networks Inc. v. Shiner*, 2023 ONCA 346, at paragraphs 40 and 46.

The first two criteria were undisputed. The application failed on the third and fourth.

On reasonable necessity, the application judge accepted that the lane had a long-standing agricultural utility and was not used merely for amusement or recreation. However, utility alone was insufficient.

In that regard, the applicant's lands were not landlocked. A public highway bordered the Home Farm and connected to a municipal road which bordered the North Farm. The applicant had been using that public route for her farming operations since being denied access.

The applicant submitted evidence from a traffic safety expert who opined that slow-moving agricultural vehicles, limited sight lines, and narrow, unpaved shoulders made the public route unsafe. However, while the expert's qualifications were not disputed, the application judge found his opinion to be of limited value since the analysis was mainly based on assumptions rather than direct investigation, and he did not appear to have spoken with local farmers who routinely used the roads. There was evidence, including from the applicant herself, that the public roads could be used safely.

While the lane over the respondents' property offered advantages in convenience, efficiency and safety, a preference for a route perceived to be safer or more convenient does not establish that its use is reasonably necessary.

On the fourth criterion, the application judge found that the applicant had established 20 years of continuous, open, peaceful and uninterrupted use before July 19, 2010. The use was visible and well known to the family that previously owned the respondents' property, and a gate structure provided physical evidence of the lane.

The 40-year period, however, was not established. The only evidence of use before July 1970 came from the applicant's aunt, who recalled that, as a young girl in the 1950s and 1960s, she had seen her uncle move livestock across the property. That evidence was general in nature. It lacked particulars, was uncorroborated and could not, standing alone, establish 40 years of uninterrupted use.

The claim therefore depended on the 20-year period, which shifted the burden to the respondents to show that the use was permissive: *Condos and Castles Realty Inc. v. Janeve Corp.*, 2015 ONCA 466, at paragraph 23. The application judge found that they had met that burden.

Among other reasons, the evidence showed that the neighbouring families were friends who socialized together and had a longstanding cooperative relationship. There was no written or formal agreement concerning the lane. The application judge accepted that it was common for neighbouring farmers of that era to permit passage over one another's lands. The arrangement was consistent with that practice.

The use of the lane was enjoyed as a matter of neighbourly accommodation, goodwill and cooperation. In the application judge's view, "such accommodation cannot be transformed into a legal right."

Alternatively, even if permission had not been proven, the application record did not contain clear and unambiguous evidence that the use was "as of right." Given the families' friendship and the common practice among farmers, the evidence was at least equally consistent with permission as with acquiescence. The Court of Appeal has found in other cases that where the evidence is equally consistent with both, the claim must fail: *English v. Perras*, 2018 ONCA 649, at paragraph 35.

The application was therefore dismissed. The decision reflects the highly fact-specific nature of these types of disputes. Informal arrangements, however longstanding, may not survive a change in ownership where an easement has not been registered on title. There is a high threshold to show that what might be viewed as neighbourly permission has in fact transformed into a legal right that may be asserted against a subsequent owner. Merely showing that the claimed route is safer, faster or more convenient will usually not be enough.

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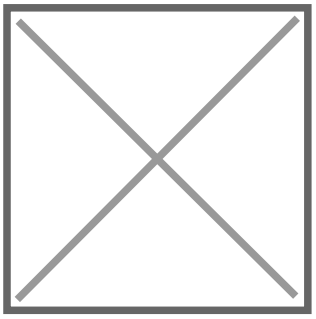
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