

# Shared laneway overburdened by change of use from summer camp to trailer park (*Kranenburg v. Grice*)

Litigation | Litigation & Dispute Resolution | Real Estate | Right-of-way Access

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Rights-of-way over a neighbouring property may be subject to restrictions on how they can be used. Over time, as ownership of the properties change, owners may wish to use the right-of-way for a different purpose than was originally contemplated. Disputes may arise.

In *Kranenburg v. Grice*, 2023 ONSC 6700 (CanLII), neighbours disagreed over the use of a laneway shared by their properties on the shore of the Saugeen River, Ontario. The applicant (Kranenburg) operated a campground on his property while the respondents (the Grices) had a seasonal home and rented out their land to farmers.

The laneway at issue wound its way through the Grices' property to the entrance of the Kranenburg property, which was otherwise landlocked. The laneway was an 800-foot-long, single-lane, gravel road, which included sharp turns and steep hills. It had no winter maintenance, no lighting, and no permanent signage. During the camping season, the laneway was maintained by Kranenburg.

After generations of peaceful co-existence by the property owners, litigation ensued after the Grices erected an entrance gate at the start of the laneway and a second chain gate before the entrance to the Kranenburg property. Kranenburg also complained about trees being planted along the side of the laneway. Kranenburg claimed damages for nuisance caused by the new gates and trees.

In their defence, the Grices took the position that the entrance and chain gates were necessary due to the increased traffic on the laneway and the impact it was having on their cattle operations and overall safety. They argued that they had not impeded access to the laneway because the gates were not locked.

The Grices also claimed that Kranenburg had overburdened the laneway by operating a come-and-go trailer park and event space on the property that had historically been used as a youth summer camp. They sought an injunction restricting the change in use and damages for trees that had been cut down by Kranenburg and used as firewood.

The legal test for whether someone has "overburdened" a right-of-way, such as the laneway is whether "it is used excessively or significantly beyond the rights and nature conveyed in the grant of easement": see *Sunnybrae Springbrook Farms*, 2010 ONSC 1123, at paragraph 93. This assessment of the extent and nature of an easement begins with the wording of the instrument creating the easement and the historical circumstances present at the time it was made.

However, in the case at hand, the parties were unable to locate the instrument that originally created the laneway as a right-of-way. They agreed that it existed before 1994 because the transfer documents at that time referred to it. They also agreed that the legal instruments that referenced the right-of-way did not reference any limitations or restrictions on its use and that the purpose of the right-of-way was to allow ingress and egress to the Kranenburg property.

The application judge noted that a grant for a right-of-way that does not contain any express restrictions will generally imply that the parties contemplated that the use of the land could change over time. Accordingly, the question is whether the change in the use goes beyond the "reasonable ambit" of the right-of-way.

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Gardiner Roberts

**Bay Adelaide Centre — East Tower**  
22 Adelaide Street West, Suite 3600  
Toronto, ON M5H 4E3

Phone: 416.865.6600  
Fax: 416.865.6636  
contactGR@grllp.com

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The Grices' property was in their family for generations and had always been used as an agricultural property with seasonal residence.

As of 1994, the last year that land registry documents were available, the Kranenburg property was being operated as a youth summer camp. This use required buses to transport the children, food delivery trucks, and garbage trucks.

In 2003, the Kranenburg property was purchased by an organization that continued to operate a youth summer camp with a focus on equestrian activities. A few seasonal trailers were parked on the property each summer that were used exclusively by the operator's family and friends. The parties agreed that the organization never operated a seasonal trailer park on the property.

In 2009, the Kranenburg property was bought by the applicant, who continued to operate it as a youth summer camp. However, after the pandemic hit in 2020, Kranenburg started using the property as a come-and-go trailer park. He expanded the business to include meetings, conferences, concerts, and events.

Based on the evidence, the application judge found that the laneway's use was historically restricted to ingress and egress to the Kranenburg property for buses carrying youth campers to and from the campsite, food and garbage trucks servicing the campground, up to twenty seasonal recreational trailers, a few passenger vehicles and trucks used by residents, guests and staff, and tractors and large farm equipment required for the Grices' cattle and haying operations. This type and volume of traffic was consistent with the physical nature of the laneway as a single-lane gravel road.

The Application judge found that Kranenburg overburdened the laneway due to the change in use of his property to a come-and-go trailer park, day-use conference, and event space. These changes increased the nature and volume of traffic on the laneway, with up to twelve recreational trailers coming and going every weekend, along with multiple passenger vehicles entering and exiting on the same day.

The increased traffic created safety concerns impacting the Grices, the most significant of which is that two larger vehicles (or a long line of passenger vehicles) cannot pass or turn around on the laneway without reversing some distance to a designated turnaround area. The increased traffic was also found to have a direct impact on the Grices' enjoyment of their recreational property because the laneway was visible and audible.

In the result, the Grices were granted an injunction limiting Kranenburg's use of the laneway to buses carrying campers and conference attendees, up to twenty seasonal recreational trailers, food and garbage trucks servicing the campground, and passenger vehicles and trucks belonging to the parties and to campground staff.

The application judge dismissed Kranenburg's claim for private nuisance, which required him to prove that there was an interference with his use or enjoyment of land that was both substantial (i.e. non-trivial) and unreasonable: *Antrim Truck Centre Ltd. v. Ontario (Transportation)*, 2013 SCC 13, paragraphs 18-19.

Based on the evidence, the gates were not shown to be a "substantial interference" with the use of the laneway but, at the highest, only an everyday inconvenience that one would expect with a roadway shared by abutting agricultural and recreational properties. There was no evidence that anyone had been unable to access the campground on the Kranenburg property or that any injuries were caused by operating the gates.

Further, the application judge commented that even if the installation of the gates was a "substantial interference", their installation was reasonable in all the circumstances given the higher volume of vehicles travelling along the laneway in recent years.

Lastly, concerning the parties' dispute over the trees, there was insufficient evidence to find that the trees impeded the laneway or that either party had committed a nuisance by planting or cutting them down.

The application judge commented that the court would expect Kranenburg to speak to the Grices before cutting down trees in the future as part of the maintenance of the laneway and that it would be prudent to obtain a survey and advice from an arborist.

Further, as is often the case in neighbour disputes, the court noted that many of the issues in the litigation could have been avoided if the parties had adopted more proactive communication strategies. Kranenburg ought to have discussed his plans to change the usage of his property with the Grices and could have obtained a traffic impact study and followed the advice contained therein. Similarly, the Grices could have discussed the possibility of installing gates on the laneway before they unilaterally did so.

The application judge concluded with the following comments:

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**Bay Adelaide Centre — East Tower**  
22 Adelaide Street West, Suite 3600  
Toronto, ON M5H 4E3

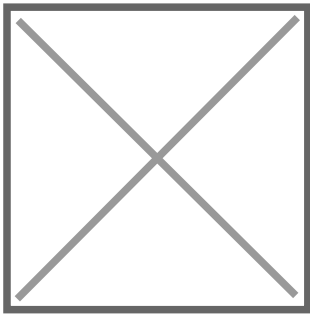
Phone: 416.865.6600  
Fax: 416.865.6636  
contactGR@grllp.com

The tranquility of these special properties and the harmonious co-existence of their owners over a half century might have been preserved had the parties treated one another as friendly neighbours rather than adversaries. With this litigation behind them, the parties have an opportunity to reset their relationship going forward.

Whether they do so, remains to be seen. A PDF version is available for download [here](#).

*(This blog is provided for educational purposes only, and does not necessarily reflect the views of Gardiner Roberts LLP).*

## Author



**James R.G. Cook**

Partner

416.865.6628

[jcook@grllp.com](mailto:jcook@grllp.com)