

The Driveway Dilemma: Why 30 Years of Use Wasn't Enough for Adverse Possession

Commercial Real Estate | Ownership | Property

9 July 2026

Real estate lawyers are frequently asked whether long-term use of a neighbouring property can eventually ripen into ownership. The answer has traditionally depended on the law of adverse possession, which imposes a demanding legal test that has become increasingly difficult to satisfy in Ontario's Land Titles system.

A recent decision of the Ontario Superior Court of Justice, [9409394 Canada Inc v Lascelles](#) [1], demonstrates that while adverse possession claims remain difficult to establish, equitable doctrines may nevertheless provide relief.

The Dispute

The dispute centred on an approximately eight-foot strip of land owned by a neighbouring landowner but used for decades as part of the purchaser's driveway.

The purchaser's property benefited from a registered easement over part of the neighbouring property. Together with the disputed strip, the driveway operated as a single eighteen-foot-wide surface covered first in gravel and later in interlocking brick. Successive owners of the purchaser's property openly used, maintained and improved the entire driveway without objection from the neighbouring owner.

The neighbouring owner erected a fence directly down the middle of the driveway, asserting ownership of the disputed strip for the first time in more than thirty years. The fence reduced the usable width of the driveway to approximately eight feet.

The purchaser commenced an application claiming ownership through adverse possession or, alternatively, relief based on proprietary estoppel.

Why the Adverse Possession Claim Failed

The neighbouring property had entered the Land Titles system in 2010, so the purchaser had to establish all elements of adverse possession during the ten-year period immediately preceding first registration.

Although the purchaser established decades of open, continuous and exclusive use, that alone was not enough. The critical issue was whether that use was inconsistent with the neighbouring owner's intended use of the property.

The neighbouring owner's land had remained vacant throughout the limitation period.

Relying on long-standing Court of Appeal authorities, including *Masidon Investments Ltd v Ham* [2] and *Fletcher v Storoschuk* [3], Justice Flaherty held that using part of another person's vacant land – even by improving it or incorporating it into one's own property – does not necessarily interfere with the owner's intended use if that intended use is simply to leave the property vacant.

In other words, using the disputed strip as part of a driveway did not prevent the neighbouring owner from continuing to do exactly what he intended to do: nothing.

Accordingly, the adverse possession claim failed.

Proprietary Estoppel Produced a Different Result

Unlike adverse possession, proprietary estoppel focuses on whether it would be unconscionable for a property owner to insist upon strict legal rights after encouraging another party to rely upon a different state of affairs.

First, although the neighbouring owner never expressly granted permission, for more than thirty years he remained silent while successive owners openly used, maintained and improved the entire driveway. His prolonged inaction reasonably led the purchaser to believe the arrangement would continue.

Second, the purchaser relied upon that expectation. It purchased the property believing it enjoyed access by way of the full driveway and subsequently invested in maintaining and repairing it.

Finally, allowing the neighbouring owner to erect a fence through the middle of the driveway after decades of acquiescence would have been unconscionable. The Court emphasized that the driveway was essential to the reasonable use and enjoyment of the property, and that restricting access in this manner created practical difficulties for the purchaser's, emergency and delivery vehicles.

Rather than allowing the neighbouring owner to rely strictly on registered title, the Court ordered the fence removed and required repairs to the damaged driveway. The Court did not rule on whether the appropriate long-term remedy should be an easement or a transfer of the disputed lands.

Practical Lessons for Property Owners

1. Long-term occupation alone does not guarantee an adverse possession claim. Since conversion to the Land Titles system, successfully establishing adverse possession has become increasingly uncommon, particularly where the disputed property remained vacant during the relevant limitation period.
2. Property owners should not assume that registered title will always be determinative. Courts remain willing to invoke equitable doctrines where rigid enforcement of legal rights would produce an unfair result.
3. Prolonged silence can have legal consequences. Owners who knowingly allow neighbours to use, improve or incorporate portions of their land into their own properties over many years may ultimately face claims grounded in proprietary estoppel, even where adverse possession is unavailable.
4. For commercial property owners, developers, purchasers and lenders, it is very important to identify longstanding informal arrangements during due diligence. Apparent encroachments, shared driveways and historic patterns of use may give rise to equitable rights that do not appear on title but nevertheless materially affect the use and value of a property.

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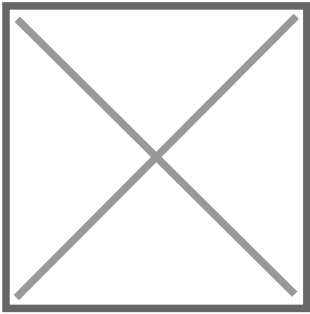
[1] 9409394 *Canada Inc v Lascelles*, 2026 ONSC 819.

[2] *Masidon Investments Ltd v Ham*, 1984 CanLII 1877 (ON CA), 45 O.R. (2d) 563.

[3] *Fletcher v Storoschuk et al*, 1981 CanLII 1724 (ON CA), 35 OR (2d) 722.

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Author



Daniel Kuhnreich

Associate

416.865.6649

dkuhnreich@grllp.com

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