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Real Estate Conveyancing

Lamont

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This release features updates to the case law and commentary, based on the reissued publication materials, in the following chapters: Chapter 4 (Offer to Purchase), Chapter 7 (Outline of Some Real Estate Statutes), Chapter 8 (Registry System Procedures), Chapter 9 (Cottage and Rural Conveyancing), Chapter 10 (The Planning Act), Chapter 11(Requisitions), Chapter 12(Clearing Objections to Title), Chapter 16 (Closing the Transaction), Chapter 22 (Liens, Charges and Potential Claims), Chapter 27 (Condominiums), and Chapter 29 (Legal Surveying).

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Highlights

Offer to Purchase—Leases—Retirement Community Ownership—"Life Lease" Building—Building Converted to Condominium—Landlord Purchasing Unit and Seeking to Terminate Tenancy—Tenant Protected by *Residential Tenancies Act*—Where the tenant entered into the lease of a unit with the "life lease" holder in a building owned by a retirement community, and following its financial difficulties, the building was converted to a condominium, the rental unit continued to be governed by the *Residential Tenancies Act*, 2006, S.O. 2006, c. 17 (RTA), which prevented the termination of a tenancy on conversion to a condominium building. In this case, the tenant rented a unit in a building owned by a retirement community (ROS) in 2011, under a standard residential tenancy agreement with the "life lease" holder. ROS went into receivership due to financial difficulties, and the building was converted to a condominium. The tenant's unit was purchased by the landlord in 2022. The landlord applied to terminate the tenancy on the grounds she required the unit for her personal use. The landlord submitted that the tenancy was originally entered into when the building was a "life lease" building, with a life lease being a form of ownership interest falling outside the authority of the RTA. However, the Landlord and Tenant Board (Board) found the tenancy was protected under s. 51(1) of the RTA, which prevented the termination of a tenancy on conversion to a condominium building. The landlord appealed, alleging the RTA did not apply because the tenancy originated in a "life lease" building. The landlord's appeal was dismissed; the tenancy remained protected by the RTA.

The Board concluded that tenancy fell within scope of the RTA. The RTA presumptively applied to all rental units in residential complexes unless specifically exempted. The tenancy agreement between the tenant and the life lease holder was a standard residential tenancy agreement, which continued the rental unit in the residential complex after conversion. It was beyond dispute that the building was a residential complex at the time of the application before the Board. The Board was not satisfied that it had sufficient evidence or information to displace the starting point that it was dealing with a rental unit in what was at that point a residential complex. First, there was no specific information on what was meant by a "life lease building". Second, the evidence before the board included notices from the receiver regarding the landlord's assumption of the tenant's lease and directions to the tenant to make monthly payments to the landlord. However, the directions did not suggest that any new type of tenancy was being created. Because the Board did not err in finding that the RTA applied, it also did not err in concluding that, to avoid the protections of the RTA, the landlord would have been required to demonstrate an exemption. The landlord failed to meet that burden to prove an exemption under the RTA applied, nor did she provide details about the "life lease" arrangement or the effect of the receivership and the court orders: *Vanderhoof v. Sakhawat*, 2025 CarswellOnt 20421, 2025 ONSC 6825 (Ont. Div. Ct.).

Real Estate Statutes—*Limitations Act*—Adverse Possession—Proprietary Estoppel—Applicant's Driveway Straddling Easement on Neighbour's Property—Current Owner and Predecessors Using Driveway for 30 Years.—Adverse Possession Not Established—Neigbour Using Property as Vacant Land—Proprietary Estoppel Established—Unconscionable to Deny Use of Driveway—Where an 18-foot-wide driveway to the

applicant's property straddled an easement over the neighbour's property for over 30 years, and the neighbor did not assert ownership over the disputed strip, despite knowing of its use as a driveway, the applicant established entitlement based on proprietary estoppel, as it was unconscionable for the neighbor to deny the applicant the benefit of the full width of the driveway; however, adverse possession was not established. In this case, the parties owned adjacent properties. The respondent owned his property since 1981, which was vacant during the material times. The applicant purchased its property in November 2015. The applicant's property enjoyed a registered easement over the corridor of the respondent's land, which the applicant used as a driveway. There was a dispute concerned a strip of land adjacent to the registered easement, which together with the easement was used by the applicant as a driveway. The driveway was about 18 feet wide, straddling the easement and the disputed strip of land. From at least July 1993 to December 2024, the driveway functioned as a single surface covered in gravel and later interlocking brick. The previous owners used and maintained the entire driveway from 1993 onwards. In November 2024, the applicant listed its property for sale. In December 2024, the respondent installed a fence running down the center of the driveway, dividing its width in two. The applicant brought application for entitlement to the disputed land by adverse possession, or, in the alternative, by way of proprietary estoppel. The application was granted; the applicant established entitlement based on proprietary estoppel.

For more than 30 years, the respondent was silent and did not assert his ownership over the disputed strip, although he knew it was being used as a driveway. The respondent's silence reasonably led the applicant to believe that he would not insist on his strict legal rights to the disputed strip of land. The applicant relied on this to its detriment: it purchased a home with the reasonable understanding that it could be accessed by a driveway that was about 18 feet wide. In addition, the applicant maintained the strip of land, and made improvements to the driveway, including repairing the interlocking brick. The applicant used and maintained the driveway, and made improvements to its surface. Without a reasonable means of entry, the applicant's enjoyment of its property was significantly impeded. Without notice or consultation, the respondent erected the fence limiting access to the applicant's home to a portion of the driveway that was about 8-feet-wide. After more than 30 years of silence and allowing the applicant to use and improve the driveway, it was unconscionable to allow the respondent to deny the applicant the benefit of the full driveway.

The claim in adverse possession failed. The respondent's property was registered in the land titles system in August 2010, so the statutory ten-year period relevant to the adverse possession claim commenced in August 2000. The respondent did not dispute that the prior owners of the applicant's property had actual possession of the disputed land from 2000 to 2010, or that their use was open and continuous. However, the respondent was not effectively excluded because the possession was not inconsistent with his intended use of the land. The applicant submitted that the criterion of inconsistent use did not apply because it was a case of mutual mistake. There was no mistaken belief on the part of the respondent as he understood the extent of the easement, and knew the driveway on the applicant's property extended beyond the registered easement. The parties agreed that the respondent's intended use of the land from 2000 to 2010 was to keep the property vacant. Using and even modifying or building on the property was not inconsistent with its use as vacant lands. The use of the disputed strip of land as a driveway did not interfere with the

respondent's ability to use the land for its intended purpose as vacant lands - that is, to make no use of the land. Therefore, the applicant did not establish adverse possession of the land.

The applicant was entitled to relief based on proprietary estoppel. For more than 30 years since the driveway was in place, the respondent was silent and did not assert his ownership over the disputed strip, although he knew it was being used. That silence reasonably led the applicant to believe that the respondent would not insist on his strict legal rights to the disputed strip. The applicant relied on that to its detriment by purchasing a home with the reasonable understanding that it could be accessed by a driveway 18 feet wide. Additionally, the applicant maintained the strip of land and made improvements to the driveway, including repairing the interlocking brick. In the circumstances, it was unconscionable to allow the respondent to deny the applicant the benefit of the full driveway. The respondent was ordered to remove the fence and repair the interlocking brick damaged when the fence was erected. The applicant was not awarded damages as there was no evidence of non-monetary losses: *9409394 Canada Inc. v. Ghislain Lascelles*, 2026 CarswellOnt 2507, 2026 ONSC 819 (Ont. S.C.J.).

Cottage and Rural Conveyancing—Water Boundary—Riparian Rights—Crown Patent - Boundary of Applicant's Property Following Shore of Lake—Lake Receding Over Time With 11.5 Acres of Accreted Land—Neigbour's Certificate of Title Covering Accreted Land—Applicant Entitled to Accreted Land—Neighbour's Title Cancelled—Where the legal description of the title to the applicant's land was riparian in nature, and the western boundary followed the shore of a lake, and the lake had receded over time, the accreted land was the rightfully part of the applicant's land, and the adjoining owners' title to the accreted land was cancelled. In this case, the applicant and the respondents held certificates of title for adjoining parcels of land. The applicant's land was original granted in Crown letters patent in October 1920. The applicant claimed that the legal description in the title to the applicant's land was riparian in nature. That meant that the western boundary of the applicant's lands, which comprised 38.9 acres, was not fixed at a specific historical shoreline but instead followed the current shore of the lake as it changed over time. By 1929, due to the receding waters of the lake, there was an additional 11.5 acres of land between the applicant's property and the lake. The applicant's predecessor in title acquired that parcel by a quit claim patent. The applicant submitted that, in the 2005 deed to the respondents, the title to the 11.5 acres of land was described as not including land granted in the Crown letters patent in October 1920. Although the respondents had a certificate title, the applicant further submitted that this constituted nil lands, as the lake receded since the original survey in 1905. As such, the applicant claimed the respondents' title was and always had been legally void.

The respondents maintained that the Crown's intent was to grant two distinct parcels and not to subsume the respondents' lands into the applicant's title. The respondents claimed that the parcels of land had been historically separate, and that both titles were valid. The applicant brought application for declaration that the applicant was the owner of the disputed land, and for an order directing the Registrar to cancel the respondents' title. The respondents brought a cross-application for a declaration that the respondents continued to be legal and equitable owners of the respondents' lands. The application was granted; the cross-application was dismissed.

The applicant's land was riparian, and the accreted land was the rightfully part of the applicant's land. This conclusion was consistent with the Torrens system, and its foundational principles. The Torrens system required that parties rely on the words appearing on title. The Crown patent to the applicant in 1920 described the boundary by reference to the water body, which was a natural boundary that was ambulatory. Subsequent government action could not transform the original natural boundary into a fixed boundary; or legitimately create a valid second title to the land that was already identified by the existing title. The respondents' land was part of the applicant's land. The Registrar was ordered to cancel the respondents' title: *Bowlby v. Bernard*, 2026 CarswellAlta 146, 2026 ABKB 53 (Alta. K.B.).

Closing Transaction—Time of Essence—APS Providing Release of Deed Upon Funds Received by 3:00 P.M. on Closing Date—Funds Received at 3:35 P.M.—Vendor Entitled to Terminate APS—Strict Enforcement of APS Not Unfair—Where the APS provided that the purchaser could not ask for release of the deed to the property unless the purchase price was paid by 3 p.m. on the closing date, and time was of the essence, it was not unconscionable for the vendor to terminate the agreement where the funds were received 35 minutes after the deadline. In this case, the parties entered into an agreement of purchase and sale (APS) of the subject property. The vendor refused to close because the balance of purchase price was not paid by 3 p.m. on the closing date as required. The funds were received 35 minutes after the deadline. Prior to the closing, the vendor emphasized and reminded the purchaser of the importance of the provision. The APS and the amending agreement expressly stated that time was of the essence. The vendor acted promptly on the default clause, and the property was resold. The purchaser brought an application for a declaration that the vendor breached the APS and for damages. The purchaser's application was dismissed. The vendor was entitled to terminate the agreement.

The argument that the APS was unconscionable was without merit. There was no inequality of the bargaining power, and the bargain struck was not improvident. Moreover, the argument that the parties' past conduct concerning delays in construction dictated the result was without merit. Since the purchaser agreed it could not ask the vendor to release the deed of land unless it paid the balance of the purchase price by 3 p.m. on the closing date, the provision in APS could be construed only as imposing the obligation on the purchaser to make the payment by that time and on that day. It was not unfair for the vendor to strictly enforce the 3 p.m. deadline: 3 *Gill Homes Inc. v. 5009796 Ontario Inc*., 2023 CarswellOnt 21646, 2023 ONSC 1298 (Ont. S.C.J.), affirmed 2024 CarswellOnt 29 (Ont. C.A.).