



Case in Brief: ***Kosicki v. Toronto (City)***

Judgment of September 19, 2025 | On appeal from the Court of Appeal for Ontario  
Neutral citation: 2025 SCC 28

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**The Supreme Court of Canada says couple now owns a strip of land in their backyard that belonged to the city as parkland.**

This case is about adverse possession, a legal concept where a person can become the owner of land if they use it without permission for a period of time to the exclusion of the legal owner. If the legal owner does not take action within that period of time, their rights are lost and the user of the land can become the new owner. In Ontario, the *Real Property Limitation Act (RPLA)* sets that period of time to 10 years.

In 2017, Pawel Kosicki and Megan Munro bought a home in Toronto. There was a chain-link fence around the backyard. In 2021, they discovered that there was a strip of parkland belonging to the city at the back of their backyard inside their fence. That strip of land had been used exclusively as part of the backyard by the home's prior owners since at least 1971. The couple had continued to use and maintain the backyard, paying property taxes based on a lot size that included the city's strip of land. When they asked to buy the strip of land, the city refused. They went to court, asking to be recognized as the rightful owners.

At the Superior Court, the judge agreed that the couple had met the legal criteria for adverse possession. However, she rejected their request. She said that as a matter of public policy someone should not be able to fence off public land and exclude the public and then become the owner. The Court of Appeal also refused the couple's request, but not for the same reason. The majority judges applied a public benefit test to protect land that was supposed to be used for public benefit, like parkland, from adverse possession by a private owner. They said those lands should be protected even if they had not actually been used as public land, unless a municipality had agreed to or knew about the private owner's use. In this case, the city did not know and had not agreed, so the couple could not be declared the owners. The couple then appealed to the Supreme Court.

The Supreme Court has allowed the appeal.

**In this case, the couple became the owners of the land because they met the criteria for adverse possession and there was no rule specifically protecting municipal parkland.**

Writing for a majority of the Supreme Court judges, Justice O'Bonsawin said that no new judge-made rule can block ownership claims over municipal parkland. This would be contrary to the *RPLA*, which already exempts certain public lands from its application. Municipal parkland is not among these exceptions. Such a rule would also undermine the government's policy choice to exclude municipal parkland. If the government intended to include it, they would have done so.

Justice O'Bonsawin also noted that since 2001, the government has protected parkland in Ontario through a land title registration system that does not allow for new adverse possession. In this case, however, the criteria for adverse possession were met for the period required by the *RPLA* before the registration system started: the actual possession of the land; an intention to exclude the true owner; and their effective exclusion. Therefore, the right to become an owner through adverse possession was preserved and the couple could be declared owners of the strip of land.

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**Breakdown of the decision:** *Majority:* Justice [O'Bonsawin](#) allowed the appeal (Chief Justice [Wagner](#) and Justices [Côté](#), [Rowe](#) and [Moreau](#) agreed) | *Dissenting:* Justice [Kasirer](#) would have dismissed the appeal (Justices [Karakatsanis](#), [Martin](#) and [Jamal](#) agreed).

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