Supreme Court decision in *Kosicki v. Toronto (City)*

For full text of the decision, see: *Kosicki v. Toronto (City)*, 2025 SCC 28 (CanLII)

In Chapter 2 of *Property Law: Cases and Commentary, 5th Edition*, an excerpt of the Ontario Court of Appeal's decision in *Kosicki v Toronto (City)* is presented to illustrate the application of the common law doctrine of adverse possession where the property that is the subject of the adverse possession claim is part of a municipal park.

On January 16, 2025, the Supreme Court of Canada heard and allowed an appeal of that decision. As in the Court of Appeal, however, the ruling was contentious, with the court splitting 5-4.

Majority reasons

Writing for the majority (Wagner C.J. and Côté, Rowe and Moreau JJ. concurring), Justice O'Bonsawin ruled that the appellant homeowners should be awarded title to the disputed lands. She found that the Court of Appeal's recognition of a new category of immunity from adverse possession for municipal lands was inconsistent with legislature's intent as could be determined from the provisions of the *Real Property Limitations Act* and other statutes that applied to the disputed lands, including the *Land Titles Act*.

From those reasons:

...

[2] The City concedes that the appellants have satisfied the test for adverse possession. It is undisputed that the parcel of land at issue has been fenced off, openly and continuously, since at least 1971. However, the City argues that the claim cannot succeed at common law because the disputed parcel of land is designated in municipal plans as parkland for public use. The application judge concluded that the City had not established that the property was immune from adverse possession under the "public benefit test" articulated in certain other lower court decisions. However, she determined it was nonetheless inappropriate for the City's title to be extinguished as "a matter of public policy" (2022 ONSC 3473, 32 M.P.L.R. (6th) 306, at paras. 76-78). The Court of Appeal upheld the decision, but reframed the public benefit test. It held that adverse possession claims will fail where the municipality has not waived its rights over the property, or acknowledged or acquiesced to its use.

[3] In my view, the *RPLA*, which extinguishes both the title and the right of the paper title holder to recover the land 10 years after dispossession, governs this dispute. The legislature has exempted certain public lands from the application of the *RPLA* for over a century. New exceptions for additional categories of public land have been enacted in related statutes since the last amendments to the *RPLA*. Although these new exceptions

grant explicit protection to provincial parkland from the application of the *RPLA*, they do not mention municipal parkland. Moreover, despite prospectively abolishing the possibility of acquiring possessory title for land registered under the *Land Titles Act*, R.S.O. 1990, c. L.5 ("*LTA*"), the legislature has preserved matured possessory claims. The preservation of acquired possessory title is also consistent with the *RPLA*'s purpose as a statute of repose. In this statutory context, to recognize a new common law exception in addition to the exceptions the legislature has set out in s. 16, which would serve to retroactively deprive a claimant of acquired possessory title, would defeat the legislature's intent.

...

[20] The question raised in this appeal requires this Court to interpret the text of the relevant provisions of the *RPLA* in their entire context and in light of their purpose (*Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, at para. 21, and *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42, [2002] 2 S.C.R. 559, at para. 26, both citing E. A. Driedger, *Construction of Statutes* (2nd ed. 1983), at p. 87). In my view, while the common law continues to play a role in the law of adverse possession in Ontario, the majority of the Court of Appeal erred in exempting the present possessory claim from the provisions of the *RPLA*. It is clear from a contextual assessment of the provisions that the legislature did not intend to exempt municipal parkland from the *RPLA*'s operation and intended to preserve matured possessory claims.

...

[22] ... By the operation of ss. 4, 5(1) and 15 of the *RPLA*, a true owner's interest in land is extinguished in favour of the possessory title acquired by a trespasser when the latter establishes "dispossession". A review of the *RPLA* and jurisprudence indicates that courts must resort to the common law to apply the clear but undefined terms of the relevant provisions. It is for this reason that I cannot accept the proposition of the dissenting judge of the Court of Appeal that "[n]o residual common law of adverse possession remains extant today" (para. 197). However, the law of adverse possession is also marked by a long history of statutory enactments, which have codified parts of the common law and modified others, including in recent years. Determining a possessory claim thus requires courts to ensure legislative intent is respected and apply common law principles in a manner consistent with the statutory scheme (*Nelson (City) v. Mowatt*, 2017 SCC 8, [2017] 1 S.C.R. 138, at para. 27).

[23] This Court has observed that the doctrine of adverse possession is a "long-standing common law device", which serves to determine when dispossession has occurred (*Mowatt*, at para. 17)... The doctrine remains "alive and well" in parts of Canada even after having been the subject of English statutory codification, which was largely reproduced in provincial legislation (*ibid.*; A. W. La Forest, *Anger & Honsberger Law of Real*

Property (3rd ed. (loose-leaf)), at § 29:8; G. Mew, D. Rolph and D. Zacks, *The Law of Limitations* (4th ed. 2023), at pp. 504-5; *Mowatt*, at para. 17).

...

[26] Substantial efforts to reform the law of limitations in Ontario were undertaken as early as 1969, which eventually culminated in the enactment of the *Limitations Act, 2002*, S.O. 2002, c. 24, Sch. B (see, e.g., Ontario Law Reform Commission, *Report on Limitation of Actions* (1969)). However, the law of limitations governing real property was left undisturbed by this enactment and attempts at reform were abandoned (Mew, Rolph and Zacks, at p. 10). As I will discuss further below, subsequent legislative enactments in the area of property rights, including the *LTA*, *PLA*, and *PPCRA*, have nevertheless significantly impacted the operation of adverse possession by eliminating the ability to acquire possessory title under the *RPLA*, but preserving matured possessory claims.

[27] Where a claim for adverse possession is available, courts apply the relevant statutory provisions to determine if it is made out. The *RPLA* provides that the limitation period will start running at the time of "dispossession" (s. 5(1)), the elements of which are established in the jurisprudence. For a claim to succeed, the trespasser must establish: (1) actual possession of the land by the trespasser for the required statutory period; (2) an intention to exclude the true owner from their property; and (3) effective exclusion of the true owner from their property (*Pflug v. Collins*, [1952] O.R. 519 (H.C.J.); *Keefer v. Arillotta* (1976), 13 O.R. (2d) 680 (C.A.); *Teis v. Ancaster (Town)* (1997), 35 O.R. (3d) 216 (C.A.)). Actual possession is established where the act of possession is open and notorious, adverse, exclusive, peaceful, actual and continuous, all of which must be present for the claim to succeed (*Mowatt*, at para. 18; *Masidon Investments Ltd. v. Ham* (1984), 45 O.R. (2d) 563 (C.A.), citing *Fletcher v. Storoschuk* (1981), 35 O.R. (2d) 722 (C.A.)).

[28] As this Court recognized in considering British Columbia's equivalent legislation, "[w]hile courts have a role in defining what constitutes dispossession under British Columbia's limitations legislation, legislative intent must be respected" (*Mowatt*, at para. 27). While the legislature may redefine the meaning of a common law term (*Giffen (Re)*, [1998] 1 S.C.R. 91, at para. 26), it must signal its intention to do so; otherwise, the word will be understood to have retained its common law meaning (*R. v. Holmes*, [1988] 1 S.C.R. 914, at pp. 929-30; *R. v. D.L.W.*, 2016 SCC 22, [2016] 1 S.C.R. 402, at para. 20; R. Sullivan, *The Construction of Statutes* (7th ed. 2022), at § 17.01.Pt2[1]).

[29] While the statute has preserved common law rules for defining dispossession, it is nevertheless clear from the history of legislative amendment in this area that courts must proceed with caution to respect legislative intent (see *R. v. Basque*, 2023 SCC 18, at paras. 40 and 45). In this respect, I note that the public benefit test

considered by the courts below is of relatively recent vintage. Unlike in *Basque*, where the Court considered the impact of a statutory provision on an *existing* common law rule, in this case we must consider the impact of case law which post-dates the enactment of the relevant provisions of the *RPLA*. In such a case, the appropriate starting point is the statutory scheme. It is necessary for a court to closely examine the statute in order to determine whether legislative intent would be undermined by recourse to a novel common law rule (see Sullivan, at § 17.02[1]).

[30] The City concedes that municipal parkland does not fall within the expressly legislated exceptions to the operation of ss. 4, 5(1) and 15 of the *RPLA*, which are set out in s. 16, but argues that the courts below were entitled to develop and apply a public benefit test to deny the appellants' matured claim (R.F., at paras. 48 and 72). In my view, a reading of the relevant provisions in the context of the broader statutory scheme governing adverse possession in Ontario reveals that the legislature did not intend to exempt municipal parkland from the *RPLA*'s effects. The legislature, although having done away with adverse possession, codified certain common law immunities from adverse possession, while protecting title acquired from matured possessory claims. By attempting to create a common law exception for municipal parkland, the Court of Appeal's decision undermines the legislature's clear policy choice to only confer immunity to certain categories of public land and preserve matured possessory title.

(1) The *RPLA* Creates Only Limited Exceptions, Which Do Not Include Municipal Parkland

...

[38] The precisely worded list of exceptions in s. 16 of the *RPLA* is to be contrasted with the broad application contemplated in ss. 4 and 15. While it is uncontroversial that courts have a role in determining what constitutes "dispossession" in s. 5(1), which is left undefined by the legislature, there is no indication in the text of s. 16 that the legislature intended that courts should supplement the statutory exceptions.

[39] The maxim of interpretation *expressio unius est exclusio alterius* ("to express one thing is to exclude another") is also of particular relevance here. An inference of implied exclusion may be drawn where there is an expectation that "if the legislature had meant to include a particular thing within its legislation, it would have referred to that thing expressly" (Sullivan, at § 8.09[1]; see *R. v. Wolfe*, 2024 SCC 34, at para. 25; *Canada v. Loblaw Financial Holdings Inc.*, 2021 SCC 51, [2021] 3 S.C.R. 687, at para. 59; *Copthorne Holdings Ltd. v. Canada*, 2011 SCC 63, [2011] 3 S.C.R. 721, at para. 108).

[40] In my view, the ordinary language of the provision, which establishes a closed list of exceptions, creates a strong expectation that the legislature would have made express reference to municipal parkland in s. 16 of the *RPLA* had it intended it to be excepted. I agree with the dissenting judge of the Court of Appeal that it is significant that

the provision expressly includes certain municipal property, that is, road allowances or highways that have vested in a municipality, but no others (see para. 101). I also note that s. 16 sets out specific and explicit exceptions to the application of otherwise broadly framed rules barring recovery to "any land" of "any person" outside of the limitation period (*RPLA*, ss. 4 and 15) (see *Bishop v. Stevens*, [1990] 2 S.C.R. 467, at pp. 480-81).

[41] I acknowledge that implied exclusion reasoning should not be treated as determinative... I am of the view that it carries significant weight in this case, particularly, as I will explain below, since the inference is reinforced by other statutes that exempt certain categories of land from the application of the *RPLA*.

(2) The Legislative Evolution of Section 16 of the *RPLA* Indicates a Pattern of Codification of Immunities

[42] ...Contrary to the City's assertion, a historical review of the legislative evolution of s. 16 of the *RPLA* provides a compelling basis to conclude that the legislature turned its mind to the common law and chose to integrate the aspects it deemed desirable into its scheme. In light of this pattern, I agree with the appellants that it is significant that the legislature has not sought to codify an exception to the application of the *RPLA* for municipal parkland.

[43] ...the maxim of implied exclusion takes on additional relevance when dealing with codification of the common law: ". . . a court may rely on implied exclusion reasoning to conclude that the part of the law not codified was meant to be excluded" (Sullivan, at § 17.02[5]; see *McClurg v. Canada*, [1990] 3 S.C.R. 1020). This is in keeping with the presumption that the legislature is presumed to know the existing law, including the common law (Sullivan, at § 8.02[1]).

...

(3) The Broader Legislative Context Confirms the Pattern of Codification and Supports the Preservation of Acquired Possessory Title

[51] I turn now to the broader legislative treatment of adverse possession, which has significantly impacted the application of the doctrine in Ontario. The legislature has repeatedly turned its mind to claims for possessory title, including with respect to public lands, and has specified where the acquisition of possessory title is no longer available. In light of this, there is strong reason to believe that the legislature would have expressly exempted municipal parkland from the application of the *RPLA* if it so intended. As Professor Sullivan writes, the expectation of express reference on which implied exclusion operates need not arise from a single Act; it may arise from the examination of "related Acts within the statute book of the enacting jurisdiction or other jurisdictions as well" (§ 8.09[3]). This Court has also recognized "the principle of interpretation that

presumes a harmony, coherence, and consistency between statutes dealing with the same subject matter" (*Ulybel*, at para. 52; *Bell ExpressVu*, at para. 27; *Canada 3000 Inc. (Re)*, 2006 SCC 24, [2006] 1 S.C.R. 865, at para. 54).

[52] A review of related statutory schemes reveals that the legislature has turned its mind to the continued application of the *RPLA* and preserved matured possessory title under that Act, despite having made the choice to prospectively abolish the doctrine of adverse possession in Ontario through the enactment of the *LTA*.

...

[56] I note that the municipal land in the present case was converted to the land titles system on October 22, 2001 (A.R., vol. I, at p. 155), at which point Étienne Brûlé Park became protected from all future claims of adverse possession by virtue of s. 51(1) of the *LTA*. In light of the protection against adverse possession conferred by s. 51(1) of the *LTA*, there is no evidence to support the City's contention that it would require extensive resources and efforts to protect parkland from possessory claims (R.F., at paras. 10 and 95).

...

[58] The legislative policy choice to preserve matured possessory claims is reaffirmed by s. 44(1) of the *LTA*, which provides that upon first registration, the registered land remains subject to certain liabilities, rights and interests, regardless of whether they are registered on title. This includes possessory title acquired by an adjoining land owner (s. 44(1) 3). In the present case, the disputed land's parcel register explicitly states that the registration is subject to rights to the land acquired by "adverse possession" (A.R., vol. II, at p. 78).

[59] More recently, the legislature again turned its mind to the *RPLA*, notably in amending statutes dealing with public lands in Ontario, namely, provincial parkland, conservation reserves, and other public lands. In 2021, the legislature amended both the *PLA* (s. 17.1) and the *PPCRA* (s. 14.5) to exempt certain categories of public lands from the application of the *RPLA*, but preserved matured possessory claims (*Supporting People and Businesses Act, 2021*, S.O. 2021, c. 34).

...

[65] In Ontario, the legislature has made a policy choice to confer special legislative treatment to a limited class of public lands and preserve matured possessory title. Considering the recent statutory enactments specifically dealing with the availability of adverse possession for public lands, I am of the view that recognizing a common law

protection against such claims for municipal parkland would run contrary to legislative intent.

(4) A Purposive Interpretation Supports the Preservation of Matured Possessory Title

[66] Recognizing an additional common law exception to the operation of ss. 4 and 15 of the *RPLA* would also be inconsistent with its purpose as a statute of limitations. Primarily being a statute of repose, the *RPLA*'s aims have long been understood as preventing unfairness where a possessor has come to rely on land for a certain length of time (see *Cholmondeley v. Clinton* (1820), 2 Jac. & W. 1, 37 E.R. 527, at p. 577). In the common law tradition, possession is a fundamental concept and functioned to support a better claim to title based in fact, when accuracy of a registry was not assured (see C. M. Rose, "Possession as the Origin of Property" (1985), 52 *U. Chicago L. Rev.* 73; Kaplinsky, Lavoie and Thomson, at p. 164). The *RPLA*, *LTA*, *PLA*, and *PPCRA* are all consistent in this respect: they seek to preserve possessory title validly acquired prior to a particular date.

...

[69] I emphasize that while there is some overlap between the rationales of limitations statutes and the doctrine of adverse possession, they remain distinct. In this case, the majority of the Court of Appeal declined to apply the *RPLA* on the basis that the rationales justifying the existence of the doctrine of adverse possession do not support its application to municipal parkland (paras. 16-19). It posited that "it is difficult to identify *any* rationale for adverse possession against municipal parkland" (para. 20 (emphasis in original)). The City has largely reasserted this argument before this Court (R.F., at paras. 93 et seq.).

[70] However, the City's argument overlooks one of the most persuasive rationales of the doctrine, that is, the protection of settled expectations (Kaplinsky, Lavoie and Thomson, at p. 167; J. W. Singer, "The Reliance Interest in Property" (1988), 40 *Stan. L. Rev.* 611; M. H. Lubetsky, "Adding Epicycles: The Inconsistent Use Test in Adverse Possession Law" (2009), 47 *Osgoode Hall L.J.* 497, at p. 532; S. E. Hamill, "Common Law Property Theory and Jurisprudence in Canada" (2015), 40 *Queen's L.J.* 679, at p. 695). This justification is especially compelling where the possessory claim has arisen from a *bona fide* error. Professor Singer explains that as time passes, the adverse possessor's interest in the land grows, bolstered by his legitimate expectations, while the true owner's interest diminishes as a result of his acquiescence to the possessor's use of the land (pp. 665-69).

...

C. *Application of a Common Law Exception for Municipal Parkland Conflicts With the Legislature's Treatment of Possessory Title*

[72] Given my conclusions on the statutory interpretation of the *RPLA*, I am of the view that the courts below erred in exempting the appellants' claim from the operation of its provisions by creating a novel immunity from adverse possession for municipal parkland. Contrary to the reasoning of the application judge, the question before this Court is not whether recognizing possessory title in this case is good public policy (para. 78). Rather, this Court must ask itself whether the manner in which the courts below exempted the present claim, on the basis of a judge-made rule, can be reconciled with the legislature's treatment of immunities from adverse possession (see Sullivan, at § 17.02[1]; *Basque*, at paras. 40 and 45). Pursuant to the principle of legislative sovereignty, "validly enacted legislation is paramount over the common law", and courts must give effect to legislative intent, "regardless of any reservations they might have concerning its wisdom" (Sullivan, at § 17.01.Pt1[1]).

[73] That the legislature has not completely ousted the common law does not permit courts to supplement a statute in a manner that is inconsistent with legislative intent. As Professor Sullivan writes, when considering whether common law may be relied on to supplement legislation, "[r]esort to the common law is impermissible if it would interfere with the policies embodied in legislation or defeat its purpose" (§ 17.02[3]). Ontario has actively legislated with respect to possessory claims to title, including with respect to certain public lands. Commenting on the role of the courts in such a context, Professor Ziff has explained that, unlike other areas of private law, the area of property law has been extensively and substantively altered by statutory changes. As a result, when addressing questions of statutory interpretation, it is to be expected that courts' "creative capacity is abridged" (B. Ziff, "Property Law and the Supreme Court: Of Gardens and Fields" (2017), 78 *S.C.L.R.* (2d) 357, at p. 365).

[75] ...insofar as the public benefit test would retroactively deprive the appellants of their possessory title, it would defeat the legislature's clear policy choice to preserve matured possessory claims. It would seem most unfair to deny the appellants' possessory claim on the basis of a common law test that emerged *after* s. 15 of the *RPLA* extinguished the City's title to the disputed land...

[76] The City, like the majority of the Court of Appeal, contends that the public benefit test does not undermine legislative intent as it operates as a rebuttable presumption rather than an immunity, meaning that the acquisition of possessory title remains possible (see C.A. reasons, at paras. 62 and 69-70). I disagree with this proposition and agree with the appellants that the effect of the Court of Appeal's decision is not appreciably different from an immunity (A.F., at para. 63).

[77] Under the test elaborated by the majority of the Court of Appeal, a possessory claim would only succeed if the municipality explicitly consented to the possession, that is "by acknowledging a private landowner's adverse possession and consenting to a transfer of title . . . or simply by a municipality acquiescing to adverse

possession, where it has clear knowledge of its parkland property being adversely possessed by private landowners, and agreeing to take no steps to interfere with that adverse possession" (para. 33). Such a test is irreconcilable with the general principles of adverse possession and effectively ousts the legislation's operation. Requiring clear knowledge and an agreement on the part of the municipality not to disrupt the appellants' possession in effect requires that they have permission to adversely possess, and yet one cannot adversely possess *with permission* (Kaplinsky, Lavoie and Thomson, at p. 172; *Teis*, at pp. 221-22; *Armstrong v. Moore*, 2020 ONCA 49, 15 R.P.R. (6th) 200, at paras. 21-24). If acknowledgement or acquiescence is required, little role would be left for the remaining requirements of adverse possession, as a transfer of title in such cases would in substance be consensual.

...

[79] Given my conclusions on statutory interpretation, it is unnecessary to further address the substantive merits of a public benefit test, as it has been discussed in various lower court decisions (see *Waugh*; *Woychyshyn*; *Richard*; *Oro-Medonte*). However, I highlight briefly the unsettled foundation of the test. The appellants are correct to note that in the majority of cases where the test was advanced to defeat a possessory claim, the claim failed on other grounds (A.F., at para. 52).

...

[81] Further, a review of these lower court decisions reveals that the public benefit test largely stems from two sources, the first of which was the *obiter* commentary of Laskin J.A. in *Teis*: "Whether, short of statutory reform, the protection against adverse possession afforded to municipal streets and highways should be extended to municipal land used for public parks, I leave to a case where the parties squarely raise the issue" (p. 229). Justice Laskin recognized the potential relevance of statute in this area and did not decide the issue.

...

[83] Given the statutory scheme and existing common law described above, the application judge's recognition of a novel retroactive blanket immunity in favour of municipal parkland had the effect of undermining legislative intent. Despite the majority of the Court of Appeal's attempt to frame its decision in a different light, by characterizing the public benefit test as a rebuttable presumption (at para. 62), I conclude that it also improperly resorted to expanding the common law where the legislature, having turned its mind to those public lands that would be exempt from the operation of the *RPLA*, clearly intended to preserve matured possessory claims. As this Court stated in *Zeitel v. Ellscheid*, [1994] 2 S.C.R. 142, a case also involving a claim to possessory title, "[i]t is beyond the power of a court to interfere in a carefully crafted legislative scheme merely because it does not approve of the result produced by a statute in a particular case" (p. 152).

Recognizing a novel common law immunity for municipal parkland from matured possessory claims cannot be reconciled with the relevant statutory scheme…

Dissenting reasons

Writing in dissent (with Karakatsanis, Martin, Kasirer and Jamal JJ. concurring), Justice Kasirer emphasized the public interest in preserving public access to parkland:

…

[91] Awarding the land to the appellants would deprive the community of this part of the park in perpetuity. The public would make a more socially valuable use of this land over time — postage stamp or not — than could any one person: that is the very principle of public use or benefit upon which parkland is predicated. For municipal parkland, that public interest is, if anything, amplified in a densely populated urban setting like the City. While I respectfully disagree with the dissenting judge's proposed conclusion in this case, I share his view that Toronto parkland is "vital to maintaining one's sanity and socializing with one's neighbours in an urban sea of steel and glass" (C.A. reasons, at para. 77). Moreover, there is no disagreeing with the fact, as the majority judges below observed, that Toronto's publicly accessible green space has "significant natural heritage" and "recreational" value that benefits the public (para. 3). While current land titles legislation precludes new adverse possession claims on registered land, granting the appellants' application based on their supposedly acquired rights would deprive the public of this benefit. And the cost to the City of monitoring 8,000 hectares of municipal property scattered over 1,500 parks — for that is what the record reveals is the land designated for this purpose — against potentially thousands of similar postage-stamp encroachments across hundreds of Toronto parks — would be prohibitive.

…

[Justice Kasirer disagreed with the majority finding that, by omitting to create an exemption for parkland, the drafters of the *RPLA* intended to treat municipal parkland as though it were private land for the purpose of the doctrine of adverse possession, and continued:]

[93] …The *RPLA* is not a "complete code" for adverse possession of land, given that the measure of adverse possession is itself a common law test, sitting outside of the rules of limitation in the statute. However, I recognize that, complete code or not, the *RPLA* could oust the common law rule on public land if the legislature chose to do so expressly or by necessary implication (R. v. Basque, 2023 SCC 18, at para. 40, citing R. v. D.L.W., 2016 SCC 22, [2016] 1 S.C.R. 402, at para. 21, per Cromwell J.). Legislative intent must, of course, be respected. But under the legislation, the common law relating to municipal land presumptively held for the use or benefit of the public has in this regard been left untouched by the legislature.

[94] Because it has not been ousted by statute, this common law rule relating to municipal parkland thus applies to the disputed land in this case.

[95] The disputed land has been designated as parkland during the whole of the relevant period. While the appellants' fence was recorded on the 1971 survey map, this does not, to my mind, meet the high bar required to overturn the presumption of public use. In addition, despite a 2007 survey map attached to a City by-law noting the fence, the City's dealings with a neighbour with a similar problem and the payment of certain property taxes on the land as would an owner, all these facts arose after the land was registered under the *Land Titles Act*, R.S.O. 1990, c. L.5 ("*LTA*"), which precludes adverse possession claims from maturing after that date. Those events cannot constitute knowledge, actual or constructive, by the public authority to the claimed adverse possession.

[96] The appellants' pre-existing fence — and the fences abutting on parkland across the City — may preclude public use of the land, but does not change the park's vocation to the benefit of the public, nor does it give rise to a settled expectation that the City acquiesced to the appellants' possession. This understanding of the public benefit presumption against adverse possession of municipal parkland visits no unfairness on the appellants in this case. The appellants cannot say that they have a valid adverse claim based on their exclusive possession when that exclusivity is a consequence of the very fence that excluded the public from use of land designated for community benefit. And because the principle explained by the majority of the Court of Appeal was not "new law" but simply a plainer articulation of a longstanding common law rule, the appellants cannot say that their claim had "crystallized" as a mature right to title before a notional change in the law.

...

[the dissenting judges characterized the Court of Appeal's expression of a public benefit test as follows:]

[114] In distilling a general rule from Ontario cases bearing on adverse possession claims on public land present in the common law as it stood, Sossin J.A. was indeed reasoning inductively. Adeptly done in this instance, this exercise is not otherwise remarkable as a feature of common law methodology. Reasoning inductively is a technique that is "characteristic of English law", as Professor C. K. Allen once wrote, by which a judge "works forward from the particular to the general" (*Law in the Making* (2nd ed. 1930), at p. 110). Justice Sossin did not break with settled law or even fill an identified gap left by statute in the law. Instead, he made sense of a series of disparate cases that have said similar things in different ways: municipal land, by reason of its nature and vocation, is not subject to acquisition by adverse possession in the same way as land held by a private owner. I respectfully disagree with the view of the dissenting judge who saw this as transgressing a judge's proper role: Sossin J.A. simply synthetically reframed the existing

law, rather than crafting a new rule, as part of an exercise of the proper judicial function that was, in Professor Allen's words, an "effort . . . to find the law, not to manufacture it" (p. 184).

...

[and the dissenting judges disagreed that the *RPLA*'s omission of a specific exemption applying to municipal parkland was evidence of an intention to displace the application of common law:]

[164] ...I respectfully disagree with the view that the legislative evolution of s. 16 reflects a deliberate and concerted process to displace or oust the common law as it applies to municipal parkland. There is no express direction one way or the other, and I see no sign of a legislative design from which to infer that silence in respect of municipal parkland reflects a deliberate intention. While the legislature may have introduced exemptions for specific categories of land — such as Crown waste land, vacant land, and public highways — over time, nothing suggests that the legislature was simultaneously seeking to exclude municipal public land from any common law protections. It simply did not provide statutory immunity to such lands.

[165] Section 16 is best understood as a provision that introduced specific statutory exemptions that continue to operate within the broader framework of the common law. As the intervener City of Ottawa notes, s. 16 went beyond the common law in some respects, most notably by exempting vacant Crown land and unopened road allowances from claims for possessory title, but there is no indication that it was intended to displace other settled doctrines, such as dedication (I.F., at paras. 24-25). This is consistent with the legal commentary suggesting that, where legislation does not expressly displace common law principles, it should be read in light of the legal framework within which it was enacted (Sullivan, at §§ 15.05[1] and 17.01.Pt1[4]-[5]).

[166] Where legislation is silent, an intention to displace existing common law principles cannot be presumed, particularly in the absence of clear statutory language or a formulation that, by necessary implication, suggests otherwise (Sullivan, at § 15.05[1]; see *Basque*, at para. 49, citing *D.L.W.*, at para. 21; see also *Heritage Capital Corp. v. Equitable Trust Co.*, 2016 SCC 19, [2016] 1 S.C.R. 306, at para. 36). This understanding aligns with the view, reflected in both judicial and academic commentary, that the *RPLA* operates in tandem with, and does not preclude, the continued operation of common law principles. Whether the omission of municipal parkland reflects legislative intention or historical contingency is a question that must be approached through that broader lens...