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## Squatter's rights no defence

The Ontario Court of Appeal has written what may well be the final chapter in a case involving a property owner who attempted to enlarge her property by improperly appropriating a chunk of her neighbour's land. In fact, the trial judge called her actions "fraudulent, wilful and reprehensible," and awarded the neighbour \$10,000 in punitive damages, plus costs of about \$50,000.

The appeal court dismissed the appeal, upheld the trial decision, and added another \$12,000 in costs to the amounts awarded by the trial judge.

The defendant, Tracey Murray, owns a house on King St., in Caledon. She was part of a group of owners who bought the house in 1990 and eventually she became the sole owner.

Back in 1981, when title to the house lot was severed from the farm property, the owners constructed a fence to contain their horses. The fence was not on the actual boundary between the house and the rest of the farm, but three feet into the farm property. Since the owners of the house also owned the farm, they didn't care where the fence was.

With the fence in the wrong position, the land belonging to the house on King St. appears larger than it is. The disputed portion is triangular in shape, and contains about one-third an acre.

The house was sold in 1984 and the farm in 1998, but the fence was left where it was in the wrong position. Today, Raghbir Singh Lehal and his wife, Devinder Kaur Lehal, own the 40-hectare farm, and Murray owns the house on the one-half hectare parcel.

When Murray bought the house, she received a copy of the survey and was aware of the legal boundaries of the land and that the fence was not on the deed line. Nevertheless, she continued to treat the triangle between the deed line and the old fence as her own. She built a new home on the foundations of the original one, and enlarged the underground septic bed so that it extended beyond the deed line.

When the Murrays applied to the Town of Caledon in 1997 for a building permit for a new four-car garage, they submitted a site plan showing where the garage would be located. When the garage was completed, however, it was not situated where the plans showed it would be. In fact, part of the garage sits on land owned by the Lehals.

After buying the farm, the Lehals tried to erect a fence along the legal lot line but Murray's husband twice threatened to remove Raghbir Lehal from the property, by force if necessary. The Lehals sued Murray for damages and Murray counterclaimed for a declaration that she had acquired title to the disputed triangle by adverse possession a legal term equivalent to what is commonly known as squatter's rights.

Under the Limitations Act in Ontario, an owner's title to land can be lost if another person is in possession of it for a period of 10 years. During that time, the person claiming the disputed land must meet three conditions: They must have had actual exclusive, open, and visible possession; had the intention to exclude the true owner from possession; and effectively excluded the true owner from possession.

Unless a claimant meets these three tests, the claim to possessory title fails.

At trial, Justice Francine Van Melle found that Murray's husband had "extended the fence...knowing full well that he was installing a fence on property that did not belong to him."

She said the course of conduct by the defendant and her husband was "apparently designed to appropriate property belonging to someone else."

When I first wrote about this case after the trial decision (Title Page, Jan. 5, 2002, at <http://www.aaron.ca>), I quoted Gavin Tighe, of Toronto's Gardiner Roberts, who successfully represented the Lehals. He told me the court, in a very unusual order for this type of case, ordered Murray to remove all of the encroachments on the Lehal property. These included surveyor stakes outlining the property Murray claimed. Tighe told me that the costs of the court case to both sides ran into six figures and exceeded by many times the value of the land involved.

Now a three-judge panel of the Court of Appeal has ruled that there was no basis to interfere with the trial decision, and that Murray did not acquire title to the disputed land by adverse possession.

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