

The End of Adverse Possession?

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Report Commented On: Alberta Law Reform Commission, [*Adverse Possession and Lasting Improvements to Wrong Land, Report for Discussion No 33 \(July 2019\)*](#)

Squatters. Land rustlers. Property pirates.

No matter how you describe it, the law of adverse possession suffers from a public perception problem. Many Albertans believe that adverse possession is an affront to their real property rights, or that it simply shouldn't exist within a Torrens land titles system. Despite the fact that adverse possession has existed in Alberta since the province's inception – and that successful cases are relatively rare – the idea that adverse possession rewards a deliberate trespasser, and penalizes a registered owner who is forced to give up some of their titled land without any compensation, continues to persist.

In October 2017, the Alberta Law Reform Institute (ALRI) was asked by the government of Alberta to review the law of adverse possession, including how best to abolish it. Our current project builds on ALRI's previous work in this area, leading to our Report for Discussion #33, [*Adverse Possession and Lasting Improvements to Wrong Land*](#).

The Report for Discussion attempts to answer this central question: if adverse possession were to be abolished in Alberta, then how would we ensure that the underlying disputes between registered owners and occupiers are resolved efficiently and effectively? Our proposed recommendations include the following:

- 1. No title or interest in land may be acquired by adverse possession after the proposed amendments come into force.**

Currently, a person who has occupied another's land for at least 10 years can bring a claim to quiet title through adverse possession. The occupation must be exclusive, open, notorious, and continuous.

Abolishing adverse possession would not affect successful claims to quiet title that have already been granted. Pending claims – those actions commenced before the amendments come into force – would also be allowed to proceed. But if an occupier had a potential adverse possession claim and did not commence an action before the amendments came into force, then the claim could not be brought.

- 2. Claims to recover possession of real property can be brought at any time.**

Currently, claims to recover possession of land are subject to a 10-year limitation period that runs from the time the registered owner is dispossessed of the land. Effectively abolishing adverse possession requires that such claims can be brought at any time, meaning that they ought to be exempted from limitation periods altogether.

We recognize that excluding claims to recover possession of land from the *Limitations Act*, [RSA 2000, c L-12](#), seems, at least initially, a bit unusual. However, it is our position that exempting such claims from limitations – particularly when considered in the context of a land registration system that provides conclusive evidence of ownership – is not inconsistent with the goals of limitations legislation.

3. Claims regarding lasting improvements made to the wrong land under section 69 of the *Law of Property Act* can be brought at any time.

If the goal of these reforms is to balance the equities between a registered owner – who can bring a claim to recover possession of land at any time – and an occupier who may have spent a great deal of time and resources to build a lasting improvement on the wrong land by honest mistake, then a claim under section 69 of the *Law of Property Act*, [RSA 2000, c L-7](#), should also be exempt from limitations legislation. Currently, these claims are also subject to a 10-year limitation period – although the limitation period never seems to run for reasons discussed in the Report.

4. Section 69 of the *Law of Property Act* should be amended to ensure that occupiers who did not make the lasting improvement have the same range of remedies as the person who made the improvement.

In our review, we determined that section 69 of the *Law of Property Act* doesn't require amendments in terms of what constitutes a lasting improvement, the nature or quality of the mistaken belief, or the broad range of available remedies. However, section 69 does require some additional clarification regarding who can bring a claim, particularly when the claimant is not the person who made the original improvement. It is our position that a subsequent occupier should be allowed to bring a claim regarding a lasting improvement, and that they should have access to the same range of remedies as the original improver.

The proposed recommendations would affect the *Limitations Act*, the *Law of Property Act*, and the *Land Titles Act*, [RSA 2000, c L-4](#). They would balance the equities between a registered owner seeking to recover possession of land, and an occupier who has made, maintained, or benefitted from a lasting improvement on land they believed they rightfully owned. Claims based on deliberate and knowing trespass would be excluded, as would claims regarding temporary encroachments or mere use of lands. Section 69 of the *Law of Property Act* would be the primary dispute resolution mechanism in the absence of adverse possession, thus allowing courts to craft more flexible solutions that take into account the specific circumstances of each individual case.

Early consultation with the Canadian Bar Association real estate sections in Edmonton and Calgary indicated support for these recommendations. We invite members of the profession – particularly those who have had experience with adverse possession claims – to fill out a short, six-question

survey on the [ALRI website](#). Consultation results will be incorporated into our final recommendations, which will then be presented to the Alberta government.

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