

CANADA / JUDGMENT

Re Victoria (City)

2020 BCSC 1942

COURT

Supreme Court of British Columbia

DECIDED

9 December 2020

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2020 BCSC 1942 Re Victoria (City)

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Re Victoria (City),

2020 BCSC 1942

Date: 20201209

Docket: S202663

Registry: Victoria

Re: Land Title Inquiry Act, RSBC 1996, c 251 and those certain parcels of land in the City of Victoria, British Columbia shown on unregistered Explanatory Plan EPP1273 and legally described as PID 024-745-961, East 38 Feet of Lot A, Section 57, Spring Ridge Victoria City, Plan 123, See DD10814; PID 025-384-368, West Half of Lot 5, Section 46, Spring Ridge, Victoria City, Plan 347; PID 010-482-997, South 10 Feet of the North 20 Feet of the West 88 Feet of Section 58, Spring Ridge, Victoria City; and that part of Vining Street from Fernwood Road Westerly to the Western Boundary of Sections 49 and 55

Before: The Honourable Mr. Justice Steeves

Reasons for Judgment

Counsel for the Petitioner, the Corporation of the City of Victoria:

K. Crawford

Place and Date of Hearing:

Victoria, B.C.

October 13, 2020

Place and Date of Judgment:

Victoria, B.C.

December 9, 2020

Table of Contents

Paragraph

Range

A. INTRODUCTION

[1] - [7]

B. BACKGROUND

[8] - [33]

(a) The Adamson parcel

[18] - [23]

(b) The Michell parcel

[24] - [29]

(c) The Goodacre parcel

[30] - [33]

C. ANALYSIS

[34] - [62]

(a) Land Title Inquiry Act

[42] - [46]

(b) Land Title Act

[47] - [50]

(c) Adverse possession and limitation periods

[51] - [62]

D. SUMMARY & CONCLUSION

[63] - [72]

A. INTRODUCTION

- [1] Many people might think that the doctrine of adverse possession (known colloquially as "squatting") existed historically but it is no longer valid. They would be correct except in the perhaps unique circumstances of this case.
- [2] The petitioner, the City of Victoria, applies pursuant to s. 2 of the Land Title Inquiry Act, R.S.B.C. 1996, c. 251 ("LTIA") and on the basis of adverse possession for a declaration that it has good safe holding and marketable title in fee simple for three parcels of land.
- [3] The three parcels are part of a group of parcels that were assembled in 1910 for the construction of the Victoria High School (School District No. 61). The three parcels of lands are:

EAST 38 FEET OF LOT A, SECTION 57, SPRING RIDGE,

VICTORIA CITY, PLAN 123, SEE DD10814

PID 024-745-961 (the "Adamson" parcel);

WEST HALF OF LOT 5, SECTION 46, SPRING RIDGE,

VICTORIA CITY, PLAN 347

PID 025-384-368 (the "Michell" parcel"); and

SOUTH 10 FEET OF THE NORTH 20 FEET OF THE

WEST 88 FEET OF SECTION 58, SPRING RIDGE,

VICTORIA CITY

PID 010-482-997 (the "Goodacre" parcel").

- [4] As will be seen, there is historical evidence that the three parcels were transferred or were intended to be transferred to the petitioner in 1910 for the construction of the Victoria High School but the transfers of the titles were never perfected. Nonetheless, the construction of the school proceeded on all of the assembled lands including the three parcels of land at issue here. The school has continued in operation since 1910 using all of the lands (and the petitioner is now considering a major redevelopment).
- [5] The petitioner says it has met the requirements for adverse possession in the LTIA, the Land Title Act, R.S.B.C. 1996, c. 250 ("LTA") and under common law. Specifically it has had undisturbed and notorious possession of the three parcels since before July 1, 1975 and for a period exceeding 60 years.

- [6] The original petition included a fourth parcel of land, the "Vining Parcel", but I allowed an application by the petitioner to adjourn that matter generally.
- [7] Counsel for the petitioner appeared unopposed because it was not possible to find anyone with an interest in the three parcels of land (adverse in interest or otherwise). The petition and supporting documents were served on the Attorney General of British Columbia and on School District No. 61. Neither has expressed an intention to participate in the hearing of this Petition, and no responses have been filed. There is no evidence that the subject lands have escheated to the Crown.

B. BACKGROUND

- [8] The petitioner was originally incorporated under the Victoria Municipal Ordinance, 1867, and is currently a municipality under the Local Government Act, R.S.B.C. 2015, c. 1 and the Community Charter, S.B.C. 2003, c. 26.
- [9] The lands at issue here are three parcels that are a part of a large number of parcels assembled for the construction of the Victoria High School, the oldest high school in Western Canada. The civic address is 1260 Grant Street, City of Victoria. On or about 1910 the petitioner started to assemble the lands necessary for the construction of the school, the school was constructed and the land has been used for the school ever since.
- [10] On August 29, 1910 the petitioner adopted Bylaw No. 729. It granted "the corporate lands at Spring Ridge also a sum of \$13,000 in aid of the purchase for the School Board of abutting lands, the whole to be used as and for a High School Site "
- [11] On November 14, 1910, the petitioner adopted Bylaw No. 749, the High School Expropriation Bylaw, 1910. It approved and confirmed an agreement between the petitioner and The Board of School Trustees of Victoria in which the petitioner agreed to expropriate certain lands in the Spring Ridge area for the purposes of the new Victoria High School. It also conveyed to the Victoria School Board all of the lands owned by the petitioner in the block bounded by Gladstone Avenue, Fernwood Road, Grant Street and Chambers Street. The authority for the power of expropriation was in the Municipal Act, S.B.C. 1906, c. 32 or the Municipal Act, R.S.B.C. 1911, c. 170.
- [12] The petitioner never transferred title to the lands referred to in Bylaw No. 749 to the School Board. Instead, there was a reorganization of the governance structure of British Columbia schools in 1946 through the creation of new school districts, including the Victoria School District. As a result of this reorganization, property that was previously vested in the Victoria School Board became vested in the City to be used and administered for school purposes. The petitioner has maintained continuous possession of the subject parcels of land since that time for the purposes of the high school site.

- [13] In 1910, under Bylaw No. 749, the petitioner charged its solicitor with acquiring the parcels of land necessary for construction of the high school. Instead of expropriating the lands as permitted under the bylaw he successfully negotiated the purchase of the parcels of land. The transfer of title in favour of the petitioner was perfected for all parcels except the three parcels that are the subject of this petition.
- [14] The records of the petitioner show that the three subject parcels are owned by the petitioner. However, a review of records in the Land Title Office ("LTO") (among other records) demonstrates that the petitioner did not acquire registered title in the three parcels of land. The objective of the current application is to transfer the titles to the petitioner.
- [15] The evidence in this petition is the result of recent research of historical records. For example, Peter Rantucci is the current Head of Strategic Real Estate for the petitioner. In his first affidavit, filed August 17, 2020, Mr. Rantucci explained that he reviewed a number of documents from the archives of the petitioner including committee reports, correspondence from 1910 between the City Solicitor and others as well as other correspondence and documents. He also searched records at the LTO going back to 1898. Historical research was also undertaken with regards to the individuals associated with the parcels of land at issue, including searching for any heirs. This included searches at the Royal BC Museum where probate records for the City of Victoria are located.
- [16] The petitioner has complied with a number of procedural requirements in the LTIA by means of appendices to its written argument in the body of that document and in affidavits. The specific provisions that the LTIA requires to be addressed are "Application proceedings" (s. 4); "Affidavit of applicant" (s. 5); "Certificate of counsel" (s. 6); "Registration in land title office" (s. 7); and some evidentiary requirements (ss. 8 and 9).
- [17] I set out here the specific histories of the three subject parcels of land, taken from the historical documents available to the petitioner and tendered in evidence by means of affidavits. Again, all three parcels were subject to Bylaw No. 749 and were to be expropriated, but the City Solicitor negotiated their transfer to the petitioner.
- (a) The Adamson parcel
- [18] A certificate of title dated August 10, 2020 lists the registered owner of this property as "William Adamson" with no address. It is a small piece of land (relative to the school property as a whole) on the northwest side of the school, on Gladstone Street. The legal description is above.
- [19] Absolute title to the Adamson land was registered in the LTO in Mr. Adamson's name in 1909, and was converted by the Registrar of Land Titles to indefeasible title on April 13, 2000. The 1909 transfer to Mr. Adamson is the last transfer of the Adamson Parcel which the LTO has on record, and the April 13, 2000 title is the first indefeasible title registered with respect to this Parcel. As will be seen, the fact of being the first indefeasible title is significant for the purposes of adverse possession under the LTA.

- [20] The land was previously owned by a number of people including Catherine Palmer Brown. There are no records establishing that the land was actually transferred to Mr. Adamson but there are records that demonstrate that the petitioner approved the sale of the land to him from Ms. Brown.
- [21] According to the affidavit evidence, the City Solicitor for the petitioner inquired with Mr. Adamson on November 26, 1910 about the sale of the Adamson Parcel, identified as the East half of Lot A, Section 57. There was a separate inquiry into Ms. Brown apparently on the assumption that she was the owner. Negotiations took place between the solicitor and the husband of Ms. Brown for the sale of the parcel (and perhaps other land) including the outstanding mortgage amount and payment of \$5,362.00.
- [22] At this point the petitioner believed that it was the registered owner of the parcel and there is an executed Deed of Conveyance dated December 13, 1910, from Ms. Brown to the petitioner. However, the records in the LTO continue to show Mr. Adamson as the registered owner. The petitioner believes that the City Solicitor did not follow-up on the matter in order to perfect the transfer of the title to the petitioner.
- [23] On the basis of historical records, Mr. Adamson appears to have been born on July 11, 1889. He died testate on July 10, 1977 and he was a retired businessman. His last address was on Beach Drive in Victoria and he is listed at that address on a List of Electors for the 1965 federal election.
- (b) The Michell parcel
- [24] Thomas Michell was registered as the owner of absolute title to this parcel in 1907. This was converted to indefeasible title on February 3, 2003. The legal description is above.
- [25] The petitioner's records record the City Solicitor writing to Mr. Michell on November 26, 1910 to propose negotiations for the purchase of Lot 5, Section 46. Mr. Rantucci deposes that the file is not clear but it appears that the solicitor treated Mr. Michell as the owner of the East Half of Lot 5 only. It also appears that a Catharine Margaret Jenkins was treated as the owner of the West Half of Lot 5.
- [26] Negotiations apparently concluded successfully and the petitioner authorized payments to Mr. Michell for part of Lot 5 and to Ms. Jenkins for the West Half of Lot 5. The petitioner registered a Deed of Conveyance for the East Part of Lot 5 from Mr. Michell to the petitioner and this was registered in the LTO. Another Deed of Conveyance for the West Part of Lot 4 and the West Part of Lot 5 from Ms. Jenkins to the petitioner was done on December 31, 1910.

- [27] Mr. Rantucci deposes that, despite the inclusion of the West Half of Lot 5 in the conveyance (from Ms. Jenkins to the petitioner), it appears that the LTO recognized only the transfer of the West Half of Lot 4. That is, the LTO did not recognize the transfer of the West Half of Lot 5 and no record of a transfer of that parcel from Mr. Michell to Ms. Jenkins has been located in the records of the LTO.
- [28] The City Solicitor subsequently reported to the petitioner that the purchase of the Michell parcel had been completed. Thereafter the petitioner treated the Michell parcel as having been lawfully acquired and this is reflected in the petitioner's tax rolls in 1911. The records do not record that the City Solicitor followed up in order to perfect the transfer of the property to the petitioner.
- [29] The petitioner has located historical records relating to a Thomas Michell who appears to have been the registered property owner on title for the subject parcel. The primary records indicate that Mr. Michell died intestate on May 29, 1916 at the age of 84 with six heirs, his children. He was retired at the time.
- (c) The Goodacre parcel
- [30] Absolute title to this parcel was registered in the names of Lawrence Goodacre and Elizabeth Sketchley Stafford in 1876 and 1893, respectively. Each had an undivided one-half interest. The first indefeasible fee simple title was registered by the LTO on April 14, 2000. The legal title is above.
- [31] On November 28, 1910 the City Solicitor for the petitioner wrote to Mr. Goodacre to inquire about the purchase of part of Section 58 for school purposes. Mr. Rantucci deposes that, if an agreement for the acquisition of this parcel was ever made, or if a Deed conveying title was ever executed or deposited in the LTO, the records of the petitioner do not reflect that.
- [32] The petitioner has possessed this parcel of land since about 1910, but it does not have any evidence to demonstrate that a conveyance of title was ever executed or registered.
- [33] Lawrence Goodacre died testate on February 6, 1925 in the City of Victoria. He was survived by at least three children. The other owner of the undivided half-interest of the parcel, Ms. Stafford, changed her name to Elizabeth Sketchley Pope. Ms. Sketchley Pope was born on September 24, 1871 in Victoria. She died testate in Vancouver, British Columbia, on December 8, 1964 with at least three surviving children.

C. ANALYSIS

- [34] As above, the petitioner seeks good safe holding and marketable title in fee simple to the Adamson parcel, the Michell parcel and the Goodacre parcel. The primary basis of the petition is the doctrine of adverse possession.

- [35] I note there is something of an issue with regards to expropriation, perhaps only a historical one. As above, in 1910 the petitioner passed Bylaw No. 729 which authorized it to purchase land at Spring Ridge in Victoria for the purposes of building what is now the Victoria High School. It also passed Bylaw No. 749 which authorized it to expropriate the land for the school. Instead of using expropriation the petitioner negotiated the sale of the different parcels of land to assemble the land necessary for the school. All went well except for the perfecting of title in the name of the petitioner for the three parcels of land that are the subject of this petition.
- [36] In the petition itself (filed August 17, 2020) the Legal Basis relies on the possessory interest it obtained under s. 53(146) of the 1906 Municipal Act and the expropriation authorized by Bylaw No. 749. It is acknowledged that the legal title was never perfected for the three parcels at issue but it is submitted that the petitioner is "the rightful owner" of the parcels. Acquiring title by means of adverse title is then submitted as an alternative argument.
- [37] In this petition the focus of the petitioner's written and oral argument was on adverse possession. In my view that is appropriate because expropriation is not the most direct means of addressing the problem here: the absence of perfected titles. I am proceeding on that basis and I will not be addressing the issue of expropriation.
- [38] As another preliminary matter, consideration of a petition seeking adverse possession requires the application of two statutes, the LTIA and the LTA. It also requires the application of the common law elements of adverse possession.
- [39] The relationship between the LTIA and the LTA for the purposes of a claim of adverse possession is set out in s. 171 of the LTA:

Adverse possession

171. An application founded in whole or in part on adverse possession must not be accepted by the registrar unless permitted by this Act and supported by a declaration of title under the Land Title Inquiry Act.
- [40] In short, before adverse possession is accepted by the LTO a declaration is required under the LTIA. That is what the petitioner seeks here.
- [41] With the above in mind, I will be addressing the following issues:
- (a) The Land Title Inquiry Act
 - (b) The Land Title Act
 - (c) Adverse possession and limitation periods
 - (d) Summary & Conclusion
 - (a) Land Title Inquiry Act

[42] The LTIA deals with the "quieting" of title and, indeed, it was formerly called the Quieting Titles Act, R.S.B.C. 1960, c. 327 (*Mowatt v. British Columbia (Attorney General)*, 2014 BCSC 988, at para. 7, rev'd 2016 BCCA 113, aff'd 2017 SCC 8). Its broad purpose is to describe the requirements for an application to the court for an investigation of unquiet title when there are issues such as unregistered title and questions about the validity of title (LTIA, s. 2; *Land Title Practice Manual*, 3rd ed., looseleaf (Vancouver, BC: Continuing Legal Education Society of British Columbia, 2019) [CLE Land Title Practice Manual], vol. 2, at §43.2, 1999 version cited in *Thomson v. Eadie*, 2006 BCSC 868, at para. 74).

[43] This is described in s. 1 of the LTIA as follows:

Right to judicial investigation of fee simple title

1 On petition to the Supreme Court, a person claiming to be the owner of an estate in fee simple in land or a trustee for the sale of the fee simple is entitled, whether the person has the legal estate or not, and whether the person's title is subject or not to any charges or encumbrances to have the title judicially investigated and its validity declared by the court.

[44] Section 30 of the LTIA makes it clear that the intention of the legislation is to effect simple solutions to questions of title:

Construction of Act

30 This Act must be construed and carried out to facilitate, as much as possible, the obtaining of perfect titles by the owners of estates in land, through the simplest machinery, at the smallest expense and in the shortest time, consistent with reasonable prudence in reference to the rights or claims of other persons.

[45] A number of sections set out other evidentiary and procedural requirements for an application under the LTIA:

- (a) All taxes are to have been paid before a declaration of title is granted (s. 10). There is no issue of unpaid taxes in the case of the three subject parcels of land because land vested in or held by a municipality is exempt from taxation under section 220(1)(b) of the Community Charter.
- (b) Reasonable opportunities to produce further evidence must be given by the court if the court is not satisfied with the evidence of title produced at first instance (s. 11). The record produced by the petitioner is adequate for deciding the issues in the petition, bearing in mind the state of historical records after 110 years. The petitioner has gone to considerable lengths to research and explain the historical record as it is. I add that the petitioner appeared unopposed and counsel readily accepted that her obligation of forthrightness was akin to that of counsel appearing in an ex parte matter.

- (c) A person with an adverse interest to the applicant's petition may apply at any time before the declaration is granted, to file a short statement of claim and affidavit (s. 16). There is no such application and there have been attempts to find a party adverse in interest.
 - (d) Where there is a contest, the court may decide the question on the evidence before it, direct any issue to be tried by a jury or refer any matter to a usual mode of investigation or one that is expedient (s. 17). I see no reason to direct that this matter be decided by a jury or other form of investigation.
 - (e) A proceeding under the LTIA is not invalid because of any informality, technical irregularity or mistake not affecting the substantial justice of the proceeding (s. 26). This is not an issue in this petition.
 - (f) A number of other provisions set out different presumptions, required forms, and registration requirements (ss. 22, 27 and 30). None of these are applicable.
- [46] Overall, the object of the LTIA is "to resolve and remediate questions of title prudently, practically, efficiently and fairly" by the application of "relaxed evidentiary standards" (Allen v. British Columbia (Attorney General), 2019 BCSC 292, at paras. 13, 23).
- (b) Land Title Act
- [47] With respect to adverse possession, ss. 23(2), (3) and (4) of the LTA are of interest:

Effect of indefeasible title

- (2) An indefeasible title, as long as it remains in force and uncanceled, is conclusive evidence at law and in equity, as against the Crown and all other persons, that the person named in the title as registered owner is indefeasibly entitled to an estate in fee simple to the land described in the indefeasible title, subject to the following:
 - (a) the subsisting conditions, provisos, restrictions, exceptions and reservations, including royalties, contained in the original grant or contained in any other grant or disposition from the Crown;
- (3) After an indefeasible title is registered, a title adverse to or in derogation of the title of the registered owner is not acquired by length of possession.
- (4) Despite subsection (3), in the case only of the first indefeasible title registered, it is void against the title of a person adversely in actual possession of and rightly entitled to the land included in the indefeasible title at the time registration was applied for and who continues in possession.

- [48] As can be seen, s. 23(2) confirms the well-known validity and power of indefeasible title and s. 23(3) states that, after indefeasible title is registered, adverse title cannot be acquired by length of possession. An older decision has queried what "could be less susceptible of being quietened than a title which is good against all the world?" (Re Quieting of Titles Act, [1967] 60 W.W.R. 119 (B.C.S.C.), at para. 5).
- [49] However, despite s. 23(3) and significantly for the purposes of the subject petition, s. 23(4) describes when there can be valid adverse possession. Existing title may be void where there is a person adversely in actual possession of the property and who continues in possession and makes an application. The length of continuing possession (commencing before July 1, 1975) is discussed below.
- [50] It is also significant that s. 23(4) applies only to the "first indefeasible title." In the circumstances here, the current title of the three parcels of land were converted for the first time to indefeasible title. In the case of the Adamson parcel this took place in April 2000, for the Michell parcel it occurred in February 2003 and for the Goodacre parcel it occurred in April 2000. Prior to these conversions the owners held "absolute title" under an absolute title system used before the adoption of the Torrens system. I note that some of the authorities and commentaries misstate this qualification in s. 23(4) of the LTA. For example, in the CLE Land Title Practice Manual the statement is that the LTIA "does not address inquiries about indefeasible titles" (§43.2). In fact, as above, the LTIA does address inquiries about a first indefeasible title. The point is that second and later indefeasible titles could not be displaced by adverse possession under the LTA.
- (c) Adverse possession and limitation periods
- [51] As above the LTIA and the LTA set out the procedures for an application of adverse possession. I turn to the common law doctrine of adverse possession itself.
- [52] As will be seen, the time periods set out in the applicable limitation periods are key to any claim of adverse possession and, indeed, the doctrine of adverse possession flows from limitation statutes (Re Land Title Inquiry Act and Canadian Pacific Railway Company, 2002 BCSC 1041 [Canadian Pacific Railway], at para. 47). That is, after the limitation periods have expired the "rightful" owner loses title to the adverse possessor.
- [53] The Supreme Court of Canada has described the doctrine of adverse possession in the following terms (Nelson (City) v. Mowatt, 2017 SCC 8 [Mowatt]):
- [17] Adverse possession is a long-standing common law device by which the right of the prior possessor of land, typically the holder of registered title and therefore sometimes referred to as the "true owner", may be displaced by a trespasser whose possession of the land goes unchallenged for a prescribed period of time. From as early as The Limitation Act, 1623 (Eng.), 21 Jas. 1, c. 16, the prior possessor's right to recover possession was curtailed by limitation periods. This rule allowing for the later possessor acquiring ownership of land after the passage of a certain time was codified in English law by the Real Property

Limitation Act, 1833 (U.K.), 3 & 4 Will. 4, c. 27, which was received into the law of British Columbia on November 19, 1858 by operation of what is now s. 2 of the Law and Equity Act, R.S.B.C. 1996, c. 253. Since then, British Columbia's successive limitation statutes, including the provisions which I have already canvassed and which govern the Mowatts' claim, have effectively reproduced the 1833 English statutory codification of adverse possession. Under those statutes, the limitation period began to run at the point in time at which the true owner's right to recover possession first arose: the date of dispossession or discontinuance of possession (see for example s. 17 of the Statute of Limitations (1924)), as determined by the test for adverse possession.

- [18] As to that test, the elements of adverse possession, all of which must be present to trigger the running of the limitation period against the "true owner", are explained by Professor Ziff in *Principles of Property Law* (6th ed. 2014), at p. 146. In brief, the act of possession must be "open and notorious, adverse, exclusive, peaceful (not by force), actual (generally), and continuous" (*ibid.* (footnote omitted)). Significantly for this case, the adverse possessor who successfully obtains title need not always be the same person whose adverse possession triggered the running of the limitation period; successive adverse possessors can "tack" on to the original adverse possession, provided that the possession is continuous in the sense that there is always someone for the true owner to sue (*Anger & Honsberger Law of Real Property* (3rd ed. (loose-leaf)), by A. W. La Forest, ed., at §28:50).
- [54] In a 2002 decision of this court Justice L. Smith also has a useful summary of the case law about adverse possession (*Canadian Pacific Railway*, at paras. 34-59). Among other things, it points out that the acquisition of title by adverse possession can arise through mutual mistake and where the adverse claimant is a trespasser (para. 55).
- [55] The doctrine has been tracked through limitation legislation in British Columbia since before 1910. For example, the Statute of Limitations, R.S.B.C. 1897, c. 123 and the Statute of Limitations, R.S.B.C. 1924, c. 145 each have provisions respecting adverse possession (ss. 16 and 49 in both statutes). These provisions would have been in force at the material times in 1910.
- [56] As it happens, the same provisions are in the Statute of Limitations, R.S.B.C. 1960, c. 370, except for references to the King as in the 1897 and 1924 statutes (see also *Canadian Pacific Railway*, at para. 47).
- [57] Section 16 of the 1960 Statute of Limitations sets a limitation period of 20 years for individuals:

16 No person shall make an entry or distress or bring an action to recover any land or rent but within twenty years next after the time at which the right to make such entry or distress or to bring such action shall have first accrued to some person through whom he claims; or if such right shall not have accrued to any person through whom he claims, then within twenty years next after the time at which the right to make such entry or distress or to bring such action shall have first accrued to the person making or bringing the same.

[58] Section 48 sets a limitation period of 60 years for the Crown in a similarly complicated way:

48 The Queen's Majesty, her heirs and successors, shall not at any time hereafter sue, impeach, question or implead any person or persons for or in anywise concerning any manors, lands, tenements, rents, tithes or hereditaments whatsoever (other than liberties or franchises) which such person or persons, or his or their or any of their ancestors or predecessors, or those from, by, or under whom they do or shall claim, have or shall have held or enjoyed or taken the rents, revenues, issues or profits thereof by the space of sixty years next before the filing, issuing, or commencing of every such action, bill, plaint, information, commission, or other suit or proceeding as shall at any time or times hereafter be filed, issued, or commenced for recovering the same or in respect thereof, by reason only that the same manors, lands, tenements, rents, tithes, or hereditaments, or the rents, revenues, issues, or profits thereof, have or shall have been in charge to Her Majesty or her predecessors or successors, or stood insuper of record within the said space of sixty years, but that such having been in charge and such standing insuper of record shall be as against such person or persons, and all claiming by, from, or under them or any of them, of no force and effect.

[59] There was then the Limitations Act, S.B.C. 1975, c. 37. Section 12 states that, "[e]xcept as specifically provided by this or any other Act, no right or title in or to land may be acquired by adverse possession." It also says in s. 14(5): "[n]othing in this Act interferes with any right or title to land acquired by adverse possession before this act came into force." The next limitation statute in British Columbia is the Limitation Act, R.S.B.C. 1996, c. 266. It stated in s. 14(5) that "[n]othing in this act interferes with any right of title to land acquired by adverse possession before July 1, 1975."

[60] Finally, there is the current Limitation Act, S.B.C. 2012, c. 13. It has the following provision:

Adverse possession

28. (1) Except as specifically provided by this or any other Act, no right or title in or to land may be acquired by adverse possession.
- (2) Nothing in this Act interferes with any right or title to land acquired by adverse possession before July 1, 1975.

[61] As discussed above, a similar approach to adverse possession is taken by the 1996 LTA. Section 23(3) states that "a title adverse to or in derogation of the title of the registered owner is not acquired by length of possession." However, there is then s. 23(4):

- (4) Despite subsection (3), in the case only of the first indefeasible title registered, it is void against the title of a person adversely in actual possession of and rightly entitled to the land included in the indefeasible title at the time registration was applied for and who continues in possession.
- [62] As also discussed above, s. 171 of the LTA states that an application "founded in whole or in part on adverse possession" must not be accepted unless permitted by the LTA and "supported by a declaration of title under the Land Title Inquiry Act."

D. SUMMARY & CONCLUSION

- [63] The petitioner seeks a declaration that it is the legal and beneficial owner in fee simple of the three parcels of land at issue pursuant to the LTIA and as a matter of adverse possession. It seeks to have safe holding and marketable title over the three parcels.
- [64] Under the LTIA and the LTA, adverse possession is available if the possession commenced prior to July 1, 1975 and it continued adversely for 20 years in the case of land owned by an individual or for 60 years in the case of land owned by the Crown.
- [65] The deed of conveyance for the Adamson parcel is dated December 13, 1910 and the deed for the Michell parcel is dated December 31, 1910. There is no deed or other instrument to record that the Goodacre parcel was transferred to the petitioner. There is only correspondence dated November 28, 1910 in which the City Solicitor inquired about the purchase of the parcel.
- [66] In any event, title was not perfected for the three parcels so the petitioner is not on title as the registered owner. And yet, the petitioner has had continuous possession and occupancy of all three parcels since 1910. I conclude that there is unquiet title for the purposes of the LTIA: the petitioner constructed the high school 110 years ago and has maintained it since then but without being the registered owners of the land where it is situated. In 1910 the owners of the three parcels held absolute titles and this was subsequently changed to the first indefeasible titles.
- [67] A claim of adverse possession requires possession of the subject land that is "open and notorious, peaceful (not by force, in general) actual (as opposed to constructive) and continuous" (Canadian Pacific Railway, at para. 57; Mowatt, at para. 18, citing Bruce Ziff, Principles of Property Law, 6th ed., (Scarborough, Ontario: Carswell, 2014), at 146).
- [68] In the Canadian Pacific Railway judgment the conclusion was that it was "difficult to imagine use of land more open, notorious and exclusive of others" than a railway line (para. 58). In the subject petition the same observations can be applied to the construction of a high school and sports fields on a large piece of property located among busy suburban streets. The development of the land had to have been a major and obvious change in the surrounding neighbourhood, if not in the City of Victoria itself.

- [69] There remains the issue as to whether the applicable limitation periods have expired. As above, if the titleholder of the land is an individual he or she has 20 years to assert ownership to the adverse possessor. The actual language used in the 1897, 1924 and 1960 Statute of Limitations is "make an entry or distress or bring an action to recover" the land. In the case of the Crown the limitation period is 60 years in which to object to the adverse possession. There is no issue of mutual mistake here and trespass can only be an issue when it is complained of within the applicable limitation period.
- [70] The petitioner has conducted extensive research to determine if any heirs of the 1910 owners of the parcels of land could be found. There is no such evidence. Significantly, there is no evidence that any of the names on title or their heirs or anyone objected to the adverse possession by the petitioner of the land for 20 or 60 years after 1910, or ever. The petitioner has also investigated whether any of the parcels escheated to the Crown and there is no evidence of that occurring. The Province of British Columbia and School District No. 61 were served with the subject petition and they have not filed any response.
- [71] Since the owners of the three parcels were individuals the 20-year limitation period applies. If there is any issue of the Crown's involvement, the period of 60 years has been exceeded. I conclude that the petitioner has proven on a balance of probabilities that it has met the legal test for its claim of adverse possession of the three parcels of land.

[72] Pursuant to s. 2 of the LTIA, the petitioner is entitled to the following order:

ON THE APPLICATION of the Corporation of the City of Victoria, dated August 14, 2020, without notice coming on for hearing at Victoria, British Columbia, on 13th October 2020, and on hearing Kerri Crawford, counsel for the Petitioner;

THIS COURT DECLARES:

1. That under the authority of the Land Title Inquiry Act, the Corporation of the City of Victoria is the legal and beneficial owner in fee simple in possession of the following properties, subject to the conditions, exceptions and reservations enumerated or referred to in section 23 (2) (a) to (j), of the Land Title Act, but free from all other rights, interests, claims and demands:
 - a. EAST 38 FEET OF LOT A, SECTION 57, SPRING RIDGE, VICTORIA CITY, PLAN 123, SEE DD 10814
PID 024-745-961;
 - b. WEST HALF OF LOT 5, SECTION 46, SPRING RIDGE, VICTORIA CITY, PLAN 347
PID 025-384-368; and
 - c. SOUTH 10 FEET OF THE NORTH 20 FEET OF THE WEST 88 FEET OF SECTION 58, SPRING RIDGE, VICTORIA CITY

PID 010-482-997; and

2. That has been proved to the satisfaction of the court on investigation of the title to the properties list in subparagraphs 1 (a) through (c) above that the Corporation of the City of Victoria's title to those parcels is a good safe holding and marketable title.

THIS COURT THEREFORE ORDERS:

3. That the Corporation of the City of Victoria shall publish this order in the Gazette for at least four weeks, following which the order shall be filed with the Registrar of Land Titles;
4. That the declaration of vesting in the Corporation of the City of Victoria under paragraph 1 of this order becomes effective after completion of the notice requirements in paragraph 3 of this order; and
5. That the relief sought by the City of Victoria with respect to that part of Vining Street from Fernwood Road westerly to the western boundary of Sections 49 and 54 (the "Vining Parcel") is hereby adjourned generally.

"J. J. Steeves, J."

The Honourable Mr. Justice Steeves

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/20/19/2020BCSC1942.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/re-victoria-city-2020>

Prepared on 28 October 2026 · Esheria