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Time is running out on Ontario squatters' rights

Paper titles are being converted to electronic

That affects ability to acquire title by adverse possession

The House of Lords, the highest court in Britain, has given its seal of approval to what was probably the biggest private land grab of the young century or, for that matter, the last century as well.

But recent developments in the law in England and Ontario may soon spell an end to the ability to acquire someone else's land just by sitting on it for a number of years.

Imagine being able to acquire almost 25 hectares of prime development land worth millions of pounds for nothing. It actually happened in England, just west of London.

The bitterly fought court case, which produced this rather bizarre result, was finally decided by the House of Lords in 2002.

In the end, it all revolved around a novel interpretation of the law of adverse possession, also known as squatter's rights.

J.A. Pye (Oxford) Limited owned 25 hectares of prime agricultural land in Berkshire.

In 1977, Pye began to recognize its potential for development. Rather than let the land sit unused, in 1983 Pye signed an agreement to permit Michael John Graham, a neighbouring farmer, to use the property for grazing in return for payment of 2000 pounds.

Pye had the right to terminate the agreement on six months' notice. The contract also provided that any grazing after its expiry would have to be by a separate, new contract.

In January, 1984, Graham wrote Pye to request a new agreement for that year. Anticipating redevelopment of the land, Pye refused. There was no answer to a subsequent request in the spring of 1985.

Without permission from the owner, and without paying any money at all, Graham continued to pasture his sheep and cattle there, cut the hay, fertilize the land and till the soil from the fall of 1984 continuously until 1999.

Had Graham been asked, he would happily have paid Pye for grazing rights or for the hay crops, but in the absence of any agreement with the owner, Graham continued to farm the land and keep his cattle on it without permission.

After January, 1984, Pye did nothing to the land.

In 1997, Graham registered a claim on the title to the land on the grounds that he had obtained "squatter's title" by adverse possession.

Traditionally, a person occupying another's land could extinguish registered title and gain title by possession if that possession was open, notorious and continuous, and excluded the rightful owner for the full statutory period.

In Ontario, that period is 10 years, but in Britain, it was 12 years.

Eventually, Pye sued to evict Graham, and Graham counterclaimed for ownership based on his possession of the land. (Graham died in a hunting accident in 1998 and his widow continued the lawsuit.)

Graham won at trial and lost at the Court of Appeal. When the case got to the highest court in the country, the House of Lords, full title was awarded to the Graham family.

The court was obviously troubled by the result, and stated that they arrived at their conclusion "with no enthusiasm."

The Law Lords ruled that there was no need for a squatter to take any positive action towards the paper owner. The squatter simply needs to have possessed the land for the required period without the consent of the deed-holder. Graham did not really intend to exclude Pye, but he got the land anyway. Not only was the land free, but the Graham family had paid no rent for 12 years.

On Oct. 13, 2003, little more than a year after the House of Lords decision in the Pye case, the British Parliament enacted the long-awaited Land Registration Act 2002.

It effectively changed the law in England and Wales to require that a squatter now has to believe that the property actually belonged to him or her.

The effect of the new law will make registered land virtually squatter-proof. Graham would not have succeeded under the new legislation because he always knew that the land was not his.

Even though that is not the rule in Ontario, land squatters in this province have an even more difficult hurdle to overcome whether their occupied land is a large farm or within a few inches of a neighbour's driveway.

With the co-operation of the Ontario government, Teranet Inc. is rapidly converting Ontario's 4.3 million land titles from a paper registry to an electronic environment.

As each property in the old paper system is converted to electronic title registry, its format is also converted to the Land Titles system.

Under those rules, the clock for acquiring title by adverse possession stops running on the date of title conversion.

As time goes on, the number of possessory title claims in Ontario and in England and Wales will rapidly diminish. Squatter's rights in Ontario may soon be a thing of the past.