LEGAL OPINION

v

RESEARCHED FACTS

“You Be The Judge”

Information For Private Property Landowners
Introduction

This booklet has been prepared by the Huron Perth Landowners Association (HPLA) to educate landowners with regards to their Private Property Rights and Crown Letters Patent.

On Friday, November 25, 2016 the Huron County Water Protection Steering Committee (HCWPSC) held a meeting to discuss the Huron County Natural Heritage Plan which affects thousands of acres of Huron County farmland.

As part of the agenda, Mr. Peter Pickfield, of Garrod Pickfield Law Firm, an Environmental, Municipal and Planning Law Lawyer, was hired by Huron County to present a legal opinion on Crown Letters Patent.

This booklet contains Mr. Pickfield's Legal Opinion.

Because owning private property is a responsibility, the HPLA decided to have Crown Patents researched by All Rights Research Ltd.

This booklet also contains the Response and Facts, from Elizabeth Marshall, All Rights Research Ltd., to the Legal Opinion given HCWPSC by Mr. Pickfield.

If you agree that Crown Patents are a legal agreement between Queen Elizabeth and you, as a landowner, then the following conclusion can be drawn: No form of Government was given a reservation for jurisdiction over private property in the Huron Tract Crown Patent.

The Governments include but are not limited to:

- Conservation Authorities
- Municipal Governments
- Building Officials
- Building Inspectors
These Government Agencies can still offer advice and services but they cannot pass laws and subsequent **fines against private property rights**.

Citizens of Canada still must abide by the Criminal Code of Canada on private and public property.

This booklet includes the Huron Tract Crown Patent. This Crown Patent may contain your farm. If not, your farm will have another Crown Patent and can be sourced using the enclosed form from the MNRF for a modest fee.

The HPLA was formed to educate landowners on their private property land rights. They meet the third Thursday of the month at the Brodhagen Community Centre. All are welcome.

The HPLA website is: huronperthlandowners.ca.

The HPLA suggest that you keep these documents in a safe place as they need to be passed on to the next generation.
DELIVERED

November 24, 2016

Huron County Water Protection Steering Committee
Huron County Planning and Development
57 Napier Street, Goderich,
Ontario, N7A 1W2

Dear Committee Members:

RE: Legal Opinion: Municipal Authority to Protect Natural Heritage Features

Summary: Our firm has been asked to provide an opinion on three legal questions that have emerged from public consultation process for the development of the County of Huron’s Natural Heritage Plan. The questions related to the legislative authority of the County to establish planning policies and zoning requirements under the Planning Act to protect natural heritage resources in the context of private property rights. Based on our legal review we can confirm the following respect to these three questions:

1. The fact that lands were transferred by way of Crown Patent to provide ownership does not establish a priority of private rights over municipal planning authority or somehow supersede a municipality’s authority to regulate land use through an official plan or zoning by-law.

2. There are no constitutional protections in the British North America Act (incorporated into the Constitution Act in 1982), Canadian Charter of Rights and Freedoms, and no restrictions to municipal powers established under the Municipal Act, that allow a property owner to refuse to consent to an official plan or zoning by-law applying to his or her land. A municipality’s authority to regulate land use is delegated to it by the province, whose own authority is derived from the provinces’ legislative authority established pursuant to subsections 92(13) and 92(16) of the Constitution Act.

3. The re-designation of lands through changes to a municipal official plan to an environmental protection designation, or even the “down zoning” of such is not the equivalent of expropriation and does not trigger an obligation on the part of the municipality to compensate the land owner for potential diminution of property value. If, however, the municipality is seeking to designate and/or rezone lands for a public purposes, such as conservation lands, public park space or a trail, it cannot obtain approval for such designation until it has indicated its intention to acquire the lands.
Introduction/Background

The County of Huron is in the process of conducting a public planning process for the development of its Natural Heritage Plan (NHP). A key document under public discussion is the proposed “Huron Natural Heritage Plan Implementation Strategy” which sets out specific recommendations for amendments to the County Official Plan, and potential changes to local official plans and local zoning by-laws, to implement more restrictive policies and regulations to protect the County’s natural heritage features and systems.

The County has held two open houses to receive comments on the NHP. During the public consultation process three questions have arisen which have legal dimensions. The questions can be summarized as follows:

1. If a property owner has a Crown Patent for his or her farm, does this affect the municipality’s authority to regulate development on private land with the official plan or zoning by-law?

2. Does the British North America Act, the Canadian Charter of Rights and Freedoms (“Charter”), or the Municipal Act provide the authority for a property owner to not consent to have the official plan or zoning by-law apply to his or her respective property?

3. If a government authority designates land as Natural Environment, is this the equivalent of expropriating the land?

All three questions relate to the legislative authority of municipalities to utilize the County Official Plan, lower-tier Official Plans and zoning provisions to protect natural heritage features.

The Huron County Water Protection Steering Committee will be meeting on November 25th to discuss the draft Natural Heritage Plan. You have asked our firm to prepare a legal opinion with respect to the three questions and to attend at the meeting to discuss our findings and conclusion.

Our opinion on each of these questions is set out below. Please note that in arriving at this opinion we have reviewed the Huron Natural Heritage Plan Implementation Strategy, a summary of the public comments prepared by County staff, and all relevant statutes and case law.

Analysis

**Question 1: If a property owner has a Crown Patent for his or her farm, does this affect the municipality’s authority to regulate development on private land with the official plan or zoning by-law?**

A Crown Patent is a legal document that is used to transfer land held by the federal or provincial government to a private owner. Dating back to the 1790s, a Crown Patent is common originating document for establishing property rights for privately-owned lands. As noted on the Province of Ontario web site, a Crown Patent for a property would typically include:

- the name of the person buying the property from the Crown;
- the purchase price;
- a description of the land.
• the date of the patent; and

• any conditions or reservations the patent was subject to when it was issued.

Conditions refer to the restrictions that Crown may have placed on the use of the land when the patent was issued. As an example of this, the Provincial website notes some patents state that the land was only to be used for agricultural purposes. Reservations are rights held back under Crown ownership at the time the Crown Patent is issues such as mineral rights, tree cutting rights or the right to construct roads through the property.

There is a commonly held perception that the property rights on lands granted through Crown Patents supersede the powers of government to regulate those lands. The law does not support this.

By way of explanation, the Canadian Constitution (Section 92(13) of the Constitution Act, 1867) allocates jurisdiction over "Property and Civil Rights" to the provinces. This gives the Province of Ontario broad powers to pass laws which affect property and associated rights.

The issue has also specifically been determined in the Courts. The leading case is the 2012 decision of the Court of Appeal, R v Mackie, which upheld the principle that the provinces have clear jurisdiction to legislate land use as delegated through the British North America Act. In addition, the Court in that case held that the Crown Patent was not designed to limit or reduce the provincial government’s powers but to “make more effectual provision for (the provincial government’s) recognized jurisdiction pursuant to the law.”

Other cases have upheld this principle. In the 2016 Ontario Court of Justice case Desmarais v Fort Erie, the Court held that Crown Patents are found all over the province, and “there is nothing in the conveyance from the Crown which...suggests that a Crown Patent has paramountcy over a municipality’s ability to regulate private property.” In the 2016 Ontario Court of Justice case Port Hope v Elgasuani, a property owner submitted that since the original grant of the land was from the Crown and the municipality had never owned the land, the municipality had no right to control what he did with the property. However, the Court rejected this submission, holding that “a Crown Patent does not limit or reduce the Provincial government’s powers to regulate land use.”

In summary, it is a well-established principle, rooted in Canadian constitutional law, that a Crown Patent does not supersede a municipality’s authority to regulate land use through an official plan or zoning by-law.

Question 2: Does the British North America Act, incorporated into the Constitution Act in 1982, the Canadian Charter of Rights and Freedoms, or the Municipal Act provide the authority for a property owner to not consent to have the official plan or zoning by-law apply to his or her respective property?

a. Constitution Act, 1982 (British North America Act)

As noted above, in Canada, the provinces have been granted broad constitutionally-enshrined powers to pass laws that regulation private property rights. In Desmarais v Fort Erie, the Court confirmed

2 Desmarais v. Fort Erie (Town), [2016] O.J. No. 1424
3 Port Hope (Municipality) v. Elgasuani, [2016] O.J. No. 1860
that the authority for a province to enact laws regarding private property and to control activities on private land is derived from subsections 92(13) and 92(16) of the Constitution Act, 1867, which state the following:

92. In each Province the Legislature may exclusively make Laws in relation to Matters coming within the Classes of Subjects next hereinafter enumerated; that is to say,

... 13. Property and Civil Rights in the Province

... 16. Generally all Matters of a merely local or private Nature in the Province.

This conclusion was also upheld by R v Mackie⁴ following the 1978 Ontario Court of Justice case, Hamilton Harbour Comm. v Hamilton⁵. In the latter case, the Court provided that “legislative authority to control the use of land generally undoubtedly belongs to the Province under s.92 of the B.N.A. Act within head 13 ... or head 16 ...”

The court in Port Hope v Elgasuani found that under the British North America Act, 1867 and all subsequent amendments thereto, the provinces have exclusive jurisdiction to legislate in relation to property and civil rights and that municipalities in Ontario have been delegated by the Province the authority to limit property rights through the Planning Act and the Building Code Act.

b. Canadian Charter of Rights and Freedoms

There is no question that the protections established under the Canadian Charter of Rights and Freedoms (the “Charter”) apply to legislative and regulatory action by the provincial government including all matters within the authority of the provincial legislature, which includes the regulation of property rights. Also, as previously mentioned, provinces have delegated their authority to legislate regarding property rights to municipalities. Therefore, municipal zoning by-laws cannot infringe on a person’s rights under the Charter. This was affirmed in the 1986 Ontario Court of Justice case Milton v Emmanuel Baptist Church, which stated that “municipal legislation must be construed in the light of the Charter.”⁶

The Charter itself, however, does not enshrine property right protections. In the 2003 OMB case Brighton (Municipality) Official Plan Amendment No. 20 (Re)⁷, the appellant landowners opposed the Environmental Protection designation applied to their properties. One of the appellants claimed that the official plan designation would restrict the use of his property in a manner “contrary to the Canadian Bill of Rights, the Charter of Rights and Freedoms and case law.” The Board rejected this claim. It stated that although the Charter can be applied to the Planning Act and its applications before the OMB, it contains no express provision protecting private property rights. The Board also stated that section 1 of the Canadian Bill of Rights does provide for the right of the individual to enjoyment of property and the right not to be deprived thereof, except by due process of law; however, subsection 5(3) states that the Bill only extends to matters within the federal legislative authority. Since matters under the Planning Act fall within provincial jurisdiction, the Bill of Rights has no application to these matters.

⁴ R. v. Mackie, supra, note 1
⁵ Hamilton Harbour Commissioners v. City of Hamilton et al., [1978] O.J. No. 3555
⁶ Milton (Town) v. Emmanuel Baptist Church, [1986] O.J. No. 1506
⁷ Brighton (Municipality) Official Plan Amendment No. 20 (Re), [2003] O.M.B.D. No. 837 [“Brighton OPA 20”]
c. **Municipal Act**

The Municipal Act does not establish a municipal obligation to obtain consent from property owners before establishing the official plan or zoning by-law requirements on his or her respective property. In fact, the Municipal Act has no bearing on this issue. While the Municipal Act allocates a broad range of regulatory and administrative decision-making powers to Ontario municipalities, the municipal decision-making authority under consideration in this case is established pursuant to the Planning Act. Further, neither the Planning Act nor any other statute requires property owners’ consent for municipal planning decisions. Municipalities are not only empowered to make such decisions but have an obligation to do so in the exercise of their responsibilities under the Planning Act.

The recourse of any property owner, or indeed any member of the public, if they wish to challenge a municipal planning decision, is through an appeal to the Ontario Municipal Board for a full hearing on the planning merits of the municipality’s decision. It should be noted that the right of appeal is restricted to appeals based on valid planning grounds. An appeal cannot simply be based on an assertion of property rights.

**Summary: Question 2**

A municipality’s authority to regulate land use is delegated it by the province, whose own authority is derived from subsections 92(13) and 92(16) of the Constitution Act. There are no provisions in the British North America Act, Charter, or Municipal Act that allow a property owner to refuse to consent to an official plan or zoning by-law applying to his or her land.

Finally, it is interesting to note that the Ontario Municipal Board has also opined that land-use regulation does not necessarily run counter to the principles of private property rights. The Board in the 1994 OMB case *Di Biase v Tiny* held that restrictions on what the appellant property owner wished to do on his land “enhanced the experience of place for all.” As a result, such restrictions could not be viewed as denying the appellant’s private property rights. The Board explained that “in all liberal democratic societies, people voluntarily agree to confine their private property rights in some specified ways to maximize them in other ways”, understanding that such confinement results in “stability of competition and sense of security for all.” The Board asserted that land use regulation through instruments such as official plans and zoning by-laws gives “common property rights some status along with individual private property rights.”

**Question 3: If a government authority designates land as Natural Environment, is this the equivalent of expropriating the land?**

There is no question that the implementation of official plan policies and zoning requirement to more rigorously protect environmental features and systems, as proposed in the Huron NHP Implementation Strategy has the potential to impose additional restrictions and requirements on the use of private lands by property owners. This is a common factor in evolving municipal land use planning documents and instruments which are approved by municipalities to meet more restrictive provincial policies and current best land use planning requirements. Again, it is well established law that such restrictions do not in and of themselves constitute “expropriation of property” rights that would impose on the municipality an obligation to compensate property owners.

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The lead case is a 1986 Ontario Court of Appeal decision, Re Salvation Army, Canada East and Minister of Government Services.\(^9\) The case dealt with a claim for compensation by a property owner based on the fact that the municipality had “down-zoned” the property. Downzoning means a change in zoning to reduce the amount of permitted development on that land. For example, the term “down-zoning” would apply in the case where a new official plan designation and associated zoning amendment imposed more restrictions on development rights on private lands than previous zoning for the property. The court confirmed that down-zoning land in and of itself does not give rise to a claim for compensation. This principle has been followed in a number of Ontario Municipal Board decisions including the oft-quoted decision in Re: Brighton OPA (“Brighton”).

The Board in Brighton also cited the 1978 OMB case Re Nepean (Township) Restricted Area By-law 73/76\(^10\) which established another important and oft-quoted principle known as the “Nepean Principle”. The “Nepean Principle provides that if a municipality requires private property for public use, it needs to show an intention to expropriate the land for the Board to approve this use. By way of explanation, one of the appellants in Brighton claimed that the designation of his property for Environmental Protection had caused an 80-percent diminution in his property value and he demanded compensation. The Board dismissed this claim for compensation. Applying the Nepean Principle, the Board found that there was no evidence the municipality or the Province was intending to use the appellants’ property for a public purpose. The Board also mentioned that each appellant had a residential dwelling on a portion of their property and that lawful use would continue to be permitted.

In summary, the case law confirms that a municipal decision to effectively reduce property rights through “down-zoning: does not constitute a de facto “expropriation of property right”, nor does it trigger an obligation on the part of the municipality to compensate the land owner. If, however, the purpose of the “down-zoning” is a “public purpose” such as establishing a park or community trail, the municipality must show an intention to expropriate that land. Accordingly, the property owner in such a case is likely entitled to compensation through the expropriation process. However, if a municipality has downzoned land without any intention to use it for a public purpose, the property owner is not entitled to any compensation.

**Conclusions**

Three legal questions that have emerged from the public consultation process for the development of the County of Huron’s Natural Heritage Plan. The questions related to the legislative authority of the County to establish planning policies and zoning requirements under the Planning Act to protect natural heritage resources in the context of private property rights. Based on our legal review we can confirm the following respect to these three questions:

1. The fact that lands were transferred by way of Crown Patent to provide ownership does not establish a priority of private rights over municipal planning authority or somehow supersede a municipality’s authority to regulate land use through an official plan or zoning by-law.

2. There are no constitutional protections for property rights in the British North America Act (incorporated into the Constitution Act in 1982), Canadian Charter of Rights and Freedoms, and no restrictions to municipal powers established under the Municipal Act, that allow a property owner to refuse to consent to an official plan or zoning by-law applying to his or her land. A

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\(^9\) Salvation Army, Canada East and Minister of Government Services, 53 O.R. (2d) 704

\(^{10}\) Nepean (Township) (Re), [1978] O.M.B.D. No. 1
municipality’s authority to regulate land use is delegated to it by the province, whose own authority is derived from the provinces’ legislative authority established pursuant to subsections 92(13) and 92(16) of the Constitution Act.

3. The re-designation of lands through changes to a municipal official plan to an environmental protection designation, or even the “down zoning” of such is not the equivalent of expropriation and does not trigger an obligation on the part of the municipality to compensate the land owner for potential diminution of property value. If, however, the municipality is seeking to designate and/or rezone lands for public purposes, such as conservation lands, public park space or a trail, it cannot obtain approval for such designation until it has indicated its intention to acquire the lands.

I will be in attendance at tomorrow’s Huron County Water Protection Steering Committee to present the results of our legal review of these issues, and answer any questions that Council may have. I look forward to meeting you then.

Yours truly,

[Signature]

Peter C. Pickfield

cc. Susanna Reid, RPP, MCIP, Planner
Response to Huron County Water Protection - Legal Opinion ©

A document created by the Research Team of All Rights Research Ltd., November, 2016 ©

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Member of the Steering Committee – International Property Rights Association.
“What cannot be legally done directly cannot be done indirectly. This rule is basic and, to a reasonable mind, does not need explanation. Indeed, if acts that cannot be legally done directly can be done indirectly, then all laws would be illusory.”¹

¹ [G.R. No. 166471, March 22, 2011], TAWANG MULTI-PURPOSE COOPERATIVE, PETITIONER, VS. LA TRINIDAD WATER DISTRICT, RESPONDENT.
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RE: Response to Legal Opinion: Municipal Authority to Protect Natural Heritage Features.

The questions asked were:

1. If a property owner has a Crown Patent for his or her farm, does this affect the Municipality's authority to regulate development on private land with the official plan or zoning by-laws?

2. Does the British North America Act (BNA), the Canadian Charter of Rights and Freedoms ("Charter"), or the Municipal Act provide the authority for a property owner to not consent to have the official plan or zoning by-law apply to his or her respective property?

3. If government authority designates land as Natural Environment, is this the equivalent of expropriating the land?

Firstly a comment is needed to express that, even with most legal counsel's credentials they may not be fully informed regarding the Letters Patent or the BNA, the various other Constitutional documents which must be taken into consideration when explaining the letters patent or "property and civil rights in the province." Laura Legge, Treasurer of the Law Society of Upper Canada knew there was and is a systemic problem. In an interview, from 2004 she stated:

"...I was concerned about the core courses in the law schools that were not being taught. And I'm still concerned about it. And my one concern, and it's an ongoing concern, is the lack of teaching of equity and legal history... And every time the Law Society seems to ask the law schools to start teaching some basic courses we get nowhere... And, in my opinion, having been a lawyer for fifty-six years, if you don't understand the law of equity, as well as the common law, how in the world can you be a lawyer in our legal system? And I think it's a real problem, and I think it's still a problem, and an ongoing problem. And I blame the Law Society for this one because we've allowed the law schools to teach a lot of courses that have really no relevance. And you don't teach people to think like lawyers, you have to give them some tools with which to think! And I had one eminent law dean tell me that their only role was to teach people to think like
lawyers. Now come off it! You have to give them some basic tools to start thinking. ... So, that was one of my very real concerns as Treasurer: that was the education of lawyers. I must say I failed: I got nowhere, and nothing has happened since... We cannot, as a Law Society, we cannot, and I always said this, we cannot tell the law schools what to teach."

Therefore any statement made by legal counsel, perhaps, should be re-examined. That is the reason for this paper, so that Municipal Councils and their staff may have the opportunity to be informed to a greater extent. I also noticed that there were a number of different Acts missing from the legal opinion paper of which I will include.
**Analysis**

**Question 1:** If a property owner has a Crown Patent for his or her farm, does this affect the municipality’s authority to regulate development on private land with the official plan or zoning by-law?

It does not matter if the land/property is a farm or residential, commercial, etc., if there is letters patent than the Municipality does not have the authority to regulate, zone or designate the land/property unless it:

(i) Acquired it by means of sections 10 and 11 subsection (2) By-laws, paragraph 4 of the Municipal Act, which states:

11. (1) A lower-tier municipality and an upper-tier municipality may provide any service or thing that the municipality considers necessary or desirable for the public, subject to the rules set out in subsection (4). 2006, c. 32, Sched. A, s. 8.

By-laws

(2) A single-tier municipality may pass by-laws respecting the following matters:

4. Public assets of the municipality acquired for the purpose of exercising its authority under this or any other Act.

(ii) Regarding the statement of "in the province/municipality" being the "property of the province/municipality" a few examples are:

"Acquisition of lands in accordance with provisions of plan

25. (1) … the council may, …, acquire and hold land within the municipality for the purpose of developing any feature of the official plan, and any land so acquired or held may be sold, leased or otherwise disposed of when no longer required. R.S.O. 1990, c. P.13, s. 25 (1); 1994, c. 23, s. 17; 1996, c. 4, s. 15.

“30. Vesting of the property in the Corporation. — All property acquired before the establishment of the Corporation, shall vest in the Corporation and all income derived and expenditure incurred in this behalf shall be brought into the books of the Corporation.”

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3 “municipal property asset” means an asset of the municipality that is land, equipment or other goods. O. Reg. 599/06, s. 14 (2).

4 "economic development services" means, in respect of a municipality, the promotion of the municipality by the municipality for any purpose by the collection and dissemination of information and the acquisition, development and disposal of sites by the municipality for industrial, commercial and institutional uses; ("services de développement économique")


6 Planning Act, R.S.O. 1990, CHAPTER P.13

6 THE EMPLOYEES’ STATE INSURANCE ACT, 1948
8. (1) Upon the commencement of this Act—
(a) all land and other property of every kind, including things in action, vested in or deemed to be vested in the State, specified in the Schedule shall, by virtue of this Act, and without further assurance, be transferred to, and shall vest in, the Corporation;”

“That the Act of Parliament of Canada, 31 Vict., c. 60, recognizes the view, and, while it provides for the regulation and protection of the fisheries, it does not interfere with private rights, only authorizing the granting of leases in fresh water rivers, where such rights have not already accrued, and that any lease granted by the Minister of Marine and Fisheries to fish in fresh water rivers which are not the property of the Dominion or in which the soil is not in the Dominion is illegal;”

Please note the above statement of “in which the soil is not in the Dominion” and what does section 92 (13). Property and Civil Rights in the Province. (16). Generally all Matters of a merely local or private Nature in the Province. Private property is not “in” or does not belong to the Dominion and private property is not “in” or does not belong to the provincial/municipal corporations. In Ontario Legislative Assembly, it was stated:

"The rule is the public good is always paramount but never when it is at the expense of a private individual."

Municipalities are only allowed to function by means of by-laws or resolutions, as it is with any corporation. So what authority do municipalities have? We will look to by-laws. Section 14 of the Municipal Act states a Municipal Council must not create a by-law which interferes with or frustrates a superior instrument.

Conflict between by-law and statutes, etc.

14. (1) A by-law is without effect to the extent of any conflict with,
(a) a provincial or federal Act or a regulation made under such an Act; or

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7 Minister of Finance (Incorporation) Act, Laws of Trinidad and Tobago, 1973 p. 6
8 Constitution of Canada. The B.N.A. Act, 1867; Its Interpretation, etc., p. 165
9 Mr. Gisborn, Ontario Legislative Assembly, February 11, 1965 Volume 1, Page 478
10 EXERCISING MUNICIPAL POWERS - Most councils consider it a best practice to exercise their municipal powers and conduct business in a clear and consistent fashion. As a councillor, you may find it helpful to become thoroughly familiar with the proper procedures and necessary conditions for calling and conducting council meetings, enacting bylaws and other resolutions, and administering and enforcing bylaws.
BYLAWS AND RESOLUTIONS - The powers of your municipality are generally exercised by either bylaw or resolution. Bylaws are the primary form of action.
Generally, bylaws must be: signed both by the head of council or presiding officer of the meeting at which the bylaw was passed and by the clerk; and under the seal of the corporation. (See the Municipal Act and other legislation, including sections 5 and 249 for more information). THE MUNICIPAL COUNCILLOR’S GUIDE 2014, Section 3, p. 39 – 43.
11 "your municipal bylaws cannot conflict with or frustrate the purpose of federal or provincial statutes or regulations or legislative instruments (section 14);" THE MUNICIPAL COUNCILLOR’S GUIDE 2014, Section 3, p. 37
(b) an instrument of a legislative nature, including an order, licence or approval, made or issued under a provincial or federal Act or regulation. 2001, c. 25, s. 14.

(2) Without restricting the generality of subsection (1), there is a conflict between a by-law of a municipality and an Act, regulation or instrument described in that subsection if the by-law frustrates the purpose of the Act, regulation or instrument. 2006, c. 32, Sched. A, s. 10.

So what can be considered as an "instrument"? Letters Patent are instruments according to the Guide to the Federal Real Properties Act. Section 5 states:

"Section 5 - Grants of Federal Real Property
Subsection 1 - Letters Patent and Instruments of Grant
- 5. (1) Federal real property may be granted (a) by letters patent under the Great Seal; or (b) by an instrument of grant, in a form satisfactory to the Minister of Justice, stating that it has the same force and effect as if it were letters patent.
Notes. This subsection describes some of the instruments that may be used to grant federal real property. Paragraph 5(1)(a) states that under the FRPA letters patent can still be used in all cases to grant federal real property. Paragraph 5(1)(b) provides for a new document, an "instrument of grant," which may be used instead of letters patent to grant federal real property. The "instrument of grant" is an alternative instrument which has the legal effect of letters patent and may be used to grant real property or any interest therein but does not have the complex processes and time delays associated with letters patent."

Letters Patent are also defined, under the Federal Real Properties Guide as:

“writing of the sovereign, sealed with the Great Seal, whereby a person or company is entitled to do acts or enjoy privileges which could not be done or enjoyed without such authority.”

And that definition has not changed throughout history.

"Letters Patent, or Letters Overt [literae patentes], writings of the Queen, sealed with the Great Seal of England, whereby a person is able to do or enjoy that which

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12 Guide to the Federal Real Properties Act - Section 5 - Grants of Federal Real Property
Subsection 1 - Letters Patent and Instruments of Grant
- 5. (1) Federal real property may be granted (a) by letters patent under the Great Seal; or (b) by an instrument of grant, in a form satisfactory to the Minister of Justice, stating that it has the same force and effect as if it were letters patent. Notes. This subsection describes some of the instruments that may be used to grant federal real property. Paragraph 5(1)(a) states that under the FRPA letters patent can still be used in all cases to grant federal real property. Paragraph 5(1)(b) provides for a new document, an "instrument of grant," which may be used instead of letters patent to grant federal real property. The "instrument of grant" is an alternative instrument which has the legal effect of letters patent and may be used to grant real property or any interest therein but does not have the complex processes and time delays associated with letters patent.

otherwise he could not. They are so called because they are open with the seal affixed and ready to be shown for confirmation of the authority thereby given…

Then there are wills, deeds, indentures, private grants, conveyances, etc. which are also considered instruments. To ensure that Municipal Council has a more expanded knowledge of the Letters Patent we are including statements from a patent dated: October 6, 2000. In the conditions of the easements for Bell Canada and Ontario Hydro:

"3. (1) Where Her Majesty the Queen in right of Ontario makes a disposition of public lands comprising in whole or in part, any part of the right-of-way, the person to whom the disposition is made, his heirs, executors, administrators, successors and assigns, or any of them may use the surface layer of land,

(c) for any purpose consistent with municipal zoning."

The above is documentation that unless "municipal zoning" is reserved, in letters patent, as a condition and/or part of an easement/covenant, a municipality cannot zone for private property and can only zone for property which it, as a corporation, has acquired, or is public land/property, not private. There is no reservation in the Letters Patent, dated: October 6, 2000, for zoning of the patented land, merely the Bell and Hydro easement, which is a public easement. As for section 65 of the Public lands Act, and the stipulation that the land granted is subject to the provisions of section 65, it is in reference to reservations for public roads, the right to take wood, gravel, etc., for roads, and the right of portages. Unless reserved in Letters patent, there is no authority for


15 Right to make roads reserved in sales, etc.

65. (1) In all sales, free grant locations, leases, licences of occupation, mining claims and other dispositions of public lands or mining lands or mining rights, there shall be reserved to the Crown the right to construct on the land any colonization or other road or any road in lieu of or partly deviating from an allowance for road without making compensation therefor, and such right whether or not it is expressly reserved from the sale, location, lease, licence of occupation, mining claim or other disposition of the land or by the letters patent when issued shall be deemed to be so reserved. R.S.O. 1990, c. P.43, s. 65 (1).

Right to take wood, gravel, etc., for roads

(2) In all sales, free grant locations, leases, licences of occupation, mining claims and other dispositions of public lands or mining lands or mining rights, where the letters patent have been issued containing a reservation of any of the area for roads, wood, gravel and other materials required for the construction or improvement of any colonization or other road or of any road in lieu of or partly deviating from an allowance for road, may be taken from the land without making compensation therefor or for the injury thereby done to the land from which they are taken, and where the letters patent have been issued without a reservation being made of any of the area for roads, wood, gravel and other materials required for the purposes hereinbefore mentioned may be taken from the land, but compensation shall be paid as provided by the Expropriations Act. R.S.O. 1990, c. P.43, s. 65 (2).

Minister or person authorized may exercise rights

(3) The rights mentioned in subsections (1) and (2) may be exercised by the Minister or by any person authorized by the Minister to exercise them on behalf of the Crown. R.S.O. 1990, c. P.43, s. 65 (3).

Right of passage over portages

(4) Where public lands over which a portage has existed or exists have been heretofore or are hereafter sold or otherwise disposed of under this or any other Act, any person travelling on waters connected by the portage has the right to pass over and along the portage with the person's effects without the permission of or payment to the owner of the lands, and any person who obstructs, hinders, delays or interferes with the exercise of such right of passage is guilty of an offence. R.S.O. 1990, c. P.43, s. 65 (4); 2000, c. 26, Sched. L, s. 9 (11).
municipalities to zone or plan for private property as the Queen in right of Ontario hasn't any right, title or interest in said land, saving the reservations.

**Question:** 2. Does the British North America Act (BNA), the Canadian Charter of Rights and Freedoms ("Charter"), or the Municipal Act provide the authority for a property owner to not consent to have the official plan or zoning by-law apply to his or her respective property?

Under the Federal Interpretations Act, 8.1 and 8.2 it states:

**RULES OF CONSTRUCTION**

**Property and Civil Rights**

Duality of legal traditions and application of provincial law

8.1 Both the common law and the civil law are equally authoritative and recognized sources of the law of property and civil rights in Canada and, unless otherwise provided by law, if in interpreting an enactment it is necessary to refer to a province’s rules, principles or concepts forming part of the law of property and civil rights, reference must be made to the rules, principles and concepts in force in the province at the time the enactment is being applied.

2001, c. 4, s. 8.

**Terminology**

8.2 Unless otherwise provided by law, when an enactment contains both civil law and common law terminology, or terminology that has a different meaning in the civil law and the common law, the civil law terminology or meaning is to be adopted in the Province of Quebec and the common law terminology or meaning is to be adopted in the other provinces.

2001, c. 4, s. 8.

**Private Acts**

Provisions in private Acts

9. No provision in a private Act affects the rights of any person, except as therein mentioned or referred to.

R.S., c. I-23, s. 9.16

This act states that any term used, that does not have an interpretation/definition within the act, has been used previously as a common law term, it retains the Common Law meaning. Black’s Law Dictionary, 9th Edition, 2009, defines “entry” as:

**ENTRY** – 1. The act, right, or privilege of entering real property.

**LAWFUL ENTRY** – 1. The entry onto real property by a person not in possession, under a claim or colour of right, and without force or fraud.

2. The entry of premises under a search warrant. **OPEN ENTRY** – A conspicuous entry onto real property to take possession; an entry that is neither clandestine nor carried out by secret artifice or stratagem and that (by law in some states) is accomplished in the presence of two witnesses. **UNLAWFUL ENTRY** – 1. The

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crime of entering another’s real property, by fraud or other illegal means, without the owner’s consent. Cf. TRESPASS (1).

RIGHT OF ENTRY – see POWER OF TERMINATION.

POWER OF TERMINATION – (1919) A future interest retained by a grantor after conveying a fee simple subject to a condition subsequent, so that the grantee’s estate terminates (upon breach of the condition) only if the grantor exercises the right to retake it. – Also termed right of entry; right of reentry; right of entry for breach of condition; right of entry condition broken. See fee simple subject to a condition subsequent under fee simple.

Unless a specific condition has been reserved in the Letters Patent of the original Patenteer, as expressed in the Public Lands Act regarding "land use conditions," there

19 10.—(1) The Lieutenant Governor in Council may set apart and appropriate such of the public lands as the Lieutenant Governor in Council considers expedient for roads and for the sites of wharves or piers, market places, jails, court houses, public parks or gardens, town halls, hospitals, places of public worship, burying grounds, schools, and for purposes of agricultural exhibitions, and for other like public purposes, and for model or industrial farms; and may make free grants for such purposes, and the trusts and uses to which they are to be subject shall be expressed in the letters patent; but no grants shall be for more than four hectares in any one case, and for any one of such purposes, except for a model or industrial farm, in which case the grant shall not be for more than forty hectares. R.S.O. 1970, c. 380, s. 14(1); 1978, c. 87, s. 30(1).
(2) The Lieutenant Governor in Council at any time before the issue of the letters patent may revoke any such appropriation. R.S.O. 1970, c. 380, s. 14 (2).
12.—(1) For the purpose of the management of public lands, the Minister may from time to time establish classes of zones, such as "Open", "Deferred", "Closed" or otherwise as he considers proper, may define the purposes for which public lands of each class may be administered, may cause areas of public lands to be laid down on maps or plans and may designate such areas as zones, and any area of public lands so designated shall be administered only for the purposes defined for the designated class of zone. R.S.O. 1970, c. 380, s. 16 (1); 1972, c. 29, s. 3.
(2) The Minister may designate areas in which the public lands are not open for disposition as summer resort locations until a plan of subdivision of the lands to be disposed of is registered under the Land Titles Act or the Registry Act, R.S.O. 1970, c. 380, s. 16 (2).
13.—(1) The Minister may designate any area in territory, without municipal organization as a restricted area, and he may issue permits for the erection of buildings or structures or the making of improvements on lands in any such area on such terms and conditions in any case as he considers proper. R.S.O. 1970, c. 380, s. 17 (1).
(2) Except under the authority of a permit issued under this Act, no person shall erect or cause to be erected any building or structure or make or cause to be made any improvement on any lands in any area in territory without municipal organization that is designated by the Minister as a restricted area.
(3) Every person who erects or causes to be erected a building or structure or makes or causes to be made any improvement on lands in an area designated by the Minister as a restricted area without a permit therefor and every person who contravenes or causes to be contravened any term or condition of a permit issued under this section is guilty of an offence and on conviction is liable to a fine of not more than $500. 1971, c. 46, s. 1.
(4) This section does not apply to the erection of buildings or structures or the making of improvements on lands for the purpose of the exploration or development of mines, minerals or mining rights. R.S.O. 1970. c. 380. s. 17 (4).
14.—(1) The Lieutenant Governor in Council may make regulations,
(a) prohibiting or regulating and controlling the sale or lease of public lands for any specified purpose or use, other than agricultural purposes, and fixing the prices or rentals and the terms and conditions of sale or lease;
(b) fixing the periods for which the Minister may extend the time for performance of a term or condition of a sale or lease under subsection 22 (2) and prescribing the fee therefor.
(2) The Minister may fix such terms and conditions of sale or lease as he considers proper in addition to those required under subsection (1).
(3) Any regulation made under subsection (1) may be made applicable to any part of Ontario and may for the purposes of subsection (1) define any term used therein.
(4) The Minister may, whether or not the consideration has been fixed by the regulations, dispose of public lands by tender or by auction upon such terms and conditions as he considers proper.
(5) Where public lands offered for sale or lease by tender or auction are not disposed of, the Minister may at any time thereafter sell or lease any such lands at such price or rental and upon such terms and conditions as he considers proper.

(6) In every Sale or other disposition of public lands for summer resort locations there shall be reserved to the Crown all mines and minerals thereon or thereunder, and the instrument of sale or other disposition shall so provide. R.S.O. 1970, c. 380, s. 18.

17.—(1) Letters patent for land sold or leased under this Act may contain a condition that the land is to be used in a particular manner or a condition that the land is not to be used in a particular manner and every such condition shall be deemed to be annexed to the land.

(2) Where land has been or is being used in violation of a condition in the letters patent, the Minister may apply by way of originating notice of motion to the judge of the county or district court of the county or district in which the land is situate for an order forfeiting the land to the Crown and for possession of the land, and the judge, upon proof to his satisfaction that the land has been or is being used in violation of the condition, shall make an order declaring that, upon registration of the order under subsection (4), the land is forfeit to the Crown and requiring any person in possession of the land to deliver up possession of the land to the Minister or to any person authorized by the Minister to receive possession of it.

(3) An order made under subsection (2) has the same force as a writ of possession and the sheriff or bailiff or person to whom it is entrusted for execution shall execute it in like manner as he would a writ of possession in an action for the recovery of land.

(4) A certified copy of an order made under subsection (2) shall be registered in the proper land registry office and, upon registration, the land is vested in the Crown and may be granted, sold, leased or otherwise disposed of in the same manner as public lands may be dealt with under the laws of Ontario. R.S.O. 1970, c. 380, s. 21.

18. Where land has been sold or leased under this Act and the letters patent therefor contain a condition that the land is to be used in a particular manner or a condition that the land is not to be used in a particular manner, the Minister may, upon such terms and conditions as he considers proper, make an order releasing the land or any part thereof from the condition or any part thereof contained in the letters patent. R.S.O. 1970, c. 380, s. 22.

26.—(1) The Ministry may cause to be erected on any public lands, including a road under the jurisdiction of the Minister, signs prohibiting, controlling or governing,

(a) the possession, occupation or any use or uses thereof;
(b) the parking of vehicles thereon.

(2) Every person who possesses, occupies or uses any public lands on which signs have been erected under clause (1) (a) in contravention of any such sign, or who parks a vehicle on public lands on which signs have been erected under clause (1) (b) in contravention of any such sign, and who has had a reasonable opportunity of seeing any of such signs, is guilty of an offence and on conviction is liable to a fine of not more than $500. 1971, c. 46, s. 3, part. 26.

43.—(1) There shall be a committee to be known as the Public Agricultural Lands Committee consisting of a chairman and such member or members as the Minister considers appropriate.

(2) Subject to the approval of the Lieutenant Governor in Council, the chairman and members of the Committee shall be appointed by the Minister.

(3) It is the duty of the Committee, Sec. 43 (3)

(a) to recommend to the Minister areas of lands that are suitable for sale or other disposition for agricultural purposes and measures for the development of such areas;
(b) to consider applications to acquire lands for agricultural purposes in any such area and all matters relevant thereto and to make recommendations to the Minister with respect thereto.

(4) After having considered the recommendations of the Committee with respect thereto, the Minister may,

(a) designate areas of lands that are suitable for sale or other disposition for agricultural purposes; and
(b) enter into agreements for the sale or other disposition of such lands for agricultural purposes to such persons, at such prices or rentals and subject to such terms and conditions as he may determine.

(5) Every agreement, licence and letters patent for land sold or otherwise disposed of under this section shall contain a condition that the land is to be used for agricultural purposes. R.S.O. 1970, c. 380, s. 48.

44.—(1) Lands may be acquired under the Ministry of Government Services Act for any forestry, agricultural or other program of the Ministry, and any lands so acquired shall be deemed to be public lands within the meaning of this Act. R.S.O. 1970, c. 380, s. 49 (1); 1972, c. 1, s. 1; 1973, c. 2, s. 2.

(2) The Minister or the Minister of Government Services etc. may enter into agreements with the owners of lands respecting the erection, maintenance and operation thereon of a public work within the meaning of the Ministry of Government Services Act. R.S.O. 1970, c. 380, s. 49 (2); 1973, c. 2, s. 2.

(3) An agreement entered into under subsection (2) may be registered in the proper land registry office and thereupon such agreement is binding upon every subsequent owner and mortgagee of the lands during the term of the agreement. R.S.O. 1970, c. 380, s. 49 (3). CHAPTER 413, Public Lands Act, 1980 Revised Statutes of Ontario, Vol 6, p. 889.
of entry," or to "zone" a land use without the written consent of the owner. If this is done than it is an expropriation or taking of the land and rights of the owner, creating an interest in some other entity – which must be government or the Crown because government or the Crown cannot grant the same rights, in one property, to two different persons/entities.20

This is made clear in MNRF Policy – PL 4.03.01 Release and Voidance of Reservations and Conditions in Land Grants, Dec. 1, 2001.

4.2.2 Land Use Condition

Occasional patents issued after 1959 may contain a land use condition authorised by section 18, to the effect of the following: "It is a condition of these letters patent that the land granted shall be used for purposes only."

Typically, land use conditions have been imposed to confine the use of lands to agricultural, conservation authority or municipal purposes. Rarely, the clause may indicate that the lands shall not be used for a particular purpose.

A land use condition may be released in accordance with section 19 of the Public Lands Act. See Part D of Procedure Directive PL 4.03.01. A land use condition should not be confused with an habendum restriction. See Habendum Restriction (Section 4.3.1 of this Policy). 21

In the case of Hamilton Harbour Commissioners v. City of Hamilton et al.,22 these sections are referred to and there needs to be an explanation in regards to harbours and wharfs as they pertain to sections 92 (13) and (16). It is established under the Public Lands Act23 that the Lieutenant Governor may set apart and appropriate such of

20 CHANDLER v. CALUMET & HECLA 149 U.S. (1893)(7-0) It is well settled that the state could have impeached the title thus conveyed to the canal company only by a bill in chancery to cancel or annul it, either for fraud on the part of the grantee, or mistake or misconstruction of the law on the part of its officers in issuing the patent. But whether there is any technical estoppel, in the ordinary sense, or not, it cannot be maintained that the state can issue two patents, at different dates to different parties, for the same land, so as to convey by the second patent a title superior to that acquired under the first patent. Neither can the second patentee, under such circumstances, in an action at law, be heard to impeach the prior patent for any fraud committed by the grantee against the state, or any mistake committed by its officers acting within the scope of their authority and having jurisdiction to act and to execute the conveyance sought to be impeached. Neither the state nor its subsequent patentee is in a position to cancel or annul the title which it had authority to make, and which it had previously conveyed to the canal company.

21 "HABENDUM" – means part of title document (e.g. letters patent) separate from the legal description, that specifies the interest being conveyed in the described property (i.e., fee simple, a term of years, or a use restriction); PL 4.03.01 Release and Voidance of Reservations and Conditions in Land Grants, Dec. 1, 2001.

22 Re City of Hamilton and Hamilton Harbour Commissioners et al. 48 O.R. (2d) 757, ONTARIO HIGH COURT OF JUSTICE.

23 10.—(1) The Lieutenant Governor in Council may set apart and appropriate such of the public lands as the Lieutenant Governor in Council considers expedient for roads and for the sites of wharves or piers, market places, jail, court houses, public parks or gardens, town halls, hospitals, places of public worship, burying grounds, schools, and for purposes of agricultural exhibitions, and for other like public purposes, and for model or industrial farms; and may make free grants for such purposes, and the trusts and uses to which they are to be subject shall be expressed in the letters patent; but no grants shall be for more than four hectares in any one case, and for any one of such purposes, except for a model or industrial farm, in which case the grant shall not be for more than forty hectares. R.S.O. 1970, c. 380, s. 14(1); 1978, c. 87, s. 30(1).
the public lands as the Lieutenant Governor in Council considers expedient for roads and for the sites of wharves or piers, market places, jails, court houses, public parks or gardens, town halls, hospitals, places of public worship, burying grounds, schools, and for purposes of agricultural exhibitions, and for other like public purposes, and for model or industrial farms; and may make free grants for such purposes, and the trusts and uses to which they are to be subject shall be expressed in the letters patent. Therefore any land use conditions implemented through legislation will be under the regulatory control of the province because there would be reserved in said letters patent that a wharf, pier or harbour would be considered "public property" in the province and it would be a matter of the provincial local government.

To continue with the Hamilton Harbour case, in response to Hamilton we direct you to:

Supreme Court of Canada, Hackett v. Colchester South, [1928] S.C.R. 255 it states:

Limitation of actions—Action by municipality for possession of land—Municipality’s title under Crown grant in trust for public wharf—Statute of Limitations set up as extinguishing municipality’s title—Application of statute—Evidence failing to establish dispossession.

Defendant claimed title to land by possession, and that plaintiff municipality’s title was extinguished by force of the Statute of Limitations. The land was part of a tract granted to the municipality by Crown grant, to hold in trust for a public wharf and public purposes connected therewith.

Held that, on the evidence, the decision of the Appellate Division, Ont. (61 Ont. L.R. 77), that defendant had failed satisfactorily to establish dispossession, should be sustained.

Semble, the land granted to the municipality was by the terms of the grant dedicated to a public use, which was accepted by the public, and this dedication gave rise to rights of enjoyment by the public, which rights were not, nor was the municipality’s title which was given for the purpose of supporting and protecting them, capable of being nullified, in consequence of adverse possession, by force of the Statute of Limitations.

APPEAL by the defendant from the judgment of the Appellate Division of the Supreme Court of Ontario[1] which (reversing the judgment of Ross, Co. C.J., Acting Judge of the County Court of the County of Essex) held that the plaintiff municipality was entitled to possession of the land in question. The land was part of a tract granted to the plaintiff municipality by Crown grant dated 12th January, 1869, to hold in trust for a public wharf and public purposes connected therewith. The defendant claimed that the municipality’s title was extinguished by force of the Statute of Limitations. The appeal to this Court was dismissed with costs.

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[1] WHARF - 1. A structure built on the shore or projecting into a harbor, stream, etc., so that vessels may be moored alongside to load or unload or to lie at rest, quay; pier.
http://www.dictionary.com/browse/wharf
The judgment of the court was delivered by
DUFF J.—I have come to the conclusion that this appeal must be dismissed. The
land, the possession of which is in dispute, is part of a tract granted to the
respondent municipality by Crown grant, dated the 12th of January, 1869. The
habendum is in these words,

To have and to hold to the said Corporation of the Township of Colchester and
their successors in office forever in trust for a Public Wharf and Public purposes
connected therewith.

The appellant’s case is that he is in possession of this piece of land from
which his predecessors dispossessed the respondent municipality more than ten
years before the action was brought, during which period, he, or his predecessors
in interest, have been in possession, and that the title of the municipality is
consequently extinguished by virtue of the Statute of Limitations. I have been very
much impressed by the force of the reasons given by Mr. Justice Hodgins in
support of his suggestion that the lands which were the subject of the grant to the
municipality were thereby dedicated to a public use, a dedication which was
accepted by the public (of this acceptance there is abundant evidence) and that
this dedication gave rise to rights of enjoyment by the public, closely analogous to
the rights of the public in respect of a public highway, and that such rights are not,
nor is a title such as that of the municipality, given for the purpose of supporting
and protecting them, capable of being nullified, in consequence of adverse
possession, by the provisions of the Statute of Limitations upon which the
appellant founds his case. I think there is a great deal to be said for that view. And
I venture to add this to what Mr. Justice Hodgins has said in support of it. The
appellant can only succeed upon the hypothesis that the municipality has lost its
title. If that be so, it follows that, as concerns the piece of land in question, the
object of the trust has necessarily failed. It would seem, again, to follow, on
ordinary principles, that a resulting trust has arisen in favour of the Crown. The
equity of the Crown, of
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which the appellant had notice, it might be forcibly argued on the authority of In re
Nisbet and Potts’ Contract, is not affected by the Statute of Limitations, because,
independently of the exceptional position of the Crown, the appellant cannot
maintain the position of a purchaser for value without notice. And, once more, it
would follow, if this be so, that only the bare legal title is extinguished, and
whatever possession the appellant may have, is held by him subject to the
equitable estate of the Crown. It is difficult to think of so impotent a conclusion as
one contemplated by the statute.

Mr. Denison suggests that all property given for charitable purposes is really
trust property, and that the title of the property so held is not exempt from the
Statute of Limitations. As to this, it should be noticed that here we are only
concerned with property which is granted by the Crown to a public body subject to
an express trust to permit the public to enjoy in it rights of physical user, as in a highway.

I do not think, however, that it is strictly necessary to express a decided opinion on this point. The Appellate Division has held that, having regard, *inter alia*, to the fact that the land was the property of the municipality, and in the same enclosure and held under the same title as an adjoining area from which the municipality was never dispossessed, the appellant has failed satisfactorily to establish dispossession from the piece in dispute. There is no doubt that, as to the critical years 1915 and 1916, the evidence is vague, and in some respects quite unsatisfactory. On the whole, I am not convinced that the Appellate Division has taken an erroneous view.

The appeal should be dismissed with costs. *Appeal dismissed with costs.*

Therefore the Harbour, in the Hamilton case, is *public land/property* and would be under the planning control of the Municipality. (also see BNA section 108, Schedule 3).

This is supported by the fact that if one wishes to create a private act/bill said person must petition to have a private act/bill enacted by the province, but a private act cannot interfere with anyone else’s rights.

In Supreme Court of Canada, Mercer v. Attorney General for Ontario,

> “the “lands” therefore which are referred to in sec. 109 of the British North America Act can only be construed to mean those ungranted or public lands belonging to the Crown.”

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26 Transfer of Property in Schedule 108, The Public Works and Property of each Province, enumerated in the Third Schedule to this Act, shall be the Property of Canada.

THE THIRD SCHEDULE

Provincial Public Works and Property to be the Property of Canada

1. Canals, with Lands and Water Power connected therewith.
2. Public Harbours.
3. Lighthouses and Piers, and Sable Island.
4. Steamboats, Dredges, and public Vessels.
5. Rivers and Lake Improvements.
6. Railways and Railway Stocks, Mortgages, and other Debts due by Railway Companies.
8. Custom Houses, Post Offices, and all other Public Buildings, except such as the Government of Canada appropriate for the Use of the Provincial Legislatures and Governments.
9. Property transferred by the Imperial Government, and known as Ordnance Property.
10. Armouries, Drill Sheds, Military Clothing, and Munitions of War, and Lands set apart for general Public Purposes.

27 Private Acts

Provisions in private Acts

...by the 13th paragraph of the 92nd section of the B.N.A. Act, with the power of legislation over “property and civil rights,” it follows that as a consequence all public property, which at the time of confederation belonged to these provinces and which became subject to provincial legislation, must equally belong to them. No. 5. “The management and sale of public lands belonging to the province, and of the timber and wood thereon,—No. 13. Property and civil rights in the province,” and No. 16. “Generally all matters of a merely local or private nature in the province.” When we come to the clauses relating to “Revenue, debts, assets, taxation,” we find, sec. 102, creation of a Consolidated Revenue fund:—
All duties and revenues over which the respective legislatures of Canada, Nova Scotia and New Brunswick, before and at the union, had and have power of appropriation except such portions thereof as are by this act reserved to the respective legislatures of the provinces or are raised by them in accordance with the special powers conferred on them…”

In regards to the Mackie case – this case could not be heard at the level of court it was in, secondly, it did not conclusively extinguish the fact that Mr. Mackie died before he could continue with his appeal. There is also the issue that the court did not understand what was meant by “property and civil rights” expressed in the 1792 Constitution which brought the laws of England in regards to property and civil rights to the province.

Property in Lands, Mines, etc.
109. All Lands, Mines, Minerals, and Royalties belonging to the several Provinces of Canada, Nova Scotia, and New Brunswick at the Union, and all Sums then due or payable for such Lands, Mines, Minerals, or Royalties, shall belong to the several Provinces of Ontario, Quebec, Nova Scotia, and New Brunswick in which the same are situate or arise, subject to any Trusts existing in respect thereof, and to any Interest other than that of the Province in the same.
56. All lands, mines, minerals and royalties vested in Her Majesty in the Provinces of Upper Canada, Lower Canada, Nova Scotia, New Brunswick and Prince Edward Island, for the use of such Provinces, shall belong to the Local Government of the territory in which the same are so situate; subject to any trusts that may exist in respect to any of such lands or to any interest of other persons in respect of the same. 1864 - Quebec Conference. The Seventy-Two Resolutions. [authenticated October 29, 1864]


“The OMB’s powers principally flow from the Planning Act. Case law indicates that I must be conscious of the fact that the OMB has expertise in both planning matters and with respect to what has been called its “home” statute, i.e. the Planning Act.
I defer to the Board’s interpretation of its powers, and, in so doing, finding that it does not have jurisdiction to determine the Crown patent issue described above. Accordingly, there is no good reason, in my view, to doubt the correctness of the decision of the OMB with respect to the jurisdiction question, which I believe to be the real question at issue. Thus the second test is not met…
With regard to the third test, while I certainly agree that there is general interest and public importance in there being a determination of what I have called the “Crown patent issue” as described above, that, as I have said repeatedly, is not the genuine question of law before me. Accordingly, in my view, granting leave to the Divisional Court would be improper with respect to the motion to dismiss. That would only compound the problem created by the Kaluznys’ having raised the Crown patent issue in the wrong forum in first instance by bringing it before the OMB. The proper forum, in my view, is the Superior Court of Justice on notice to, at the very least, the province. I agree that what is really being raised by the Kaluznys’ is indeed a constitutional issue. Its connection to land use is merely collateral. The land use aspects are not those properly addressed or addressable by the OMB.

“[18] English law was received into the Province of Ontario in 1792 through An Act Making More Effectual Provision for the Government of the Province of Quebec in North America and to Introduce the English Law as the Rule of Decision in all Matters of Controversy, Relative to Property and Civil Rights, [19] Stats. Upp. Can. 1792 (32 Geo. III), c. 1 (“the 1792 Act”). The explicit intent of the 1792 Act was to incorporate into Ontario law, the laws of England in relation to property and civil rights.\(^\text{31}\)

This follows with the Property and Civil Rights Act presently in Ontario, which the Preamble is not displayed:

Property and Civil Rights Act, R.S.O. 1990, CHAPTER P.29

**Consolidation Period:** From December 31, 1990 to the e-Laws currency date.

No amendments.

**Rule of decision**

1. In all matters of controversy relative to property and civil rights, resort shall be had to the laws of England as they stood on the 15th day of October, 1792, as the rule for the decision of the same, and all matters relative to testimony and legal proof in the investigation of fact and the forms thereof in the courts of Ontario shall be regulated by the rules of evidence established in England, as they existed on that day, except so far as such laws and rules have been since repealed, altered, varied, modified or affected by any Act of the Imperial Parliament, still having the force of law in Ontario, or by any Act of the late Province of Upper Canada, or of the Province of Canada, or of the Province of Ontario, still having the force of law in Ontario. R.S.O. 1990, c. P.29, s. 1.

Had the Justice performed due diligence, as the Justice had expressed that Mr. Mackie had not, and had fully read the document in its entirety\(^\text{32}\), as the document states:

“PASSED IN THE FOURTEENTH YEAR OF GEORGE III.

CHAPTER LXXXII.

An act for making more effectual provision for the government of Quebec in North America.

Whereas his Majesty, by his royal proclamation, bearing date the seventh day of October, in the third year of his reign, thought fit to declare the provisions which have been made in respect to certain countries, territories, and islands of America, ceded to his Majesty by the definitive treaty of peace concluded at Paris on the tenth day of February, one thousand seven hundred and sixty-three; and whereas by the arrangement made by the said royal proclamation, a very large extent of country, within which there were several colonies and settlements of the subjects of France, who claimed to remain therein under the faith of the said treaty, was left, without any provision being made for the administration of civil government

\(^{31}\) Ontario Supreme Court, Polewsky v. Home Hardware Stores Ltd., Date: 1999-10-12

\(^{32}\) E. A. Driedger: Construction of Statutes (2nd ed. 1983 at page 87.) “Today there is only one principle or approach, namely the words of the Act is to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act and the intention of Parliament.”
therein; and certain parts of the territory of Canada, … May it therefore please your most excellent Majesty that it may be enacted, and be it enacted by the King’s most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal and commons, in this present parliament assembled, and by the authority of the same, That all the territories, islands, and countries in North America, belonging to the Crown of Great Britain, bounded on the south by a line from the bay of Chaleurs, along the high lands which divide the…, and northward to the southern boundary of the territory granted to the merchants adventurers of England, trading to Hudson’s bay; and also all such territories, islands, and countries, which have, since the tenth of February, one thousand seven hundred and sixty-three, been made part of the government of Newfoundland, be, and they are hereby, during his Majesty’s pleasure, annexed to, and made part and parcel of the province of Quebec, as created and established by the said royal proclamation of the seventh of October, one thousand seven hundred and sixty-three.

II. Provided always, That nothing herein contained, relative to the boundary of the province of Quebec, shall in any wise affect the boundaries of any other colony.

III. Provided always, and be it enacted, That nothing in this act contained shall extend, or be construed to extend, to make void, or to vary or alter any right, title, or possession, derived under any grant, conveyance, or otherwise howsoever, of or to any lands within the said province, or the provinces thereto adjoining; but that the same shall remain and be in force and have effect, as if this act had never been made…

IX. Provided always, That nothing in this act contained shall extend, or be construed to extend, to any lands that have been granted by his Majesty, or shall hereafter be granted by his Majesty, his heirs and successors, to be holden in free and common soccage.

CHAPTER 93.

An Act adopting English Law in Certain Matters.
WHEREAS by the first Act passed in the first Session of the Parliament of Upper Canada, on the 15th day of October, 1792, it was among other things enacted, that in all matters of controversy relative to property and civil rights, the laws of England should be the rule for the decision of the same, and that all matters relative to testimony and legal proof in the investigation of fact should be regulated by the rules of evidence established in England, but that nothing therein contained should extinguish, release, discharge or affect any right, lawful claim or incumbrance to and upon any lands, tenements or hereditaments within Upper Canada, or should rescind, vacate or effect any contract or security then made and executed conformably to the Laws of Canada under the Imperial Statute passed in the fourteenth year of the reign of His Majesty King George the Third, intituled "An Act for the making more effectual provision for the Government of the Province of Quebec, in North America," or vary or interfere with any of the subsisting provisions respecting ecclesiastical rights or due, or should introduce any of the laws of England respecting the maintenance of the poor, or respecting bankrupts.

Therefore, subject to the exceptions and provisions above recited, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:--

1. In all matters of controversy relative to property and civil rights, resort shall continue to be had to the laws of England as they stood on the 15th day of October, 1792, as the rule for the decision of the same, and all matters relative to testimony and legal proof in the investigation of fact and the forms thereof in the several Courts in Ontario, shall continue to be regulated by the rules of evidence established in England, as they existed on the day and year last aforesaid—excepting so far as the said laws and rules have been since repealed, altered, varied, modified or affected by any Act of the Imperial Parliament, still having force of law in Ontario, or by any Act of the late Province of Upper Canada, or of the Province of Canada, or of the Province of Ontario, still having the force of law in Ontario, or by these Revised Statutes. R.S.O. 1877, c. 92, s. 1.

2. The Statutes of Jeofails, of Limitations, and for the amendment of the law, excepting those of mere local expediency, which previous to the 17th day of January, 1822, had been enacted respecting the law of England and then continued in force, shall be valid and effectual for the same purposes in Ontario, excepting so far as the same have, since the day last aforesaid, been repealed, altered, varied, modified or affected in the manner mentioned in section 1 of this Act. R.S.O. 1877. c. 92, s. 2. See also caps. 60, 111.

Under our constitutional law there can be no interference, by government, regarding any lands, tenements, hereditaments, encumbrances, mortgages, or two-party contracts. A definition of “free and common socage” is needed to fully understand the limitations of the legislature.

“Freehold tenure is without any incidents or obligations for the benefit of the Crown. All lands granted by the Crown in fee simple are granted in free and common socage - freehold tenure.
A fee simple may be transferred without licence or fine and the new owner holds from the Crown in the same manner as the previous tenant held from the Crown.\textsuperscript{36}

Under the circumstances, this ruling has left more questions than answers, as to exactly how the Justice ruled against Mr. Mackie.

To continue, this case has also placed every property transaction in jeopardy, since the inception of the 40 year title search, as it was declared that there had not been due diligence performed by the private property owner as he had not his Crown Patent or knowledge of his “rights” prior to activity on his private property. It is a standard of law that “where an individual acts in ignorance of his rights, he shall not be prejudiced by such acts.”\textsuperscript{37}

\textsuperscript{[17]} The Crown further questions the due diligence defence as there was no evidence presented that the appellant relied on the Patent when making decisions about the property, as he did not then possess nor had he as yet seen the Crown Patent.

\textsuperscript{[20]} It is further argued that the Crown Patent was obtained after the start of the business; and after the Niagara Escarpment Commission’s decision and after the Restoration Order was made. The absence of the Crown Patent’s existence to the appellant should preclude the argument that it presents itself as forming the basis of a due diligence defence.\textsuperscript{38}

If the case that the Crown Attorney is presenting, that due to a lack of Crown Patent knowledge at the time of purchase and/or during the situation with the Niagara Escarpment Commission, is the precluding evidence that Mr. Mackie had not performed due diligence\textsuperscript{39} by not having previous knowledge of the Crown Patent. What the Crown and the Justice may be implying is that it was the error of all Lawyers as well as real estate agents, during the purchasing process of property that have not performed due diligence during the title searches that must be performed.

Under the implication that Mr. Mackie had not performed due diligence, it is also the part of the Crown, the Justice and the Attorney General\textsuperscript{40} to perform due diligence.

\textsuperscript{36} Ownership and Title to Real Property, \url{http://lawstudies.wikidot.com/laws3112-lecture-3}

\textsuperscript{37} New Orleans v. United States. (10 Peters, 662-787. 1836). It is a principle sanctioned as well by law as by the immutable principles of justice, that, where an individual acts in ignorance of his rights, he shall not be prejudiced by such acts.

\textsuperscript{38} Her Majesty v. Robert Mackie, 2012

\textsuperscript{39} DUE DILLIGENCE - (Black’s Law Dictionary, 9th Edition, 2009, p. 523) – 1. The diligence reasonably expected from, and ordinarily exercised by, a person who seeks to satisfy a legal requirement or to discharge an obligation. – Also termed reasonable diligence; common diligence. ORDINARY DILIGENCE – The diligence that a person of average prudence would exercise in handling his or her own property like that at issue. – Also termed common diligence.
Based on this lack of authority of the province, had due diligence been performed by the Attorney General’s office during the creation of the Niagara Escarpment Planning (N.E.P. Act) legislation and if the N.E.C. understood their limited authority and had the enforcement officer for the N.E.C. been informed and/or understood his lack of authority over private property, there would have been no incident created and these charges would not have been laid.

**Question:** 3. *If government authority designates land as Natural Environment, is this the equivalent of expropriating the land?*

Government may pass regulation for land/property which belongs to it and not private property which has been alienated by the Crown through letters patent. It is expressed quite clearly in a number of cases.

To understand what is being stated one must understand the definition of "zone." The definition of "zone" is:

**ZONE, ZONING, ZONES** - *verb tr.v. zoned, zon·ing, zones.* 1. To divide into zones. 2. To designate or mark off into zones. 3. To surround or encircle with or as if with a belt or girdle. 41

*verb [with object] 1. designate (a specific area) for use or development as a particular zone in planning: the land is zoned for housing.* 42

To have the authority to zone or designate something one must own the area designated or have entered into an agreement with the private property owner (knowingly and willingly), and the private property owner has dedicated the property to the entity wishing to designate or zone the property. Zoning is a designation which cannot come to fruition unless there has been a previous dedication by the owner by grant in deed – registered against the title of the property. The definition of dedication and designation is:

**DEDICATION** – The donation of land or creation of an easement for public use. 43

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40 “He is the legal adviser of the Crown, and of the Executive Council or Ministry; and all legislation for the Province is conducted in his name and under his responsibility. He appears on behalf of the Crown in civil and criminal cases; and he is the proper officer to enforce criminal laws by prosecution in the Queen’s name in Courts of Justice in the Province. The Attorney-General of this Province is the officer of the Crown who must consider to be present in the Courts of the Province to assert the rights of the Crown and those are under its protection. His duties are somewhat analogous to those of the Minister of Justice in Ottawa; and he has all the rights, powers, duties, functions, responsibilities and authorities which, up to 1867, were vested in or imposed on the Attorney-General or Solicitor General of the Province of Canada by virtue of any Law, Statute, or Ordinance of Upper Canada or Canada, and not repugnant to the Confederation Act of that year. This also applies to the other Executive officers in regards to their respective departments....” A Manual of Government in Canada; or, the Principles and Institutions of our Federal and Provincial Constitutions, D. A. O’Sullivan, Esq., M.A., of Osgoode Hall, Barrister-at-law, 1879, p. 140-141.


42 [http://oxforddictionaries.com/definition/english/zone](http://oxforddictionaries.com/definition/english/zone)

And designate is defined as:

**DESIGNATE** – See *DESIGNEE* 44

**DESIGNEE** – A person who has been designated to perform some duty or carry out some specific role. -- Also termed *designate*. 45

**DESIGNATE** - The expression used by a testator instead of the name of the person or the thing he is desirous to name; for example, a legacy to the eldest son of such a person, would be a designation of the legatee.

A bequest of the farm which the testator bought of such a person; or of the picture he owns, painted by such an artist, would be a designation of the thing devised or bequeathed. 46

What is DESIGNATION - A description or descriptive expression by which a person or thing is denoted in a will without using the name. 47

**DESIGNATIO.** Lat. [from designare, q. v.] Designation, specification. Designatio [personae]; designation of the person. 2 Bowell on Bev. 357, 358. 1 Hilliard's Real Prop. 499. Applied to a word of purchase, as distinguished from a word of limitation. 2 Stra. 802, 804.

Designatio unius persona est exclusio alterius. The specification of one person is [or implies] the exclusion of another. Co. Litt. 210. "The law shall never seek out a person when the parties themselves have appointed one." Id. *ibid.* 48

As expressed by the Supreme Court of Canada:

"*But it cannot be said and maintained that this man formally dedicated this piece of property and nobody can be deprived of his rights without his consent, or without the provisions of the law.*

*There is no consent proved and the law cannot be construed as depriving him of his right in connection therewith.*" 49

In 1968 as stated:

"The Court of Appeals, Stevens, J., held that actions of subdivider in testifying that he did not intend to dedicate land designated in subdivision plat as park to public, in failing to include park in dedicatory working on record plat, in establishing and grading streets and replatting lots in portion of area designated as park, and in executing easement for sewer line to city across park and paying taxes on such

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48 New Law Dictionary: and Glossary: Containing Full Definition of The Principal Terms of the Common and Civil Law; ...Compiled on the basis of Spelman’s Glossary, By Alexander M. Burrill, Counsellor at Law, p. 369.

49 Rowland v. Edmonton (City), (1915), 50 S.C.R. 520.
property were inconsistent with intent to dedicate park to public but rather were consistent with intent to retain property as private property of subdivider and they rebutted presumption of dedication arising from plat. Judgment affirmed.\(^{50}\)

In 2013 without dedication there can be no designation.

"(b) Inapplicability of the Doctrine of Dedication and Acceptance

[16] The motions judge acknowledged that up until December 31, 2002, a municipal road could be created by the common law doctrine of dedication and acceptance. This doctrine requires the satisfaction of the following three conditions, as outlined in Cook’s Road Maintenance Assn. v. Crowhill Estates 2001 CanLII 24149 (ON CA), (2001), 196 D.L.R. (4th) 35 (Ont. C.A.), at para.10: (i) an owner of the land on which the road is situated had formed the intention to dedicate the land to the public as a public road, or highway; (ii) the intention was carried out by the road being thrown open to the public; and (iii) the road was accepted by the public.

[17] The motions judge observed that dedication may occur by usurpation and long enjoyment and may be inferred from use by the public.

[18] The motions judge concluded that there was no evidence from which he could find or infer any intention to dedicate a roadway or that any roadway was open to the public, who accepted it. The appointment of pathmasters, the granting of a road petition and 14 years of possible usage\(^{2}\) were insufficient to satisfy the conditions required to establish title based on the doctrine of dedication and acceptance.

[19] The motions judge therefore concluded that the allegation that a public highway existed prior to 1854 raised no genuine issue requiring a trial.\(^{51}\)

Without there being a formal dedication, by grant through the wording of a deed, and being registered on the title of the property, unless reserved in the Letters Patent, there can be no designation of land by the federal, province, municipal governments or the Crown.

From the Legislative Debates government was fully aware and fully understood, that they could not plan for property if they did not own it or was not owned or "in"\(^{52}\) the


\(^{52}\) There needs to be explanation as to what is meant by "in" a municipality as well as what is "in" the province or federal government. When something is "in the municipality" or "in the province" that means that it is something that is owned/belongs to, or is the property of that specific corporation. For example: “30. Vesting of the property in the Corporation. — All property acquired before the establishment of the Corporation, shall vest in the Corporation and all income derived and expenditure incurred in this behalf shall be brought into the books of the Corporation.” (THE EMPLOYEES’ STATE INSURANCE ACT, 1948)

“8. (1) Upon the commencement of this Act—
(a) all land and other property of every kind, including things in action, vested in or deemed to be vested in the State, specified in the Schedule shall, by virtue of this Act, and without further assurance, be transferred to, and shall vest in, the Corporation;” (Minister of Finance (Incorporation) Act, Laws of Trinidad and Tobago, 1973 p. 6).
Crown. The statement of the “Queen in right of Ontario has no right, title or interest in and to the lands described…” expresses this because the Queen cannot lay claim, or regulate something, after letters patent have been issued; the statement of "The fee and the legal possession were in the King or his grantees.” And as expressed in Privy Council Appeal No. 36 of 1934. In the matter of a Reference concerning refunds of dues paid under the terms or section 47 (F) of the Timber Regulations in Manitoba, British Columbia, Saskatchewan and Alberta:

“By section 11 (1) British subjects or intending British subjects were empowered to make application for entry for a homestead; if that application were accepted on payment of the prescribed fee, the receipt given by the local agent of the Government was to be a "certificate of entry," entitling the recipient to take, occupy, use and cultivate the land entered for, and to hold possession thereof to the exclusion of any other person, and to bring and maintain actions for trespass committed on the land. These rights, however, were subject to the proviso that occupancy, use and possession of land should be subject to the provisions of the Act or any other Act affecting it, or of any regulations made thereunder (section 11

"That the Act of Parliament of Canada, 31 Vict., c. 60, recognizes the view, and, while it provides for the regulation and protection of the fisheries, it does not interfere with private rights, only authorizing the granting of leases in fresh water rivers, where such rights have not already accrued, and that any lease granted by the Minister of Marine and Fisheries to fish in fresh water rivers which are not the property of the Dominion or in which the soil is not in the Dominion is illegal;“ (Constitution of Canada. The B.N.A. Act, 1867: Its Interpretation, etc., p. 165)
The statement of "in which the soil is not in the Dominion", and sections 92 (13). Property and Civil Rights in the Province, with 92. (16). Generally all Matters of a merely local or private Nature in the Province. Private property is not "in" or does not belong to the Dominion and private property is not “in” or does not belong to the provincial corporation, same for municipalities, because the "soil" or land belongs to the patentee (his heirs and assigns), which includes the patentee's private property rights. Once a municipality has been created, by Letters Patent, it is not “in the province” and does not belong to the province and that is why section 13 of the 1215 or section 9 of the 1297 Magna Carta, still stands. The statement that the municipalities are "creatures of the province" is not necessarily true, because the municipalities are not necessarily the "creatures of the province". The municipalities were created at the petition of the property owners, they are the shareholders and they are the ones who have control, not the provinces. Property Rights 101: An Introduction – Second Edition, p. 122-123

BELONG – 1. To be the property of a person or thing. 2. To be connected with as a member. Black's Law Dictionary, 9th Edition, 2009, p. 175


Conclusion
[121] Accordingly, the plaintiff's claim for a declaration that Her Majesty The Queen in right of Ontario is the owner of the lands lying between the water's edge of Nottawasaga Bay and the line depicting the “line of the wood” and a declaration as to the location of the line depicting the “line of the wood” on the original plan of survey of the Township of Tiny or in the alternative for an order directing a reference to determining the location of the line depicting the line of the wood on the original plan of survey of the Township of Tiny, are dismissed as is the claim for permanent injunctive relief and therefore all of the claims of the plaintiff are dismissed.
[122] As to the defendants' counterclaim, the defendants are entitled to the following, that is to say:
[123] A declaration that the owners of Blocks A, and B and each of the individual lots 1 to 45 inclusive Registered Plan No. 750 registered in the Registry Office for the Registry Division of Simcoe own and have title to the water's edge of Nottawasaga Bay subject to the right of free access to the shore of Lake Huron for all vessels, boats and persons and that Her Majesty the Queen in right of Ontario has no right, title or interest in and to the lands described as Blocks A, B, and each of the individual lots 1 to 45 inclusive, Registered Plan 750 save the free access to the shore of Lake Huron for all vessels, boats and persons from Lake Huron. Ontario (Attorney General) v. Rowntree Beach Assn. Date: 1994-03-11

(2)). By section 11 (6) it was provided that an entry for a homestead should be for the sole use and benefit of the entrant, failing which the Minister should have a discretion to cancel the entry. An entrant was bound to perfect his entry by taking up possession of the land and beginning residence thereon within six months from the date of the certificate, failing which the entry was liable to be cancelled; it might also be cancelled if the entrant in any year failed to fulfil the requirements of the Act. ... At the end of three years, the entrant might be granted letters patent for the land, which thereupon vested in the entrant in fee simple. 55

The Legislators knew they could not legislate or regulate private property, 57 and originally they had respected that if they violated the rights of the private property owner they would be placing the Queen and the Crown in disrepute.

Conclusion

"Whether the government is federal or provincial, authority to govern ultimately flows from the Crown." 58 Therefore if all power or authority flows from the Crown, and if the Queen in right of Ontario has no right, title or interest in private patented property/land than the government does not have the authority to zone, designate, regulate, etc., because the definition of "right, title and interest" and they are:

RIGHT (Black's Law Dictionary, 9th Edition, 2009, p. 1436) – 1. That which is proper under law, morality, or ethics. 2. Something that is due to a person by just claim, legal guarantee, or moral principle 59. 3. A law <the right to dispose of one's estate>. 4. A legally enforceable claim that another will do or will not do a given

55 VEST - [from Fr. vester, Lat. vestire, to clothe.] To clothe with possession; to deliver full possession of land or of an estate; to give seisin ; to enfeoff. Spelman, voc. Vestire.
To pass to a person; to become fixed in a person: to give an immediate right of present enjoyment; to give a present fixed right of future enjoyment; to give a legal or equitable seisin. 4 Kent's Com. 202. A statute or conveyance is said "to vest an estate in a person;" an estate is said "to vest or be vested in a person." Id. 238, 245. New Law Dictionary: and Glossary: Containing Full Definition of The Principal Terms of the Common and Civil Law, ...Compiled on the basis of Spelman's Glossary, By Alexander M. Burrill, Counsellor at Law, p. 1034.
VEST – 1. To confer ownership (of property) upon a person. 2. To invest (a person) with the full title to property. 3. To give (a person) an immediate, fixed right of present or future enjoyment. 4. Hist. To put (a person) into possession of land by the ceremony of investiture. – vesting. Black's Law Dictionary, 9th Edition, 2009, p. 1699.

56 Privy Council Appeal No. 36 of 1934. In the matter of a Reference concerning refunds of dues paid under the terms or section 47 (f) of the Timber Regulations in Manitoba, British Columbia, Saskatchewan and Alberta.
57 "Since Magna Carta the estate of a subject in lands or buildings has been protected against the prerogative of the Crown." Attorney-General v. De Keyser's Royal Hotel Ltd., (1920) A.C. 508 at 569 (H.L.)
58 A Crown of Maples Constitutional Monarchy in Canada, Catalogue N° : CH4-129/2012E
act; a recognized and protected interest the violation of which is a wrong. 5. The interest, claim, or ownership that one has in tangible or intangible property.

**TITLE** (Black’s Law Dictionary, 9th Edition, 2009, p. 1622) – 1. The union of all elements (as ownership, possession, and custody) constituting the legal right to control and dispose of property; the legal link between a person who owns property and the property itself. 2. Legal evidence of a person’s ownership rights in property; an instrument (such as a deed) that constitutes such evidence.

**INTEREST** (Black’s Law Dictionary, 9th Edition, 2009, p. 885) – 1. The object of any human desire; especially advantage or profit of a financial nature. 2. A legal share in something; all or part of a legal or equitable claim to or right in property <right, title and interest>. Collectively, the word includes any aggregation of rights, privileges, powers and immunities, distributively, it refers to any one right, privilege, power or immunity.

With the Queen in right of Ontario, and Canada, not having any right, title or interest in the private patented property/lands excepting anything reserved in said letters patent, and as all power flows from the Crown then neither a province or municipal government would have the authority to create a right or interest in private patented property/land, so what land does a municipality have authority over if not merely public lands or lands/property owned by it particularly when one considers section 3 of the *Real Properties Limitations Act*, which states:

**Limitation where the Crown interested**

3. (1) No entry, distress, or action shall be made or brought on behalf of Her Majesty against any person for the recovery of or respecting any land or rent, or of land or for or concerning any revenues, rents, issues or profits, but within sixty years next after the right to make such entry or distress or to bring such action has first accrued to Her Majesty. R.S.O. 1990, c. L.15, s. 3 (1).

As the majority of land granted, has passed the 60 years, the Queen/Crown nor anyone on behalf of the Queen/Crown, including government has any ability to regulate without fair and complete compensation. This has been established time and time again therefore any planning done by any level of government must only be done after the land/property has been acquired by said level of government.

“Again it appears to me to be almost inconceivable that the Crown should claim the right to do such things as prostrate fences, take possession of the great industrial works mentioned, or cause any buildings to be destroyed, without being bound at law to compensate the owners therefor.”

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60 Attorney General v. De Keyser’s Royal Hotel, Ltd., May 10, 1920
This is a fundamental principle, going back at least to Magna Carta,”…“Since Magna Carta the estate of a subject in lands or buildings has been protected against the prerogative of the Crown.”

And in 2013:

[30]…The words of McIntyre J.A. in Royal Anne Hotel are apposite: “There is no reason why a disproportionate share of the cost of such a beneficial service should be visited upon one member of the community by leaving him uncompensated for damage caused by the existence of that which benefits the community at large. [p. 761]

It is hoped with this very short dissertation that the Huron County Water Protection Steering Committee and the Huron County Planning and Development Department will not violate the Crown, the Municipal Act, the Property and Civil Rights Act, the Constitution (BNA), etc., or court rulings in regards to the private property rights of the residents situate within the geographical boundaries of Huron County. This could lead to legal challenges under section 448 (2) and/or section 273 of the Municipal Act.

We have a number of reports available for Municipal Council, including 2 Municipal Councilors Guides which may be of interest. If Council is interested please contact All Rights Research Ltd., and/or the local chapter of the Ontario Landowners Association for these documents.

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61 Attorney General v. De Keyser’s Royal Hotel, Ltd., May 10, 1920

62 Antrim Truck Centre Ltd. v. Ontario (Transportation), 2013 SCC 13, DOCKET: 34413, March 7, 2013
APPENDIX 1.

PUBLIC LANDS ACT, R.S.O. 1980.

10.—(1) The Lieutenant Governor in Council may set apart and appropriate such of the public lands as the Lieutenant Governor in Council considers expedient for roads and for the sites of wharves or piers, market places, jails, court houses, public parks or gardens, town halls, hospitals, places of public worship, burying grounds, schools, and for purposes of agricultural exhibitions, and for other like public purposes, and for model or industrial farms; and may make free grants for such purposes, and the trusts and uses to which they are to be subject shall be expressed in the letters patent; but no grants shall be for more than four hectares in any one case, and for any one of such purposes, except for a model or industrial farm, in which case the grant shall not be for more than forty hectares. R.S.O. 1970, c. 380, s. 14(1); 1978, c. 87, s. 30(1).

(2) The Lieutenant Governor in Council at any time before the issue of the letters patent may revoke any such appropriation. R.S.O. 1970, c. 380, s. 14 (2).

12.—(1) For the purpose of the management of public lands, the Minister may from time to time establish classes of zones, such as "Open", "Deferred", "Closed" or otherwise as he considers proper, may define the purposes for which public lands of each class may be administered, may cause areas of public lands to be laid down on maps or plans and may designate such areas as zones, and any area of public lands so designated shall be administered only for the purposes defined for the designated class of zone. R.S.O. 1970, c. 380, s. 16 (1); 1972, c. 29, s. 3.

(2) The Minister may designate areas in which the public lands are not open for disposal as summer resort locations until a plan of subdivision of the lands to be disposed of is registered under the Land Titles Act or the Registry Act, R.S.O. 1970, c. 380, s. 16 (2).

14.—(1) The Lieutenant Governor in Council may make regulations,

(a) prohibiting or regulating and controlling the sale or lease of public lands for any specified purpose or use, other than agricultural purposes, and fixing the prices or rentals and the terms and conditions of sale or lease;

(b) fixing the periods for which the Minister may extend the time for performance of a term or condition of a sale or lease under subsection 22 (2) and prescribing the fee therefor.

(2) The Minister may fix such terms and conditions of sale or lease as he considers proper in addition to those required under subsection (1).

(3) Any regulation made under subsection (1) may be made applicable to any part of Ontario and may for the purposes of subsection (1) define any term used therein.

(4) The Minister may, whether or not the consideration has been fixed by the regulations, dispose of public lands by tender or by auction upon such terms and conditions as he considers proper.

(5) Where public lands offered for sale or lease by tender or auction are not disposed of, the Minister may at any time thereafter sell or lease any such lands at such price or rental and upon such terms and conditions as he considers proper.
(6) In every Sale or other disposition of public lands for summer resort locations there shall be reserved to the Crown all mines and minerals thereon or thereunder, and the instrument of sale or other disposition shall so provide. R.S.O. 1970, c. 380, s. 18.

43.—(1) There shall be a committee to be known as the Public Agricultural Lands Committee consisting of a chairman man and such member or members as the Minister considers appropriate.

(2) Subject to the approval of the Lieutenant Governor in Council, the chairman and members of the Committee shall be appointed by the Minister.

(3) It is the duty of the Committee, Sec. 43 (3)
  (a) to recommend to the Minister areas of lands that are suitable for sale or other disposition for agricultural purposes and measures for the development of such areas;
  (b) to consider applications to acquire lands for agricultural purposes in any such area and all matters relevant thereto and to make recommendations to the Minister with respect thereto.

(4) After having considered the recommendations of the Committee with respect thereto, the Minister may,
  (a) designate areas of lands that are suitable for sale or other disposition for agricultural purposes; and
  (b) enter into agreements for the sale or other disposition of such lands for agricultural purposes to such persons, at such prices or rentals and subject to such terms and conditions as he may determine.

(5) Every agreement, licence and letters patent for land sold or otherwise disposed of under this section shall contain a condition that the land is to be used for agricultural purposes. R.S.O. 1970, c. 380, s. 48.

44.—(1) Lands may be acquired under the Ministry of Government Services Act for any forestry, agricultural or other program of the Ministry, and any lands so acquired shall be deemed to be public lands within the meaning of this Act. R.S.O. 1970, c. 380, s. 49 (1); 1972, c. 1, s. 1; 1973, c. 2. s. 2.

(2) The Minister or the Minister of Government Services etc. may enter into agreements with the owners of lands respecting the erection, maintenance and operation thereon of a public work within the meaning of the Ministry of Government Services Act. R.S.O. 1970, c. 380, s. 49 (2); 1973, c. 2, s. 2.

(3) An agreement entered into under subsection (2) may be registered in the proper land registry office and thereupon such agreement is binding upon every subsequent owner and mortgagee of the lands during the term of the agreement. R.S.O. 1970, c. 380, s. 49 (3).

54.—(1) All trees on land that has been disposed of under this Act for agricultural purposes remain the property of the Crown until the issuance of letters patent, whereupon the property in such trees passes to the patentee.

(2) During the time the trees on land that has been disposed of under this Act for agricultural purposes remain the property of the Crown, the purchaser or locatee of such land or anyone claiming under him may cut and use all such trees as are necessary for building on and fencing such land, and he may cut and dispose of all such trees required to be removed in clearing the land for cultivation, but no trees except those necessary for such building and fencing shall be cut beyond the limit of the actual
clearing without the consent in writing of an officer authorized by the Minister for the purpose.

(3) All trees cut under subsection (2) and sold or bartered are subject to the payment of the same charges as are at the time payable by the holders of licences to cut timber, unless the Minister otherwise directs in writing.

(4) Where land is disposed of under this Act for agricultural purposes and a licence to cut timber on such land is subsisting at the time the disposition is made, the licence shall be deemed to be revoked in respect of such land, and in any such case the Minister may compensate the holder of such licence by granting him a licence to cut timber elsewhere. R.S.O. 1970. c. 380, s. 59.

55.—(1) Where land is disposed of under this Act for agricultural purposes, the property in all trees thereon shall be deemed to have passed to the patentee by the letters patent, and every reservation of any class or kind of tree contained in the letters patent shall be deemed to be void.

(2) A reservation of all timber and trees or any class or kind of tree contained in letters patent granting public lands disposed of under this or any other Act for a summer resort location is void.

(3) A reservation of all timber and trees or any class or kind of tree contained in letters patent dated on or before the 1st day of April, 1869 and granting public lands disposed of under this or any other Act is void.

(4) Subsections (2) and (3) do not affect the rights of the holder of a licence under the Crown Timber Act subsisting 26th day of June, 1970. R.S.O. 1970, c. 380, s. 60 (1-4).

(5) Where public lands have been disposed of by the Crown under this or any other Act and some but not all of the species of trees thereon have been reserved to the Crown and are not under timber licence, the Minister may, if the lands comprise not more than eighty hectares, or, if the lands comprise more than eighty hectares, the Minister may, with the approval of, the Lieutenant Governor in Council, acquire any species of trees not so reserved or release any species of trees so reserved at such price and upon such terms and conditions as he considers proper. R.S.O. 1970, c. 380, s. 60 (5); 1978, c. 87, S.O.30 (5).

56. In sections 54 and 55, the expression “this Act” includes any predecessor of this Act. R.S.O. 1970, c. 380, s. 61.

57. In any letters patent issued for lands located or sold under this Act for agricultural purposes on or after the 1st day of April, 1957, the mines and minerals shall be reserved to the Crown. R.S.O. 1970, c. 380, s. 62. CHAPTER 413 - Public Lands Act, 1980 Revised Statutes of Ontario, Vol 6, p. 889.
Bio:

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E. F. Marshall's information has been used at the University of Guelph. The Ms. Marshall has
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