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Property Standard By-Laws: What Municipal Councils Need to Know. ©

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EXECUTIVE SUMMARY

"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]*?*

Throughout Ontario different Municipalities are entertaining the implementation of Property Standard By-laws and are including Warrantless Entry extending enforcement powers. These Municipalities, under Section 15.1 to 15.8 of the Building Code are falsely creating by-laws restricting and dictating what a private property owner may or may not do with and on their private property. The Building Code restricts the usage of Sections 15.1 to 15.8, "Municipal Property Standards" by Section 1.1 and 1.2 of the Act, to Municipal/Public Properties only.

The only sections of the Building Code that expressly grants permission to municipalities to create by-laws is section 7 of which a municipality must enter into agreements with a board of health, a planning board or a conservation authority under section 3.1. And section 3.1 is limited to municipal sewage systems.

Section 35 limits municipalities with restrictions that the Building Code supersedes all municipal by-laws and that any municipal by-laws can only be for construction and demolition that involves and/or has participation of public property. This is included in section 99.1 of the Municipal Act which makes specific reference to section 35 of the Building Code.

Section 133, "Fortification of Land" is also limited to times of construction and/or demolition and is restricted by the building code as the building code prevails over any by-laws created under this section.

Implementation of "property standard by-laws" are only to be implemented on properties that are owned by the Municipalities, properties that are under the management of corporations that are created and regulated by the Municipalities as in Social Housing, public utilities corporations created by municipalities, or properties that the Municipalities have entered into agreements with the owners of certain public facilities/social housing and agreements entered into with private property owners. The last mentioned properties would have "covenants" registered against the title of the property.

Any property standard by-laws that are being implemented on private property, outside of the aforementioned criteria, are a violation of the Building Code, the Criminal Code of Canada, the Planning Act, and the Municipal Act.

It is with this report that we hope that our Municipalities will be protected from issuing licenses, permits, fees and fines that can be challenged in the courts, saving time, money and effort for both the Municipalities and the electorate.

THE MUNICIPAL ACT

Section 2[2] of the Municipal Act states that the municipalities are to be "responsible and accountable governments" "within their jurisdiction". They are also "given powers and duties under this Act and many other Acts for the purpose of providing good government". The statementy of "good government" is ultra vires of the province as it is only the Federal Government, under section 91 of the BNA, which has jurisdiction over "good government". As it is only the Federal Government that can implement good government this authority cannot be transferred from the province to the municipalities.

Under section 4 of the Municipal Act, municipalities, either upper or lower tier, are merely corporations[3] and under section 4.2 they do not have to subscribe to the "Corporations Act" or the "Corporations Information Act."[4]

In conjunction with section 4, section 9 of the Municipal Act expresses that the municipalities only have the same rights, powers, privileges, and capacities of the natural person. It also expresses that they also only have the same authority as a natural person.[5] A "natural person" cannot commit trespass on to private property as expressed in the Criminal Code of Canada (see page 27). This includes the trespass of creating by-laws that violate a private property owner's right to use his/its property as he/it sees fit[6].

Under section 5 "Powers exercised by council", subsection 3 it states that municipalities can only create by-laws in the same capacity and under the same power as a natural person could, meaning that a natural person can only create "by-laws" or have authority over what belongs[7] to that person (section 9 Municipal Act). This in turn limits the ability of municipalities to create by-laws for any enforcement beyond its authority. In conjunction with section 9, subsection 4 of section 5 express that this limitation is applicable to all municipal powers, whether bestowed by the Municipal Act or any other Act[8].

Section 9 of the Municipal Act is self-explanatory. A municipality only has the same rights, capacity, privileges or authority/power as a person.

Powers of a natural person

9. A municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act. 2006, c 32, Sched. A, s. 8.

Under section 10[9]/[10] of the Municipal Act a board and/or single tier municipality may provide services that the municipality considers necessary to the local community. A local board is defined under subsection 6 as:

"Definition

(6) In this section,

"local board" means a local board other than,

(a) a society as defined in subsection 3 (1) of the Child and Family Services Act[11]*,*
(b) a board of health as defined in subsection 1 (1) of the Health Protection and Promotion Act[12]*,*
(c) a committee of management established under the Long-Term Care Homes Act, 2007[13]*,*
(d) a police services board established under the Police Services Act[14]*,*
(e) a board as defined in section 1 of the Public Libraries Act[15]*, or*
(f) a corporation established in accordance with section 203[16]*. 2006, c. 32,"*

Subsection 2[17] allows for the municipality to pass by-laws for the corporate structure of the municipality, accountability and transparency of the municipality and the local boards, financial management of the municipality and local boards, the public assets (*10. 2. 4. Public assets of the municipality acquired for the purpose of exercising its authority under this or any other Act.*) for the social, economical and environmental development[18] of the municipality, health and safety of persons when involved with/on municipal property, provide services to support the corporate structure, animal protection as defined in sections 444 to 447 of the Criminal Code of Canada on municipal property, buildings/structures owned, managed or under agreement of/with the municipality and/or local board, fencing and signs of/for the municipality, and licensing certain businesses business licenses that are allowed under section 92.9[19] of the BNA., and entities that use public/Crown properties at the discretion of the provincial and federal governments.

Subsection 3[20] expresses that a municipality may pass by-laws that combine, in conjunction, more than one of the topics covered in subsection 2.

Subsection 4[21] ensures that there will be no municipal interference if another person or entity provides a service or "thing", and that the municipality may only pass by-laws in regards to what the municipality or a municipal service board may receive for services and/or things provided to it.

Subsection 5[22] is an exemption that a municipality may pass by-laws in regards to services or things provided by someone, to the municipality and/or board, that there is a system[23] in place to ensure the operation of the municipality and/or the board and this must also ensure that the municipality and/or the board meet provincial standards and regulations that pertain to the municipality and/or the board.

Section 11[24] is the Spheres of Jurisdiction. This entails the authority of both lower and upper tier municipalities to create by-laws for what belongs to either, as expressed in the "table" of jurisdiction, grant the upper or lower tier the superior by-law creating authority. This would mean that if the jurisdiction of the by-law was granted exclusively to the upper tier the lower tier would have to accept that by-law, whereas the opposite if it is strictly granted to the lower tier. If

there is no exclusive power to either than both have the authority. Again, it must be stressed that this is only for what belongs to the municipalities under the Municipal Act or any other Act.

Subsection 2[25] allows for the municipality to pass by-laws for the corporate structure of the municipality, accountability and transparency of the municipality and the local boards, financial management of the municipality and local boards, the public assets (*11. 2. 4. Public assets of the municipality acquired for the purpose of exercising its authority under this or any other Act.*) for the social, economical and environmental development[26] of the municipality, health and safety of persons when involved with/on municipal property, provide services to support the corporate structure, animal protection as defined in sections 444 to 447 of the Criminal Code of Canada on municipal property, buildings/structures owned, managed or under agreement of/with the municipality and/or local board, fencing and signs of/for the municipality, and licensing certain businesses business licenses that are allowed under section 92.9[27] of the BNA., and entities that use public/Crown properties at the discretion of the provincial and federal governments.

Subsection 3[28] of 11 allows the municipalities to create by-laws for public highways, including traffic and parking on said highways, the public transportation systems/corporations of the municipalities/regions, public waste management systems, public utilities, cultural endeavours supplied by the municipality, access to recreational facilities owned by the municipality or local boards/corporations created by the municipalities, parks owned by the municipalities, heritage sites owned or heritage sites of private property owners who have entered into agreements with the municipality, municipal fences and signs, animals that use public facilities owned by the municipality, the public assets of the municipalities for economic, social and environmental development[29] of the municipal assets, municipal drains under the *Drainage Act,* and business licenses that are allowed under section 92.9 of the BNA.

Section 11 (4)[30] are the rules of jurisdiction between upper and lower tier municipalities. 11. 4. 4, 5, and 6[31], restricts the municipalities with the division of powers between upper and lower municipalities under this or any other Act. 11.4.7[32] restricts municipalities from placing municipal signs within 400 meters of any highway. This includes advertising signs owned by the lower tiered municipality and its ability to place a sign within the 400 meter distance of an upper tier highway.

Under section 11 subsection 6 and 7[33] the municipalities are restricted from creating by-laws that interfer with any other service or goods provider, including whether those services are provided by either upper or lower tier municipalities. And under subsection 8[34] both upper and lower tier municipalities are limited to creating by-laws for services that they or a corporation created by them, supplies and or for property that is owned and managed/operated by either corporation[35].

The municipalities do not have authority to create by-laws for "private" entities or property.

If the Province was legally able to create legislation, in regards to these issues, it would have. We direct you to Section 14 of the Municipal Act.

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
(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.

Same

(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.

Section 15 restricts any municipal powers/authority to those of a "natural person".

RESTRICTIONS AFFECTING MUNICIPAL POWERS

Specific powers, by-laws under general powers

15. (1) If a municipality has power to pass a by-law under section 9, 10 or 11 and also under a specific provision of this or any other Act, the power conferred by section 9, 10 or 11 is subject to any procedural requirements, including conditions, approvals and appeals, that apply to the power and any limits on the power contained in the specific provision. 2001, c. 25, s. 15 (1); 2006, c. 32, Sched. A, s. 11 (1).

Interpretation

(4) Subsection (1) applies to limit the powers of a municipality despite the inclusion of the words "without limiting sections 9, 10 and 11" or any similar form of words in the specific provision. 2006, c. 32, Sched. A, s. 11 (4).

Section 99.1[36] of the Municipal Act is only applicable to the demolition and conversion of residential rental properties owned, managed or under agreement of/with the municipality. This section is restricted by the Building Code and there is also strict criteria implemented in Section 99.1 as to exactly what type of rental properties they are referring to.

Under 99.1 (3)[37], the municipality cannot regulate or prohibit the demolition or conversion of any rental unit with less than 6 living quarters.

Under 99.1 (4)[38], again it is stressed that if there is a difference in any meaning/interpretation or conflict of a by-law and the Building Code, the Building

Code is the superior document and this section of the Municipal Act references section 35 of the building code.

99.1 (5)[39] allows that if there is a permit by a municipality for residential rental properties owned, managed or under agreement, under this section then there is no need to obtain a permit under section 8 of the building code.

And under 99.1 (6)[40] the municipality is required to inform the Minister of any demolitions and conversions of residential rental properties as this pertains to the Social Housing Reform Act[41] (repealed but outstanding agreements are still in force) and the Housing Development Act.

Under section 110[42] (9[43]) of the Municipal Act, municipalities may enter into agreements with service managers under the Social Housing Reform Act and may allow property tax exemptions, funding and support for social housing and capital facilities. There is also the ability for municipalities to lease property for social housing and/or to allow for exemptions from development charges, etc., but this all must be done through the by-law process. There can also be exemptions from School Board[44] taxes, grants, loans, etc., created under Section 110.

110 (10[45]) creates an ability for a reserve fund for the purpose of renovations, repairing and maintaining social housing and/or capital facilities that are established under the agreements. The Lieutenant Governor (L.G.) in Council may make regulations[46], in regards to capital facilities such as defining municipal capital facilities, which facilities the municipalities may enter into agreements with, which facilities municipalities may grant tax exemptions/reductions to, the rules, procedures, conditions and prohibitions of the agreements, defining school capital facilities and for which school boards and tax exemptions pertaining to school boards, and any foreign currencies in which the municipality may make lease payments and the conditions of these agreements.

In 2006 regulation 599/06[47] was enacted and could be an extension of section 110 as it involves “Municipal Service Corporations” and particularly section 9 of the regulation, “Economic development corporations”. A corporation created under this regulation is to be considered a local board for purposes of section 326[48] of the Municipal Act. Under section 9 (4) defines what “economic development services” means. It is inclusive of promotion of the municipality and the dissemination of information and economic strategies, the acquisition, development and disposal of sites in the municipality for residential, industrial, commercial and institutional uses, public transit, residential housing (social housing), parking facilities, small business initiatives, community improvement planning as set out in Part IV of the Planning act (Community Development), improvement, beautification and maintenance of municipally-owned land, buildings and structures in an area designated by the municipality beyond the

standard provided at the expense of the municipality generally, and promotion of any area of the municipality as a business or shopping area, provision of facilities for amusement or for conventions and visitors' bureaus, provision of culture and heritage systems. O. Reg. 599/06, s. 9 (4).

The forced demands for permits is illegal because a municipality, like any "person" or even the Crown does not have any right, title or interest in private property ergo, it cannot demand that the private property owner obtain permission from it to do or not do something on the private property owner's property. This is evident in Regulation 322/12[49] under the Municipal Act. *"Scope of local improvement, 2 (4) Nothing in this Regulation authorizes a municipality to enter and undertake a work as a local improvement on private property without the permission of the owner or other person having the authority to grant such permission."* and "*PART III, LOCAL IMPROVEMENTS ON PRIVATE PROPERTY BY AGREEMENT, Local improvements, private property, 36.1 In accordance with this Part, a municipality may raise the cost of undertaking works as local improvements on private property by imposing special charges on the lots of consenting property owners upon which all or part of the works are or will be located."*

In this document there is a definition of "private". The definition contains the explanation that private is "*with respect to a work or property, a work or property that is not owned by the municipality or a local board of the municipality",* as there has never been any indication that the Municipal Act, the Building Code, the Planning Act, the Ontario Planning and Development Act or any act that pertains to government agencies having a right, title or interest in, on or to private property, it stands to reason that any act and/or regulation is created to restrict and to regulate for public/Crown properties and public/Crown employees. This includes any corporation that is created by the province and/or municipalities to fulfill a "public service", as in Social Housing, community planning boards, local appeal bodies, etc.

There are very few criteria that a municipality may register against a title. An example of one in particular is for non-payment of property taxes[50] and this is one instance as an example of when Municipal Inspectors may enter onto the property without warrant as expressed in Section 386.1 and 386.2[51] of the Municipal act.

Section 133[52] of the Municipal Act refers to "Fortification of land" and makes reference and is subservient to the Building Code. Under 133 (2)[53] the definition of land is: *"land" means land, including buildings, mobile homes, mobile buildings, mobile structures, outbuildings, fences, erections, physical barriers and any other structure on the land or on or in any structure on the land"* and 133 (4) and (5)[54] expresses that this section is limited to Section 35 of the Building Code. According to Black's Law Dictionary, 9th Edition Land is defined as:

LAND (Black's Law Dictionary, 9th Edition, 2009, p. 955) – 1. An immovable and indestructible three-dimensional area consisting of a portion of the earth's surface, that space above and below the earth's surface, and everything growing on or permanently affixed to it. 2. An estate or interest in real property.

"In its legal significance, 'land' is not restricted to the earth's surface, but extends below and above the surface. Nor is it confined to solids, but may encompass within its bounds such things as gases and liquids. A definition of 'land' along the lines of 'a mass of physical matter occupying space' also is not sufficient, for an owner of land may remove part or all of that physical matter, as by digging up and carrying away the soil, but would nevertheless retain as part of his 'land' the space that remains. Ultimately, as a juristic concept, 'land' is simply an area of three-dimensional space, its position being identified by natural or imaginary points located by reference to the earth's surface. 'Land' is not the fixed contents of that space, although, as we shall see, the owner of that space may well own those fixed contents. Land is immovable, as distinct from chattels, which are moveable; it is also, in its legal significance, indestructible. The contents of the space may be physically severed, destroyed or consumed, but the space itself, and so the 'land', remains immutable."

Fortification By-laws can only be implemented on "public properties" and not on private properties. Section 133 doesn't include, as example, video cameras for security on a private home or business, it doesn't include extra locks etc., on homes or businesses that are private. It pertains only to property that is owned, managed or in some form of public property. Under Section 7 of the Constitution everyone is and has the right to personal security. If a municipality were to implement section 133 on private property is would violate the Constitution and the by-law created would be void and of no effect.

And section 133 (6)[55] is in regards to work orders that have been created through by-laws under the Municipal Act pertaining to construction and demolition under the Building Code allowing for 3 months for the work to be completed. And again pertains to property that is not private property. The properties of local housing corporations would be an example of the types of properties that a municipality may regulate under sections 133.

Under section 203[56] of the Municipal Act, municipalities may create corporations. There are some exemptions to this provision, though, and they are that municipalities may not create corporations under the *Electricity Act, 1998*, a corporation established under section 13[57] of the *Housing Development Act*, a local housing corporation established under Part III[58] of the *Social Housing Reform Act, 2000* or any other corporation that a municipality is expressly authorized under any other Act to establish or control. So if a municipality can create a corporation under another act it does not need to resort to section 203 of

the Municipal Act to reach its objective. And again the L.G. in Council may make regulations in regards to section 203.

Section 269[59] of the Municipal Act expands the definition of "local board" from what was defined in section 1 and refers to municipal and local board policies as set out in section 270. In the "other than' category, the Act (10 (6)), has not included hospital boards, school boards, and conservation authorities. It has included in the definition of local board - "an area services board", "a local service board", "a local roads board", "district social services administration board", "a local housing corporation described in section 23[60] of the Social Housing Reform Act, 2000", and any other "prescribed body performing a public function". Subsection 2 states that the Minister may make regulations prescribing what entities may be defined as "local boards."

In conjunction with section 269 (definition of local board), 270[61] lays out policy for the following. The sale and disposition of municipal land, hiring of employees, procurement of goods and services, when/where and how notice will be made of public meetings, the municipal corporations accountability for its actions in a transparent manner and the delegation of its powers and duties. Subsection 2[62] of 270 involves policies of the local boards. They include: the sale and disposition of the land belonging to or under the management of that specific board, hiring employees, and the procurement of goods and services for the board.

Under Section 326. (1)[63] a municipality may through creating by-laws identify a special service[64] that is needed by the municipality, determine costs, capital costs, debenture charges, depreciation charges, costs against the municipality for a reserve fund. It also may determine if certain residents will receive some form of benefit[65] from a service that the municipality will provide and determine if the costs for these services will be added to a tax levy. This section should be read in conjunction with regulation 322/12.

With the involvement of Social Housing and the Housing Development Act, and as there is the Landlord Tenant Act for regulation of privately operated rental properties, the Municipalities, to limit the corporations that are created under and in conjunction with the Social Housing Reform Act and the Housing Development Act, need a certain criteria established for Municipal Property Standards. This is covered under sections 15.1 to 15.8 as properties that are under management of municipalities, including public pools, parks, etc., also need to meet certain property standards. Perhaps this is why there is a requirement under section 7.1 of the Building Code implementing a code of conduct.

The interesting point of section 110, regulation 599/06, 322/12 and regulation 586/06 of the Municipal Act, is that these sections/regulations pertain to criteria that is laid out in the Planning Act. In the Planning Act there are a

number of interesting and very restrictive sections that pertain to exactly what the municipality may have authority over. This is particularly stated in section 25, 28 (2), (3), (6), Section 33, 34, and 36. Section 33 includes section 15.1 of the Building Code which in turn is “Municipal Property Standards.”

In summary we now know the extent of Municipal authority allows the municipality to pass by-laws for the corporate structure of the municipality, accountability and transparency of the municipality and the local boards, financial management of the municipality and local boards, the public assets (*11. 2. 4. Public assets of the municipality acquired for the purpose of exercising its authority under this or any other Act.*) for the social, economical and environmental development of the municipality, health and safety of persons when involved with/on municipal property, provide services to support the corporate structure, animal protection under the Criminal Code of Canada on municipal property, buildings/structures owned, managed or under agreement of/with the municipality and/or local board, fencing and signs of/for the municipality, and licensing certain businesses business licenses that are allowed under section 92.9 of the BNA., and entities that use public/Crown properties at the discretion of the provincial and federal governments.

THE PLANNING ACT

Public works and by-laws to conform with plan

24. (1) Despite any other general or special Act, where an official plan is in effect, no public work shall be undertaken and, except as provided in subsections (2) and (4), no by-law shall be passed for any purpose that does not conform therewith. R.S.O. 1990, c. P.13, s. 24 (1); 1999, c. 12, Sched. M, s. 24.

Pending amendments

(2) If a council or a planning board has adopted an amendment to an official plan, the council of any municipality or the planning board of any planning area to which the plan or any part of the plan applies may, before the amendment to the official plan comes into effect, pass a by-law that does not conform with the official plan but will conform with it if the amendment comes into effect. 2006, c. 23, s. 12.

Same

(2.1) A by-law referred to in subsection (2),

(a) shall be conclusively deemed to have conformed with the official plan on and after the day the by-law was passed, if the amendment to the official plan comes into effect; and

(b) is of no force and effect, if the amendment to the official plan does not come into effect. 2006, c. 23, s. 12.

Preliminary steps that may be taken where proposed public work would not conform with official plan

(3) Despite subsections (1) and (2), the council of a municipality may take into consideration the undertaking of a public work that does not conform with the official plan and for that purpose the council may apply for any approval that may be required for the work, carry out any investigations, obtain any reports or take other preliminary steps incidental to and reasonably necessary for the undertaking of the work, but nothing in this subsection authorizes the actual undertaking of any public work that does not conform with an official plan. R.S.O. 1990, c. P.13, s. 24 (3).

Deemed conformity

(4) If a by-law is passed under section 34 by the council of a municipality or a planning board in a planning area in which an official plan is in effect and, within the time limited for appeal no appeal is taken or an appeal is taken and the appeal is withdrawn or dismissed or the by-law is amended by the Municipal Board or as directed by the Board, the by-law shall be conclusively deemed to be in conformity with the official plan, except, if the by-law is passed in the circumstances mentioned in subsection (2), the by-law shall be conclusively deemed to be in conformity with the official plan on and after the day the by-law was passed, if the amendment to the official plan comes into effect. 1994, c. 23, s. 16 (2); 1996, c. 4, s. 14 (2).

Section 25[66] of the Planning Act states if there is an official plan a municipality must acquire land to place a "hold" on the property. This is supported by section 34 (8) of the Planning Act – Zoning By-laws.

Section 34 (8) expresses:

"Acquisition and disposition of non-conforming lands: (8) The council may acquire any land, building or structure used or erected for a purpose that does not conform with a by-law passed under this section and any vacant land having a frontage or depth less than the minimum established for the erection of a building or structure in the defined area in which such land is situate, and the council may dispose of any of such land, building or structure or may exchange any of such land for other land within the municipality. R.S.O. 1990, c. P.13, s. 34 (8); 1996, c. 4, s. 20 (4)."

Which, in turn, leads to the "Holding" provisions in section 36[67] of the Planning Act. In the aforementioned sections a municipality cannot place an "H" or holding symbol on private property. Unless it has been acquired and is owned, managed or belongs to the municipality or a corporation/board created by/for the municipality.

Section 28 (2)[68] states that where there is an official plan in effect that pertains to the community improvement the council may designate the whole or any part of an area covered under the official plan as a community development project area. Section 28 (3)[69] states when a by-law has been passed under subsection 2 the municipality may acquire the land within the community improvement area for the clearing, grading and/or prepare the land for community improvement and that it may hold the land acquired before or after the passing of the by-law.

Section 28 (6)[70] expresses that where a community improvement plan has come into effect, after acquiring the land/property, the municipality may construct, repair, rehabilitate buildings or the land, in conformity with the community improvement plan. It also expresses that the municipality may sell, lease or dispose of the buildings and/or land and that the sell, lease or disposal of the buildings/land can be to any person or government authority for use in conformity of the community improvement plan.

The definition of "community improvement"[71] includes:

"planning or replanning, design or redesign resubdivision, clearance, development or redevelopment, construction, reconstruction, rehabilitation, energy efficiency, and provides for residential ("Affordable housing 28. (1.1) Without limiting the generality of the definition of "community improvement" in subsection (1), for greater certainty, it includes the provision of affordable housing. 2006, c. 23, s. 14 (2)."), commercial, industrial, public, recreational, institutional, religious, charitable or other

uses, buildings, structures, works, improvements or facilities, or spaces therefor, as may be appropriate or necessary."

"Community improvement plan" means a plan for the community improvement of a community improvement project area; and "community improvement project area" means a municipality or an area within a municipality, the community improvement of which, in the opinion of the council, is desirable because of age, dilapidation, overcrowding, faulty arrangement, unsuitability of buildings or for any other environmental, social or community economic development reason.

Section 28 (7)[72] states that the municipality may make grants or loans for the purpose of carrying out the municipalities improvement plan. These grants or loans can be made to registered owners, assessed owners, tenants of lands and buildings within the municipality improvement project area and to any person that an owner or tenant has assigned rights to for receiving the grant or loan to pay part or all of the eligible costs of the community improvement plan, in other words entities that provide a public service and or future owners that purchase, lease or are the recipients of the disposed properties. "Eligible Costs[73] " include environmental site assessments, environmental remediation, development, redevelopment, construction, and reconstruction of lands and buildings for rehabilitation purposes or for the provision of energy efficient uses, buildings, structures, works, improvements or facilities.

Section 28 (7.2)[74] allows for grants and loans between upper and lower tier municipalities. (7.3)[75] limits the amount of grants or loans and brings in section 365.1[76] of the Municipal Act in regards to tax relief for an "eligible" property owner, who makes application, when property taxes are considered an "overburden" determined by the council.

Section 28 (10)[77] is the requirements for conditions of sale. This section includes section 34 (zoning by-laws) of the Planning act and explains that nothing that has been acquired by the municipality for a community improvement in a community improvement area can be sold unless a by-law is implemented and/or amended and that the purchaser, leases or entity that received the dispossession of property from the municipality enters into an agreement with the municipality covenanting the land use condition and/or zoning.

Section 28 (11)[78] refers to grants and/or loans under subsection (7) and/or an agreement in regards to grants and/or loans. It also expresses that any agreement entered into under section (10) may be registered against the land and that the municipality may be able to enforce the conditions on the future purchaser of the property subject to the Registry Act and/or the Land Titles Act.

Section 32[79] of the Planning Act is for Community Improvement Areas and is regulations for Grants and/or Loans for repairs brings in Municipal Property

Standards. Grants and Loans may be made by Municipal Councils to owners and or assessed owners of properties for repairs under the Social Housing Reform Act, the Housing Development Act, or for separate local boards that supply facilities for public services. This includes sections 15.1[80] and 15.2 (2)[81] of the Building Code. Section 15.1 to 15.8 does not apply to private property that is not part of a corporation providing a public service and is not part of municipal management or subsidies.

Section 33[82] of the Planning Act should be read in conjunction with Section 99.1, section 326 of the Municipal Act and section 15.1 and section 35[83] of the Building Code. Again this section of the Planning Act pertains to community development areas and is not applicable to private property.

Under Part V – Land Use Control and Related Administration section 34.6 (3)[84] states that "The authority to regulate provided in paragraph 4 of subsection (1) includes and, <u>despite the decision of any court</u>, shall be deemed always to have included the authority to regulate the minimum area of the parcel of land mentioned therein and to regulate the minimum and maximum density and the minimum and maximum height of development in the municipality or in the area or areas defined in the by-law.", the criteria that is set out in section 34 (1). (4)[85] still stands. This is beyond the authority of the Province to interfere with the courts and could be considered *ultra vires,* or beyond the authority of the Province. Placing this statement leads to the confusion of Municipal Councils, the public staff and residents to think that appealing to the courts is not an avenue, when the courts and one's right to appeal to the courts is part of our fundamental rights under the Constitution. Not to mention to make this statement is to amend the British North America Act, again which is beyond the authority of the Province.

We are seeing that our municipally elected officials have not been informed of the various sections that must be read in conjunction with a number of pieces of legislation to enact by-laws. Section 34 of the Planning Act is "zoning by-laws", and the implementation of zoning by-laws is done when, either the municipality has ownership of the property, a public facility/government corporation has ownership or agreements have been "knowingly" entered into between the municipality and the private property owner. Presently, caused by a lack of information, private property owners are being forced and/or "blackmailed" into entering into agreements that are beyond the ability of the municipality to demand, for permits/permission. "Covenant" or conditions of the agreement are then registered against the title of the land, which affects the title. This cannot be done under the Registry Act[86].

As expressed in the Midland Free Press, regarding *Ontario (Attorney General) v. Rowntree Beach Assn., 1994 CanLII 7228 (ON S.C.),* "*If you don't own it, you cannot plan for it*."[87], as it is only the private property owner that has the authority to dedicate his property and it is only the private property owner that

has the authority to designate his property for the use of the public[88] if he chooses.

THE BUILDING CODE

Section 1 Interpretation (1.1)[89] expresses that there is a limitation and exclusion of sections 15.1 to 15.8., Municipal Property Standards. Section 1 (1.2)[90] expresses that 15.1 to 15.8 are only applicable to sections 2, 16, 19, 20, 21, 27, 31, 36, and 37 of the Building Code. This does not include section 35[91] of the Building Code – Municipal By-laws.

Under section 35 of the Building Code, Municipal By-laws, it expresses that the Building Code is the superior document. It also expresses (35. (2))[92] that municipalities may make by-laws involving section 10 of the Building Code, and in the event that there is a conflict or a difference in interpretation, of section 10, the Building Code prevails. Section 35. (3)[93] sets out that this section is applicable to both upper and lower tier municipalities and local boards, which include boards created for Social Housing and Heritage Committees. And under section 35.1[94] a regulation made by a Conservation Authority is not a regulation within the definition of Part III (Regulations) under the Legislation Act, 2006[95].

Section 2[96] of the Building Code is for the administration and enforcement of the Building Code and is applicable to sections 15.1 to 15.8. Section 2 expresses that the Minister is responsible for the administration of this Act and that (2. (2)) there shall be a Director[97] appointed by the Lieutenant Governor for the Building and Development Branch of the Ministry of Municipal Affairs and Housing.

Section 16[98] of the Building Code expresses that regardless of sections 8, 12, 15, 15.2, 15.4, and 15.10.1 an inspector shall not enter into dwellings without (a) the consent of the occupier[99] after informing the occupier of their right to refuse, (a. 1.) a warrant has been obtained, (b) that the time to obtain a warrant would endanger the occupier, (c) that entering was to stop and immediate endangerment and/or (d) all requirements had been met to remove unsafe conditions under 15.9 (6) or to repair under sections 15.4 (1).

Section 19[100] involves inspectors and is inclusive of sections 15.1 to 15.8. This section pertains to a registered code agency[101] and anyone appointed by a registered code agency must meet the qualifications set out in the Building Code. A registered code agency is defined in the Building Code as:

> *"registered code agency" means a person that has the qualifications and meets the requirements described in subsection 15.11 (4); ("organisme inscrit d'exécution du code")*

And must meet the criteria set out in section 15.11 Qualifications:

Qualifications for registered code agencies

(4) A person is not eligible to be appointed as a registered code agency under this Act unless the person has the qualifications and meets the requirements set out in the building code. 2002, c. 9, s. 27; 2006, c. 19, Sched. O, s. 1 (7).

A registered code agency also pertains to the Architects Act in sections 56[102] and section 58[103], where architects must register with registered code agencies their designs of which architects are responsible for.

Section 20[104] involves section 15.1 to 15.8 and the obstruction of posted orders and that no person shall obstruct or cover up a posted order, on public properties, unless authorized by an inspector, officer or registered code agency.

Section 21[105] – Warrant for entry and search, involves sections 15.1 to 15.8 and expresses that a provincial judge or justice of the peace may issue a warrant for a search of a building, receptacle or a place, but only if the judge or justice is convinced that a warrant is applicable and that there is an offense in progress and anything seized must be documented for the person who's property is being searched. Reference is made to sections 159[106] and 160[107] of the Provincial Offenses Act and the seizure of things.

Section 27[108] Service – pertains to sections 15.1 to 15.8 and involves the delivery of orders. Orders must be sent either through registered mail allowing for 5 days after mailing or if the recipients can prove that it took longer than 5 days to be received. Orders may also be hand delivered by an officer to the agent/person.

Section 37[109] Proof of directions, orders, etc., is applicable to sections 15.1 to 15.8 and states that there must be proof of an order and/or direction for prosecution of an offense and it must be signed by the chief building official or officer under the direction of the chief building official.

Section 31[110] – Immunity from action, also pertains to sections 15.1 to 15.8 and grants immunity to directors, members of the Building Code Commission, the Building Materials Evaluation Commission, anyone acting under their authority, a person conducting an inquiry, a chief building official, an inspector or anyone working in good faith in the execution of their powers.

This is where section 7.1[111] Code of Conduct must be implemented and unfortunately this code seems to be lacking. There are complaints received by the Ontario Landowners Association about the problems that are being created by "inspectors" that may or may not meet the criteria. These complaints should be considered a valid indication of a failure in regards to the Code of Conduct. For example, it has been expressed that a particular area has implemented a by-law expressing when a "private pool" must be opened at the same time as a

"public pool". The definition of "Outdoor Pool" in Building Code Act, 1992, Ontario Regulation 350/06 is "*Outdoor pool* means a *public pool* that is not an *indoor pool*." There is no ability and/or authority for a municipality to implement a by-law for the opening of a "private pool", let alone implement section 15.2 allowing for "Warrantless Entry" onto private property.

Section 31 (2) expresses that the Crown, Municipalities either upper or lower, boards of health, planning boards and/or conservation authorities are liable to trespasses committed by their chief building officials/inspectors. Subsection (3)[112] relieves the Crown, municipalities, boards of health, planning boards and conservation authorities from liability for any act, omission or damage done by a "registered code agency" as under section 15.17.

Section 36[113] – Offenses, explains that a "person" is guilty of an offense if the person gives false information, fails to comply with an order, or contravenes this act. This section continues with subsections explaining the various fines and/or penalties to the persons and corporations that the building code is applicable to. Again this would be municipal persons and/or corporations under the various positions providing public services.

Sections 15.1 to 15.8 are not applicable to the rest of the building code and are for the construction and demolition of facilities that are used by/with and for the general public. They include section 3.1 of the Building Code - Enforcement, boards of health, planning boards and conservation authorities. This section relates to sewage systems in a municipality and the construction and/or demolition. The inspection is to be done by either of the aforementioned entities to ensure that municipalities are following prescribed regulations. They also have jurisdiction for the enforcement of this Act in the prescribed municipalities and territory without municipal organization.[114]

Section 7[115] of the Building Code expresses that where a municipality (upper/lower) have entered into an agreement under section 3(5), a board of health for purposes of 3.1, a planning board for purposes of 3.1, the Lieutenant Governor in Council for the purpose of 3.1 may make by-laws and/or regulations pertaining to those sections for territory they have applicable jurisdiction. Section 7 also pertains to fees charged for permits, as expressed in (8.1)[116], which includes PART XII FEES AND CHARGES[117], of the Municipal Act. Definitions under section 390 are:

"*In this Part, "by-law" includes a resolution for the purpose of a local board; "fee or charge" means, in relation to a municipality, a fee or charge imposed by the municipality under sections 9, 10 and 11 and, in relation to a local board, a fee or charge imposed by the local board under subsection 391 (1.1); "local board" includes any prescribed body performing a public function and a school board but, for the purpose of passing by-laws imposing fees or charges under this Part, does not include a school board*

or hospital board; "person" includes a municipality and a local board and the Crown. 2001, c. 25, s. 390; 2006, c. 32, Sched. A,"

And specifically note section 398 of the Municipal Act.

Debt 398. *(1) Fees and charges imposed by a municipality or local board on a person constitute a debt of the person to the municipality or local board, respectively. 2001, c. 25, s. 398 (1); 2006, c. 32, Sched. A, s. 170 (1).*
Amount owing added to tax roll *(2) The treasurer of a local municipality may, and upon the request of its upper-tier municipality, if any, or of a local board whose area of jurisdiction includes any part of the municipality shall, add fees and charges imposed by the municipality, upper-tier municipality or local board, respectively, to the tax roll for the following property in the local municipality and collect them in the same manner as municipal taxes: 1. In the case of fees and charges for the supply of a public utility, the property to which the public utility was supplied. 2. In all other cases, any property for which all of the owners are responsible for paying the fees and charges. 2001, c. 25, s. 398 (2); 2006, c. 32, Sched. A, s. 170 (2).*

This is for services that have been supplied by the municipality or local boards and/or for agreements that have been entered for the use of public properties. This has been amended by Regulation 322/12 of the Municipal Act.

In the Building Code the roles of "persons" that are described in the Building Code. This does not pertain to a private individual as a private individual can construct any structure on his/her private property without needing permission from any entity. This has been resolved throughout history as no one but the private property owner has any right, title or interest in, on or to that individual's private property/land. Also a requirement under section 1.1[118] "Roles of various persons" prescribes that construction is to only be carried out by persons with the qualifications and insurance required by the Building Code. When making repairs on one's vehicle there is no requirement that one must be a licensed mechanic, ergo, the Building Code is not applicable to an individual or anyone he/she wishes to assist him or her in the construction and/or demolition of any structure, building, home, etc., on their private property.

CONCLUSION

From the beginning of this report we have shown how the Municipal Act, the Planning Act, and the Building Code, etc., must all be read as one document in regards to the authority of Planners, Councils, Building and By-law Inspectors. As expressed in Georgian Bluffs (Township) v. Moyer, 2012 ONCA 700, DOCKET: C53734, at pages 6 and 7.

> "This action should never have occurred. It was caused by an incompetent employee of the Township who simply did not know what his job was or the limitations to his legal powers, …"
> [20] The action that "should have never occurred" was an action brought by the Township. The appellant successfully defended himself against the most significant element of the claim advanced by the Township – namely, an order that he remove all objectionable items from his 100-acre property. The appellant also succeeded in having the clean-up costs struck from his property tax bill, in establishing that the Township had trespassed upon his property, and, as we have found, in establishing that the Township had converted chattels he owned. In other words, the appellant was successful on every substantive issue raised in the litigation…"

The limitation to the authority of Municipal Councils, Planners, Building Inspectors, and By-law Inspectors is that of an individual or "natural person" they do not have the authority to trespass on anyone's private property/land. Be that trespass in the form of entering onto the land or passing by-laws and/or regulations that infringe on private land/property.

There is no mention in the Municipal Act that Municipalities have the ability to regulate private property, other than those entities that Municipalities have the ability under sections 92.2 and 92.9 of the British North America Act, to license or directly tax. The Planning Act restricts any implementation of designation and control onto properties that have been acquired by the Municipalities. And the Building Code is only applicable on "public properties", Crown properties, government properties or corporations that have entered into agreements with levels of government for public services and have been specifically created to provide public service, including Social Housing Residential Units, Health Boards, School Boards, Conservation Authorities, Heritage Conservation Districts,etc.

An example of where property standards are applicable is section 45 and 45.1 of the Heritage Ontario Act. Section 45 is the application rules for Part V of the Heritage Ontario Act – Heritage Conservation Districts. These rules instruct municipalities that only after they have entered into an agreement with a private property owner, under Section 36 (*Purchase or lease by-laws or Expropriating by-law)* and Section 37 (*Easements, Covenants, Agreements),* may they designate the property and implement Section 45.1. Section 45.1 is:

Building standards by-law 45.1 (1) If a by-law passed under section 15.1 of the Building Code Act, 1992 *setting out standards for the maintenance of property in the municipality is in effect in a municipality, the council of the municipality may, by by-law,*

(a) prescribe minimum standards for the maintenance of the heritage attributes of property situated in a heritage conservation district designated under this Part; and

(b) require property that is situated in a heritage conservation district designated under this Part and that does not comply with the standards to be repaired and maintained to conform with the standards. 2005, c. 6, s. 34.

Application (2) Sections 15.2, 15.3, 15.4, 15.5 and 15.8 of the Building Code Act, 1992 *apply with necessary modifications to the enforcement of a by-law made under subsection (1). 2005, c. 6, s. 34.*

This allows municipalities to create "property standards by-laws" for properties that are Crown property, Public property, Municipal property or properties that have agreed to be restricted willingly by the private property owner, as he/she had previously entered into an agreement with the municipality.

Throughout this document we are hopeful, that with the information provided, that Municipal Councils will take a step back and ask questions of their staff and advisors. It would seem that the pertinent information for making informed decisions, which is needed, is not being provided during the advisory process.

It is with this report that we hope that our Municipalities will be protected from issuing licenses, permits, fees and fines that can be challenged in the courts, saving time, money and effort for both the Municipalities and the electorate.

GLOSSARY

ABSOLUTE PROPERTY (Black's Law Dictionary, 9th Edition, 2009, p. 1336) – Property that has full and complete title to and control over.

ALIENATE (Black's Law Dictionary, 9th Edition, 2009, p. 84) – To transfer or convey (property or a property right) to another.

ALIENTATION (Black's Law Dictionary, 9th Edition, 2009, p. 84) – 1. Withdrawal from former attachment; estrangement. 2. Conveyance or transfer of property to another <alienation of one's estate>.

BAD LAW - (Black's Law Dictionary, 9th Edition, 2009, p. 159) – Invalid or void; legally unsound <bad service process> <bad law>.

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

BELONGINGS (Black's Law Dictionary, 9th Edition, 2009, p. 175) – 1. Personal Property; *EFFECTS* – see personal property under property. 2. All property, including realty.

COMMON LAW: The Common Law includes those principles, usages, and rules of action, applicable to the government and security of person and property, which do not rest for their authority upon any express or positive declaration of the will of the legislature. The Law Lexicon, or Dictionary of Jurisprudence, 1848, p. 121.

CORPORATION - A legal entity created under the authority of a statue, which permits a groups of people, as shareholders, to apply to the government for an independent organization to be created, which then pursues set objectives, and is empowered with legal rights usually only reserved for individuals, such as to sue and be sued, own property, hire employees or loan and borrow money. Duhaime On-Line Legal Dictionary. http://www.duhaime.org/LegalDictionary.aspx as of June 28, 2011

DOMAIN (Black's Law Dictionary, 9th Edition, 2009, p. 557) – 1. The territory over which sovereignty is exercised. 2. An estate in land. 3. The complete and absolute ownership of land.

EMINENT DOMAIN. – So great moreover is the regard of the law for private property, that it will not authorize the least violation of it; no, not even for the general good of the whole community. If a new road, for instance, were to be made through the grounds of a private person, it might perhaps be extensively beneficial to the public; but the law permits no man, or set of men to do this without consent of the owner of the land…Besides the public good is in nothing

more essentially interested, than in the protection of every individual's private rights…" Blackstone Commentaries, 2:138-9

FREE SOCAGE – Socage in which the services were both certain and honorable. By the statute 12 Car. 2. ch. 24 (1660), all tenures by knight service were, with minor exceptions, converted into free socage. Black's Law Dictionary, 9th Edition, 2009. Example: Section 22 of the British North America Act, 1867: (3.) He shall be legally or equitably seized as of free-hold for his own use and benefit of Lands or Tenements held in Free and Common Soccage or seized or possessed for his own use and benefit of Lands or Tenements held in Francalleu or in Roture, within the Province for which he is appointed…

FREEDOM OF CONTRACT (Black's Law Dictionary, 9th Edition, 2009, p. 735 (1879)) – the doctrine that people have a right to bind themselves legally; a judicial concept that contracts are based on mutual agreement and free choice, and thus should not be hampered by external control such as government interference.

FREEHOLD – Such an interest in lands of frank-tenement as may endure not only during the owner's life, but which is cast after his death upon the persons who successively represent him, ... Such persons are called heirs, and he whom they thus represent, the ancestor. When the interest extends beyond the ancestor's life, it is a freehold of inheritance, and when it only endures for the ancestor's life, it is a freehold not of inheritance. An estate to be a freehold, must possess these two qualities: 1. Immobility, that is, the property must be either land, or some interest issuing out of or annexed to land; and, 2. a sufficient legal indeterminate duration; for if the utmost period of time to which an estate can endure be fixed and determined , it cannot be a freehold. Dictionary of Jurispurdence, J.J.S. Wharton, Esq., 1847-48, pg. 268.

INSTRUMENT (Black's Law Dictionary, 9th Edition, 2009, p. 869) – 1. A written legal document that defines rights, duties, entitlements, or liabilities, such as a contract, will, promissory note, or share certificate. – Also termed legal instrument ("An instrument seems to embrace contracts, deeds, statutes, wills, Orders in Council, orders, warrants, schemes, letters patent, rules, regulations, bye-laws, whether in writing or in print, or party in both; in fact, any written or printed document that may have to be interpreted by the courts." Edward Beal, Cardinal Rules of Legal Interpretation 55 (A.E. Randal ed. 3d. ed. 1924)

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.

LAND (Black's Law Dictionary, 9th Edition, 2009, p. 955) – 1. An immovable and indestructible three-dimensional area consisting of a portion of the earth's surface, that space above and below the earth's surface, and everything growing on or permanently affixed to it.

2. An estate or interest in real property.

"In its legal significance, 'land' is not restricted to the earth's surface, but extends below and above the surface. Nor is it confined to solids, but may encompass within its bounds such things as gases and liquids. A definition of 'land' along the lines of 'a mass of physical matter occupying space' also is not sufficient, for an owner of land may remove part or all of that physical matter, as by digging up and carrying away the soil, but would nevertheless retain as part of his 'land' the space that remains. Ultimately, as a juristic concept, 'land' is simply an area of three-dimensional space, its position being identified by natural or imaginary points located by reference to the earth's surface. 'Land' is not the fixed contents of that space, although, as we shall see, the owner of that space may well own those fixed contents. Land is immovable, as distinct from chattels, which are moveable; it is also, in its legal significance, indestructible. The contents of the space may be physically severed, destroyed or consumed, but the space itself, and so the 'land', remains immutable."

LAND – In its restrained sense means soil, but in its legal acceptation it is a generic term, comprehending every species of ground or earth, as meadows, pastures, woods, moors, water, marshes, furze, and heath; it includes also messauges (i.e. dwelling houses, with some adjacent land assigned to the use of them, usually called curtilage), tofts (i.e. places where houses formerly stood), crofts (derived from the old English word creaft, meaning handy-craft, …they are small enclosures for pasture, &c., adjoining to dwelling houses), mills, castles, and other buildings, for with the conveyance of the land, the structures upon it pass also. And besides an indefinite extent upwards, it extends downwards to the globe's centre, hence the maxim: - Cufus est solum ejus est suque ad caelum et ad inferos….Water, by a solecism, is, in legal language, held to be a species of land; and yet it is to be observed, that a grant of a *certain water* will not convey soil, but only a right of fishing; but it is doubtful whether, by the grant of a several piscary, the soil passes or not, or, in other words, whether a person can have a several fishery without being owner of the soil…And in order to recover possession of a pool or rivulet of water, the action must be brought for the land, e.g., ten acres of land, covered with water, and not in the name of water only. Challower v. Thomas, Brownl. 142. Dictionary of Jurispurdence, J.J.S. Wharton, Esq., 1847-48, pg. 356-357

LEGAL MONOPOLY (Black's Law Dictionary, 9th Edition, 2009, p. 1098) – The exclusive right granted by government to business to provide utility services that are in turn regulated by the government.

LICENSE (Black's Law Dictionary, 9th Edition, 2009, p. 1002) – 1. A permission, usu., revocable, to commit some act that would otherwise be unlawful; esp., an agreement (not amounting to a lease or profit a prendre) that it is lawful for the licensee to enter the licensor's land to do some act that would otherwise be illegal, such as hunting game.
"A license is an authority to do a particular act, or series of acts, upon another's land, without possessing any estate therein. It is founded in personal confidence, and is not assignable, not within the statute of Frauds." 2 James Kent, Commentaries on American law ' 452-53 (George Comstock ed., 11th ed. 1866)
2. The Certificate or document evidencing such permission.

MANDAMUS (Black's Law Dictionary, 9th Edition, 2009, p. 1046-1047) - A writ issued by a court to compel performance of a particular act by a lower court or a governmental officer or body, usually to correct a prior action or failure to act.
ALTERNATIVE MANDAMUS – A writ issued upon the first application for relief, commanding the defendant either to perform the act demanded or to appear before the court at a specified time to show cause for not performing it.
PEREMPTORY MANDAMUS – An absolute and unqualified command to the defendant to do the act in question. It is issued when the defendant defaults on, or fails to show sufficient case in answer to, an alternative mandamus.

NON-STOCK CORPORATION (Black's Law Dictionary, 9th Edition, 2009, p. 393) – A corporation that does not issue shares of stock as evidence of ownership but instead is owned by its members in accordance with a charter or agreement. Examples are mutual insurance companies, charitable organizations, and private clubs.

PRINCIPLE (Black's Law Dictionary, 9th Edition, 2009, p. 1313) – A basic rule, law, or doctrine

PRIVATE (Black's Law Dictionary, 9th Edition, 2009, p. 1315) – Relating or belonging to an individual, as opposed to the public or the government.

PRIVATE PROPERTY (Black's Law Dictionary, 9th Edition, 2009, p. 1337) – Property – protected from public appropriation – over which the owner has exclusive and absolute rights

PROPERTY (Black's Law Dictionary, 9th Edition, 2009, p. 1335) – The right to possess, use and enjoy a determinate thing (either a tract of land or a chattel); the right of ownership <the institution of private property is protected from undue governmental interference>. – Also termed "bundle of rights" [Cases: Constitutional Law.]

PROVINCE (Black's Law Dictionary, 9th Edition, 2009, p. 1345) – 1. An administrative district into which a country has been divided. 2. A sphere of activity of a profession such as medicine or law.

PUBLIC (Black's Law Dictionary, 9th Edition, 2009, p. 1350) – The people of a nation or community as a whole <a crime against the public>. A place open or visible to the public <in public>

PUBLIC INTEREST (Black's Law Dictionary, 9th Edition, 2009, p. 1337) – 1. The general welfare of the public that warrants recognition and protection. 2. Something in which the public as a whole has a stake; esp., an interest that justifies governmental regulation.

PUBLIC PROPERTY (Black's Law Dictionary, 9th Edition, 2009, p. 1337) – State or community owned property not restricted to any one individual's use or possession.

REAL PROPERTY (Black's Law Dictionary, 9th Edition, 2009, p. 1335) – Land and anything growing on, attached to, or erected on it, excluding anything that may be severed without injury to the land.

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. 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 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.

WATER – A species of land. An action cannot be brought to recover possession of a pool or other piece of water by the name water only, but it must be brought for the land that lies at the bottom, as twenty acres of land covered in water. Brownl. 142. Dictionary of Jurispurdence, J.J.S. Wharton, Esq., 1847-48, pg. 696

COURT OF APPEAL FOR ONTARIO

CITATION: Georgian Bluffs (Township) v. Moyer, 2012 ONCA 700

DATE: 20121017

DOCKET: C53734

Sharpe, Gillese and Watt JJ.A.

BETWEEN

The Corporation of the Township of Georgian Bluffs

Plaintiff (Respondent)

and

James Moyer

Defendant (Appellant)

M. Paul Downs and Paula Downs, for the appellant

R. H. Thomson, for the respondent

Heard: October 5, 2012

On appeal from the judgment of Justice R.M. Thompson of the Superior Court of

Justice, dated April, 19, 2011.

BY THE COURT:

[1] The appellant owns a rural, 100-acre property located in the respondent Township. He inherited the property from his father, along with his father's habit of storing a large volume of discarded vehicles, equipment, construction material and other items on the property. Some of this material was dispersed over a municipal road allowance adjacent to the appellant's property.

[2] The respondent Township decided to take action to eliminate what it regarded as a nuisance and eyesore. Its representatives entered onto the road allowance and a portion of the appellant's property and removed chattels, including vehicles and other objects from the road allowance as well as some chattels, namely discarded wooden pallets, from the appellant's property. The Township added to the appellant's property tax bill the cost of removal and cleanup of the road allowance and commenced this action claiming, *inter alia*, an order requiring the appellant to remove all the wrecked, discarded and abandoned vehicles and other objects and debris from his property. The appellant defended that claim and counterclaimed for damages for trespass and conversion, punitive damages, and an order removing from his tax bill the cost of the removal and clean-up related to the road allowance.

[3] The trial judge dismissed the Township's claim for an order requiring the appellant to clean up his entire property. He found that the appellant had established that his use of the property qualified as a legal non-conforming use with respect to the bylaw provisions relied on by the Township. The trial judge also found that the Township was not entitled to add the road allowance clean-up costs to the appellant's property tax bill. The trial judge found that the Township had trespassed upon the appellant's property and removed chattels belonging to the appellant but he rejected the claim in conversion on the ground that the

appellant had failed to establish that the chattels removed had any value. The trial judge also rejected the appellant's claim for punitive damages.

[4] As a remedy for the trespass committed by the Township, the trial judge fashioned what he described as "an equitable resolution". He ordered that the appellant be entitled to retrieve three vehicles that had been towed from the road allowance without any storage or towing charges and that he not be required to compensate the Township for the cost of its clean-up of the road allowance.

[5] In a subsequent endorsement dealing with costs, the trial judge concluded that the litigation never should have occurred and that each party should bear its own costs of the action.

ISSUES

[6] The appellant raises several grounds of appeal asking us to award damages for conversion, damages for trespass, and punitive damages, and to grant leave to appeal costs and award him costs of the action.

ANALYSIS

(1) Conversion

[7] The trial judge dismissed the claim for damages for conversion on the basis that the chattels that he found had been removed from the appellant's property – namely, wooden pallets – were worthless.

[8] In our view, there is no basis for us to interfere with the trial judge's finding as to the value of the pallets. There was evidence to support that finding. The appellant had collected the pallets from factories as they were no longer usable and could not be repaired. He had paid nothing for the pallets and he made no effort to resell them.

[9] While the appellant argues other items were removed from his property, there is no finding to support his contention that those items were removed from his property rather than the road allowance. Moreover, there was no credible evidence provided by the appellant as to the value of the chattels he says were removed from his property.

[10] We do not agree that the circumstances of this case fall within the principle identified in *Lamb v. Kincaid* (1907), 38 S.C.R. 516, that a wrongdoer cannot escape or limit liability by destroying the evidence needed to ascertain the value of converted goods. The removal and destruction of the pallets by the Township did not preclude an assessment of their value as there was evidence from which the trial judge could fairly conclude that the converted property had no value.

[11] However, the Township did remove and destroy property belonging to the appellant and we agree with the submission that although the property had no market value, the appellant is entitled to an award of nominal damages for the Township's wrongful act of conversion. Subject to what we say below with respect to costs, as a practical matter, we consider that nominal award to be

subsumed in the set-off of damages against towing, storage and clean-up costs discussed under the next heading.

(2) Trespass

[12] The appellant argues that although the trial judge held that the Township trespassed upon his property and that he was entitled to damages on account of that trespass, the trial judge failed to award any damages.

[13] We disagree. The trial judge found that the trespass was “not minimal” but on the other hand, “not grossly intrusive” and that the physical damage associated with it was “negligible”.

[14] It is undisputed that the appellant was liable for the cost of removing objects and cleaning up the road allowance. In addition, the judgment allowed the appellant to retrieve vehicles the Township rightfully removed without towing or storage charges. In effect, the judgment set off the clean-up, towing and storage charges against the damages for trespass.

[15] In our view, it was open to the trial judge to fashion a remedy along those lines. Although the Township had not claimed the clean-up costs in the action, those costs were clearly in issue at the trial as they related to to the dispute about adding the costs to the appellant’s property tax bill. We recognize that there may have been an issue as to whether the Township’s action in adding the costs to the appellant’s tax bill protected the claim from being barred by the running of the limitation period. However, even if the appellant had a possible

defence to the claim, there was on the record a legal obligation from which he was released. We are not persuaded that the trial judge erred in finding that the release of that claim, combined with the release from towing and storage charges for the three vehicles, was adequate compensation for the Township's infringement of the appellant's property rights.

(3) Punitive Damages

[16] The findings of the trial judge do not justify an award for punitive damages. He expressly refused to find that the Township's conduct was malicious, highhanded, arbitrary, oppressive, deliberate or callous. On the contrary, he found that the trespass occurred through incompetence and a failure to understand the limits of the Township's authority. The trial judge concluded that although the trespass was not minimal neither was it grossly intrusive and the resulting physical damage was negligible.

[17] These findings were open to the trial judge and we see no basis to interfere with his conclusion that the conduct of the Township did not rise to level warranting the sanction of punitive damages.

(4) Costs

[18] In his costs endorsement, the trial judge found:

> This action should never have occurred. It was caused by an incompetent employee of the Township who simply did not know what his job was or the limitations

> to his legal powers, coupled with the stubbornness of a citizen who did not like government authority.

[19] We see no reason to disagree with that assessment. However, we disagree with its implications with respect to costs.

[20] The action that "should have never occurred" was an action brought by the Township. The appellant successfully defended himself against the most significant element of the claim advanced by the Township – namely, an order that he remove all objectionable items from his 100-acre property. The appellant also succeeded in having the clean-up costs struck from his property tax bill, in establishing that the Township had trespassed upon his property, and, as we have found, in establishing that the Township had converted chattels he owned. In other words, the appellant was successful on every substantive issue raised in the litigation and it was only his counter-claim for damages that met with limited success.

[21] In the light of the overall success achieved by the appellant with respect to the illegality of the Township's actions, the trial judge erred in principle by denying him costs. In *Northwood Mortgage Ltd. v. Gensol Solutions Inc.* (2005), 3 B.L.R. (4th) 322 (Ont. C.A.), at para. 6, this court stated that "an order depriving a successful party of costs is exceptional". This case does not present a compelling reason to depart from the usual rule.

[22] The appellant submitted a bill of costs for the claim and counterclaim in the amount of $93,862.13 on a substantial indemnity basis and $72,413.63 on a

partial indemnity basis and disbursements of $2312.77. Those amounts must be reduced to take into account the fact that substantial portions of the counterclaim were unsuccessful.

[23] We do not agree that this is a case for substantial indemnity costs. While offers to settle were submitted by the appellant, it is not possible to say that the result he achieved was superior to the terms of those offers. Nor do we consider the conduct of the Township to be such as to call for a substantial indemnity award for reasons similar to those outlined above with respect to punitive damages.

[24] In our view, taking all the circumstances to account, an award of $50,000 and $2312.77 for disbursements, inclusive of taxes, is appropriate.

DISPOSITION

[25] Leave to appeal costs is granted and the appellant is awarded his costs of the trial in the amount of $52,312.77, inclusive of taxes and disbursements. The appeal is otherwise dismissed. The appellant is also entitled to costs of the appeal fixed in the amount of $15,000 plus $4047.73 for disbursements, both figures inclusive of taxes.

"Robert J. Sharpe"
"E.E. Gillese J.A."
"David Watt J.A."

Released: October 17, 2012

CRIMINAL CODE OF CANADA…

R.S., c. C-34, s. 37.

Defence of Property

Defence of personal property

38. (1) Every one who is in peaceable possession of personal property, and every one lawfully assisting him, is justified

(a) in preventing a trespasser from taking it, or

(b) in taking it from a trespasser who has taken it,

if he does not strike or cause bodily harm to the trespasser.

Assault by trespasser

(2) Where a person who is in peaceable possession of personal property lays hands on it, a trespasser who persists in attempting to keep it or take it from him or from any one lawfully assisting him shall be deemed to commit an assault without justification or provocation.

R.S., c. C-34, s. 38.

Defence with claim of right

39. (1) Every one who is in peaceable possession of personal property under a claim of right, and every one acting under his authority, is protected from criminal responsibility for defending that possession, even against a person entitled by law to possession of it, if he uses no more force than is necessary.

Defence without claim of right

(2) Every one who is in peaceable possession of personal property, but does not claim it as of right or does not act under the authority of a person who claims it as of right, is not justified or protected from criminal responsibility for defending his possession against a person who is entitled by law to possession of it.

R.S., c. C-34, s. 39.

Defence of dwelling

40. Every one who is in peaceable possession of a dwelling-house, and every one lawfully assisting him or acting under his authority, is justified in using as much force as is necessary to prevent any person from forcibly breaking into or forcibly entering the dwelling-house without lawful authority.

R.S., c. C-34, s. 40.

Defence of house or real property

41. (1) Every one who is in peaceable possession of a dwelling-house or real property, and every one lawfully assisting him or acting under his authority, is justified in using force to prevent any person from trespassing on the dwelling-house or real property, or to remove a trespasser therefrom, if he uses no more force than is necessary.

Assault by trespasser

(2) A trespasser who resists an attempt by a person who is in peaceable possession of a dwelling-house or real property, or a person lawfully assisting him or acting under his authority to prevent his entry or to remove him, shall be deemed to commit an assault without justification or provocation.

R.S., c. C-34, s. 41.
Assertion of right to house or real property
42. (1) Every one is justified in peaceably entering a dwelling-house or real property by day to take possession of it if he, or a person under whose authority he acts, is lawfully entitled to possession of it.
Assault in case of lawful entry
(2) Where a person
(a) not having peaceable possession of a dwelling-house or real property under a claim of right, or
(b) not acting under the authority of a person who has peaceable possession of a dwelling-house or real property under a claim of right,
assaults a person who is lawfully entitled to possession of it and who is entering it peaceably by day to take possession of it, for the purpose of preventing him from entering, the assault shall be deemed to be without justification or provocation.

Trespasser provoking assault
(3) Where a person
(a) having peaceable possession of a dwelling-house or real property under a claim of right, or
(b) acting under the authority of a person who has peaceable possession of a dwelling-house or real property under a claim of right,
assaults any person who is lawfully entitled to possession of it and who is entering it peaceably by day to take possession of it, for the purpose of preventing him from entering, the assault shall be deemed to be provoked by the person who is entering.

R.S., c. C-34, s. 72.
Forcible Entry and Detainer
Forcible entry
72. (1) A person commits forcible entry when that person enters real property that is in the actual and peaceable possession of another in a manner that is likely to cause a breach of the peace or reasonable apprehension of a breach of the peace.
Matters not material
(1.1) For the purposes of subsection (1), it is immaterial whether or not a person is entitled to enter the real property or whether or not that person has any intention of taking possession of the real property.
Forcible detainer
(2) A person commits forcible detainer when, being in actual possession of real property without colour of right, he detains it in a manner that is likely to cause a breach of the peace or reasonable apprehension of a breach of the peace, against a person who is entitled by law to possession of it.
Questions of law

(3) The questions whether a person is in actual and peaceable possession or is in actual possession without colour of right are questions of law.
R.S., 1985, c. C-46, s. 72;R.S., 1985, c. 27 (1st Supp.), s. 10;1992, c. 1, s. 60(F).
Punishment
73. Every person who commits forcible entry or forcible detainer is guilty of
(a) an offence punishable on summary conviction; or
(b) an indictable offence and liable to imprisonment for a term not exceeding two years.
R.S., 1985, c. C-46, s. 73;R.S., 1985, c. 27 (1st Supp.), s. 11;1992, c. 1, s. 58.
PART IX — OFFENCES AGAINST RIGHTS OF PROPERTY [321. - 378.]
R.S., 1985, c. C-46, s. 321;R.S., 1985, c. 27 (1st Supp.), s. 42.

Theft
Theft
322. (1) Every one commits theft who fraudulently and without colour of right takes, or fraudulently and without colour of right converts to his use or to the use of another person, anything, whether animate or inanimate, with intent
(a) to deprive, temporarily or absolutely, the owner of it, or a person who has a special property or interest in it, of the thing or of his property or interest in it;
(b) to pledge it or deposit it as security;
(c) to part with it under a condition with respect to its return that the person who parts with it may be unable to perform; or
(d) to deal with it in such a manner that it cannot be restored in the condition in which it was at the time it was taken or converted.
Time when theft completed
(2) A person commits theft when, with intent to steal anything, he moves it or causes it to move or to be moved, or begins to cause it to become movable.
Secrecy
(3) A taking or conversion of anything may be fraudulent notwithstanding that it is effected without secrecy or attempt at concealment.
Purpose of taking
(4) For the purposes of this Act, the question whether anything that is converted is taken for the purpose of conversion, or whether it is, at the time it is converted, in the lawful possession of the person who converts it is not material.
Wild living creature
(5) For the purposes of this section, a person who has a wild living creature in captivity shall be deemed to have a special property or interest in it while it is in captivity and after it has escaped from captivity.
R.S., c. C-34, s. 285.

Agent pledging goods, when not theft
325. A factor or an agent does not commit theft by pledging or giving a lien on goods or documents of title to goods that are entrusted to him for the purpose of sale or for any other purpose, if the pledge or lien is for an amount that does not exceed the sum of

(a) the amount due to him from his principal at the time the goods or documents are pledged or the lien is given; and
(b) the amount of any bill of exchange that he has accepted for or on account of his principal.
1974-75-76, c. 93, s. 24.

Theft by or from person having special property or interest
328. A person may be convicted of theft notwithstanding that anything that is alleged to have been stolen was stolen
(a) by the owner of it from a person who has a special property or interest in it;
(b) by a person who has a special property or interest in it from the owner of it;
(c) by a lessee of it from his reversioner;
(d) by one of several joint owners, tenants in common or partners of or in it from the other persons who have an interest in it; or
(e) by the representatives of an organization from the organization.
R.S., c. C-34, s. 292.

Taking ore for scientific purpose
333. No person commits theft by reason only that he takes, for the purpose of exploration or scientific investigation, a specimen of ore or mineral from land that is not enclosed and is not occupied or worked as a mine, quarry or digging.
2010, c. 14, s. 3.

Punishment for theft
334. Except where otherwise provided by law, every one who commits theft
(a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years, where the property stolen is a testamentary instrument or the value of what is stolen exceeds five thousand dollars; or
(b) is guilty
(i) of an indictable offence and is liable to imprisonment for a term not exceeding two years, or
(ii) of an offence punishable on summary conviction,
where the value of what is stolen does not exceed five thousand dollars.

Criminal breach of trust
336. Every one who, being a trustee of anything for the use or benefit, whether in whole or in part, of another person, or for a public or charitable purpose, converts, with intent to defraud and in contravention of his trust, that thing or any part of it to a use that is not authorized by the trust is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years.
R.S., c. C-34, s. 296.

Public servant refusing to deliver property
337. Every one who, being or having been employed in the service of Her Majesty in right of Canada or a province, or in the service of a municipality, and entrusted by virtue of that employment with the receipt, custody, management or

control of anything, refuses or fails to deliver it to a person who is authorized to demand it and does demand it is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years.
R.S., c. C-34, s. 299.

Destroying documents of title
340. Every one who, for a fraudulent purpose, destroys, cancels, conceals or obliterates
(a) a document of title to goods or lands,
(b) a valuable security or testamentary instrument, or
(c) a judicial or official document,
is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years.
R.S., c. C-34, s. 300.

Fraudulent concealment
341. Every one who, for a fraudulent purpose, takes, obtains, removes or conceals anything is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years.
R.S., c. C-34, s. 318.

False Pretences
False pretence
361. (1) A false pretence is a representation of a matter of fact either present or past, made by words or otherwise, that is known by the person who makes it to be false and that is made with a fraudulent intent to induce the person to whom it is made to act on it.
Exaggeration
(2) Exaggerated commendation or depreciation of the quality of anything is not a false pretence unless it is carried to such an extent that it amounts to a fraudulent misrepresentation of fact.
Question of fact
(3) For the purposes of subsection (2), it is a question of fact whether commendation or depreciation amounts to a fraudulent misrepresentation of fact.
R.S., c. C-34, s. 319.

False pretence or false statement
362. (1) Every one commits an offence who
(a) by a false pretence, whether directly or through the medium of a contract obtained by a false pretence, obtains anything in respect of which the offence of theft may be committed or causes it to be delivered to another person;
(b) obtains credit by a false pretence or by fraud;
(c) knowingly makes or causes to be made, directly or indirectly, a false statement in writing with intent that it should be relied on, with respect to the financial condition or means or ability to pay of himself or herself or any person or organization that he or she is interested in or that he or she acts for, for the

purpose of procuring, in any form whatever, whether for his or her benefit or the benefit of that person or organization,
(i) the delivery of personal property,
(ii) the payment of money,
(iii) the making of a loan,
(iv) the grant or extension of credit,
(v) the discount of an account receivable, or
(vi) the making, accepting, discounting or endorsing of a bill of exchange, cheque, draft or promissory note; or
(d) knowing that a false statement in writing has been made with respect to the financial condition or means or ability to pay of himself or herself or another person or organization that he or she is interested in or that he or she acts for, procures on the faith of that statement, whether for his or her benefit or for the benefit of that person or organization, anything mentioned in subparagraphs (c)(i) to (vi).
R.S., 1985, c. C-46, s. 362;R.S., 1985, c. 27 (1st Supp.), s. 52;1994, c. 44, s. 22;2003, c. 21, s. 5.

Obtaining execution of valuable security by fraud
363. Every one who, with intent to defraud or injure another person, by a false pretence causes or induces any person
(a) to execute, make, accept, endorse or destroy the whole or any part of a valuable security, or
(b) to write, impress or affix a name or seal on any paper or parchment in order that it may afterwards be made or converted into or used or dealt with as a valuable security,
is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years.
R.S., c. C-34, s. 337.

Fraud
Fraud
380. (1) Every one who, by deceit, falsehood or other fraudulent means, whether or not it is a false pretence within the meaning of this Act, defrauds the public or any person, whether ascertained or not, of any property, money or valuable security or any service,
(a) is guilty of an indictable offence and liable to a term of imprisonment not exceeding fourteen years, where the subject-matter of the offence is a testamentary instrument or the value of the subject-matter of the offence exceeds five thousand dollars; or
(b) is guilty
(i) of an indictable offence and is liable to imprisonment for a term not exceeding two years, or
(ii) of an offence punishable on summary conviction,
where the value of the subject-matter of the offence does not exceed five thousand dollars.

R.S., c. C-34, s. 342.

Fraudulent concealment of title documents
385. (1) Every one who, being a vendor or mortgagor of property or of a chose in action or being a solicitor for or agent of a vendor or mortgagor of property or a chose in action, is served with a written demand for an abstract of title by or on behalf of the purchaser or mortgagee before the completion of the purchase or mortgage, and who
(a) with intent to defraud and for the purpose of inducing the purchaser or mortgagee to accept the title offered or produced to him, conceals from him any settlement, deed, will or other instrument material to the title, or any encumbrance on the title, or
(b) falsifies any pedigree on which the title depends,
is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years.
Consent required
(2) No proceedings shall be instituted under this section without the consent of the Attorney General.
R.S., c. C-34, s. 343.

Fraudulent registration of title
386. Every one who, as principal or agent, in a proceeding to register title to real property, or in a transaction relating to real property that is or is proposed to be registered, knowingly and with intent to deceive,
(a) makes a material false statement or representation,
(b) suppresses or conceals from a judge or registrar, or any person employed by or assisting the registrar, any material document, fact, matter or information, or
(c) is privy to anything mentioned in paragraph (a) or (b),
is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years.
R.S., c. C-34, s. 344.

Fraudulent sale of real property
387. Every one who, knowing of an unregistered prior sale or of an existing unregistered grant, mortgage, hypothec, privilege or encumbrance of or on real property, fraudulently sells the property or any part thereof is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years.
R.S., c. C-34, s. 384.

PART XI
WILFUL AND FORBIDDEN ACTS IN RESPECT OF CERTAIN PROPERTY
Interpretation
Definition of “property”
428. In this Part, “property” means real or personal corporeal property.
R.S., c. C-34, s. 385.

Wilfully causing event to occur
429. (1) Every one who causes the occurrence of an event by doing an act or by omitting to do an act that it is his duty to do, knowing that the act or omission will probably cause the occurrence of the event and being reckless whether the event occurs or not, shall be deemed, for the purposes of this Part, wilfully to have caused the occurrence of the event.
Colour of right
(2) No person shall be convicted of an offence under sections 430 to 446 where he proves that he acted with legal justification or excuse and with colour of right.
Interest
(3) Where it is an offence to destroy or to damage anything,
(a) the fact that a person has a partial interest in what is destroyed or damaged does not prevent him from being guilty of the offence if he caused the destruction or damage; and
(b) the fact that a person has a total interest in what is destroyed or damaged does not prevent him from being guilty of the offence if he caused the destruction or damage with intent to defraud.
R.S., c. C-34, s. 386.

Mischief
Mischief
430. (1) Every one commits mischief who wilfully
(a) destroys or damages property;
(b) renders property dangerous, useless, inoperative or ineffective;
(c) obstructs, interrupts or interferes with the lawful use, enjoyment or operation of property; or
(d) obstructs, interrupts or interferes with any person in the lawful use, enjoyment or operation of property.
R.S., c. C-34, s. 396.

Occupant injuring building
441. Every one who, wilfully and to the prejudice of a mortgagee or an owner, pulls down, demolishes or removes all or any part of a dwelling-house or other building of which he is in possession or occupation, or severs from the freehold any fixture fixed therein or thereto, is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years.
R.S., c. C-34, s. 397.

Interfering with boundary lines
442. Every one who wilfully pulls down, defaces, alters or removes anything planted or set up as the boundary line or part of the boundary line of land is guilty of an offence punishable on summary conviction.
R.S., c. C-34, s. 398.

Interfering with international boundary marks, etc.
443. (1) Every one who wilfully pulls down, defaces, alters or removes

(a) a boundary mark lawfully placed to mark any international, provincial, county or municipal boundary, or
(b) a boundary mark lawfully placed by a land surveyor to mark any limit, boundary or angle of a concession, range, lot or parcel of land,
is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years.
Saving provision
(2) A land surveyor does not commit an offence under subsection (1) where, in his operations as a land surveyor,
(a) he takes up, when necessary, a boundary mark mentioned in paragraph (1)(b) and carefully replaces it as it was before he took it up; or
(b) he takes up a boundary mark mentioned in paragraph (1)(b) in the course of surveying for a highway or other work that, when completed, will make it impossible or impracticable for that boundary mark to occupy its original position, and he establishes a permanent record of the original position sufficient to permit that position to be ascertained.
Nuisances
Common nuisance
180. (1) Every one who commits a common nuisance and thereby
(a) endangers the lives, safety or health of the public, or
(b) causes physical injury to any person, is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years.
Definition
(2) For the purposes of this section, every one commits a common nuisance who does an unlawful act or fails to discharge a legal duty and thereby
(a) endangers the lives, safety, health, property or comfort of the public; or
(b) obstructs the public in the exercise or enjoyment of any right that is common to all the subjects of Her Majesty in Canada.

R.S., 1985, c. C-46, s. 587;R.S., 1985, c. 27 (1st Supp.), s. 7.
Ownership of Property
Ownership
588. The real and personal property of which a person has, by law, the management, control or custody shall, for the purposes of an indictment or proceeding against any other person for an offence committed on or in respect of the property, be deemed to be the property of the person who has the management, control or custody of it.
“document of title to lands”
“document of title to lands” includes any writing that is or contains evidence of the title, or any part of the title, to real property or to any interest in real property, and any notarial or registrar’s copy thereof and any duplicate instrument, memorial, certificate or document authorized or required by any law in force in any part of Canada with respect to registration of titles that relates to title to real property or to any interest in real property;

Definition of “agent of the state”
(4) For the purposes of this section, “agent of the state” means
(a) a peace officer; and
(b) a person acting under the authority of, or in cooperation with, a peace officer.
“every one”, “person” and “owner”, and similar expressions, include Her Majesty and an organization;
“municipality”
“municipality” includes the corporation of a city, town, village, county, township, parish or other territorial or local division of a province, the inhabitants of which are incorporated or are entitled to hold property collectively for a public purpose;
“organization” means
(a) a public body, body corporate, society, company, firm, partnership, trade union or municipality, or
(b) an association of persons that
(i) is created for a common purpose,
(ii) has an operational structure, and
(iii) holds itself out to the public as an association of persons;

“peace officer” includes
(a) a mayor, warden, reeve, sheriff, deputy sheriff, sheriff’s officer and justice of the peace,
(b) a member of the Correctional Service of Canada who is designated as a peace officer pursuant to Part I of the Corrections and Conditional Release Act, and a warden, deputy warden, instructor, keeper, jailer, guard and any other officer or permanent employee of a prison other than a penitentiary as defined in Part I of the Corrections and Conditional Release Act,
(c) a police officer, police constable, bailiff, constable, or other person employed for the preservation and maintenance of the public peace or for the service or execution of civil process,
(d) an officer within the meaning of the Customs Act, the Excise Act or the Excise Act, 2001, or a person having the powers of such an officer, when performing any duty in the administration of any of those Acts,
(d.1) an officer authorized under subsection 138(1) of the Immigration and Refugee Protection Act,
(e) a person designated as a fishery guardian under the Fisheries Act when performing any duties or functions under that Act and a person designated as a fishery officer under the Fisheries Act when performing any duties or functions under that Act or the Coastal Fisheries Protection Act,
(f) the pilot in command of an aircraft
(i) registered in Canada under regulations made under the Aeronautics Act, or
(ii) leased without crew and operated by a person who is qualified under regulations made under the Aeronautics Act to be registered as owner of an aircraft registered in Canada under those regulations,
while the aircraft is in flight, and
(g) officers and non-commissioned members of the Canadian Forces who are
(i) appointed for the purposes of section 156 of the National Defence Act, or

(ii) employed on duties that the Governor in Council, in regulations made under the National Defence Act for the purposes of this paragraph, has prescribed to be of such a kind as to necessitate that the officers and non-commissioned members performing them have the powers of peace officers;
“property”
“property” includes
(a) real and personal property of every description and deeds and instruments relating to or evidencing the title or right to property, or giving a right to recover or receive money or goods,
(b) property originally in the possession or under the control of any person, and any property into or for which it has been converted or exchanged and anything acquired at any time by the conversion or exchange, and
(c) any postal card, postage stamp or other stamp issued or prepared for issue under the authority of Parliament or the legislature of a province for the payment to the Crown or a corporate body of any fee, rate or duty, whether or not it is in the possession of the Crown or of any person;

ONTARIO REGULATION 322/12
made under the
MUNICIPAL ACT, 2001
Made: October 23, 2012
Filed: October 25, 2012
Published on e-Laws: October 26, 2012
Printed in *The Ontario Gazette*: November 10, 2012
Amending O. Reg. 586/06
(LOCAL IMPROVEMENT CHARGES — PRIORITY LIEN STATUS)
Note: Ontario Regulation 586/06 has previously been amended. For the legislative history of the Regulation, see the Table of Consolidated Regulations – Detailed Legislative History at www.e-Laws.gov.on.ca.
1. Ontario Regulation 586/06 is amended by adding the following heading before section 1:
PART I
GENERAL
2. (1) Subsection 1 (1) of the Regulation is amended by adding the following definitions:
"private" means, with respect to a work or property, a work or property that is not owned by the municipality or a local board of the municipality;
. . . . .
"sufficient agreement" means an agreement determined to be sufficient under section 36.4;
(2) Clause 1 (2) (b) of the Regulation is amended by striking out "or distribution of water" and substituting "distribution or conservation of water".
(3) Subsection 1 (2) of the Regulation is amended by striking out "and" at the end of clause (o), by adding "and" at the end of clause (p) and by adding the following clause:
(q) constructing energy efficiency works or renewable energy works.

(4) Section 1 of the Regulation is amended by adding the following subsection:
(3) If a municipality undertakes a work as a local improvement, a special charge imposed with respect to the work in accordance with this Regulation has priority lien status as described in section 1 of the Act.

3. Section 2 of the Regulation is revoked and the following substituted:
Scope of local improvement
2. (1) If a municipality has the authority to undertake a work, including a private work, under section 9, 10 or 11 of the Act or under any other provision of any Act, the municipality may undertake the work as a local improvement in accordance with this Regulation.
(2) The power to undertake a work as a local improvement includes, without limitation, the power to,
(a) undertake the work as a local improvement, including undertaking the work on private property;
(b) acquire an existing work and where it does, this Regulation applies as if the municipality were undertaking the work so acquired;
(c) undertake a work as a local improvement for the benefit of a single lot; and
(d) raise the cost of undertaking a work as a local improvement by imposing special charges, including special charges on a single lot.
(3) Where a municipality undertakes a private work as a local improvement, this Regulation applies to undertaking the private work as a local improvement as if the municipality were undertaking its own work.
(4) Nothing in this Regulation authorizes a municipality to enter and undertake a work as a local improvement on private property without the permission of the owner or other person having the authority to grant such permission.
4. Subsection 4 (2) of the Regulation is amended by striking out the portion before clause (a) and substituting the following:
(2) A notice to an owner under this Regulation is sufficiently given if it is,
5. The Regulation is amended by adding the following heading before section 5:
PART II
IMPOSITION AND APPORTIONMENT OF THE COSTS OF LOCAL IMPROVEMENTS ON THE BASIS OF FRONTAGE
6. Paragraph 2 of subsection 12 (2) of the Regulation is revoked and the following substituted:
2. Reasonable administrative costs, including the cost of advertising and of giving notices.
7. The Regulation is amended by adding the following Part:
PART III
LOCAL IMPROVEMENTS ON PRIVATE PROPERTY BY AGREEMENT
Purpose, Sufficient Agreements and By-Laws
Local improvements, private property

36.1 In accordance with this Part, a municipality may raise the cost of undertaking works as local improvements on private property by imposing special charges on the lots of consenting property owners upon which all or part of the works are or will be located.

Local improvements by agreement

36.2 (1) This Part applies to a municipality undertaking work as a local improvement on private property if,

(a) the municipality and the owners of the lots which would be specially charged to raise all or any portion of the cost of the work enter into a sufficient agreement in which the owners consent to their lots being specially charged; and

(b) the municipality is not undertaking the work in accordance with Part II.

(2) An agreement described in subsection (1) may provide for the apportionment of the cost of the work among the specially charged lots on any basis that the municipality considers appropriate, but the method of apportionment must be authorized under Part XII of the Act.

(3) Despite subsection (2), the method of apportionment provided for in an agreement described in subsection (1) shall not result in special charges that are based on, are in respect of or are computed by reference to the assessment of the specially charged lots as shown on the assessment roll for any year under the *Assessment Act*.

(4) An agreement described in subsection (1) shall be signed by the municipality and the owners of all the lots which would be specially charged, if the municipality undertakes the work as a local improvement in accordance with this Part.

(5) The agreement signed by the municipality and the owners of all the lots which would be specially charged must include,

(a) the estimated cost of the work;

(b) the estimated lifetime of the work;

(c) a description of the apportionment method and the amount of the special charges for the lots to be specially charged;

(d) without limiting clause (c), the manner in which a cost over run or under run is to be dealt with, if the actual cost of work differs from the estimated cost of the work; and

(e) when the special charges for the lots are to be paid.

Cost of a work

36.3 The following may be included in the cost of a work under this Part:

1. Engineering expenses.
2. Reasonable administrative costs, including the cost of advertising and of giving notices.
3. Interest on short and long-term borrowing.
4. Compensation for lands taken for the purposes of the work or injuriously affected by it and the expenses incurred by the municipality in connection with determining the compensation.
5. The estimated cost of incurring long-term debt, including any discount allowed to the purchasers of the debt.

Sufficient agreement

36.4 (1) An agreement described in section 36.2 is sufficient if it meets the requirements of section 36.2 and of this section.

(2) The clerk of the municipality shall determine the sufficiency of an agreement and, where it is sufficient, the clerk shall certify the agreement.

(3) The clerk's certification of the agreement as sufficient is final and binding.

(4) A person who has signed an agreement may withdraw his or her name from the agreement by filing a written withdrawal with the clerk, before the clerk has certified the sufficiency of the agreement but the person cannot withdraw his or her name from the agreement after the clerk has certified the sufficiency of the agreement.

(5) In determining the sufficiency of an agreement, where a lot is owned by two or more persons, the owner of the lot is deemed not to have signed the agreement unless all of the owners of the lot have signed the agreement.

Local improvement charges by-law

36.5 (1) If the municipality has the authority to undertake a work, it may, in accordance with this Part, pass a by-law to undertake the work as a local improvement for the purpose of raising all or any part of the cost of the work by imposing special charges on lots upon which all or some part of the local improvement is or will be located.

(2) A by-law under subsection (1) may be a by-law to authorize the undertaking of a specific work for which the municipality has given notice under clause 36.6 (2) (a) or a by-law to authorize the undertaking of works which satisfy the requirements of a municipal program for which the municipality has given notice under clause 36.6 (2) (b).

Notice of local improvement charges by-law

36.6 (1) Before passing a by-law to undertake a work as a local improvement under section 36.5, the municipality shall give notice to the public of its intention to pass the by-law.

(2) The public notice of the intention to pass the by-law shall include,
(a) a description of a specific work the municipality intends to undertake; or
(b) a description of a program that the municipality has or intends to establish to undertake the types of works set out in the notice.
Clarification
36.7 A municipality may undertake a work as a local improvement under this Part in accordance with a sufficient agreement despite receiving a petition under subsection 7 (1) against undertaking the work as a local improvement under Part II within the previous two years.
Application of ss. 31-36
36.8 Sections 31 to 36 apply, with necessary modifications, for the purpose of a municipality undertaking a work as a local improvement under this Part.
Non-application of exemption
36.9 If an Act, regulation or by-law provides that special charges under this Regulation are not required to be paid with respect to a lot, despite the exemption, the lot is subject to this Part for all purposes and shall be specially charged.
Procedure for Imposing Special Charges
Local improvement roll
36.10 Before a special charge is imposed, the treasurer of the municipality shall prepare a local improvement roll setting out,
(a) the cost of the work;
(b) every lot to be specially charged and the name of the owner of each lot;
(c) the special charges with which each lot is to be specially charged;
(d) when the special charges are to be paid; and
(e) the lifetime of the work.
Notice and certification of proposed roll
36.11 (1) Before a special charge is imposed, the municipality shall give notice of the proposed local improvement roll that is prepared to the owners of lots liable to be specially charged.
(2) The treasurer shall certify the proposed local improvement roll after,
(a) considering objections to the roll received from the owners, if any;
(b) considering proposed revisions to the roll received from the municipality, if any; and
(c) making any corrections to the roll that the treasurer considers fair and equitable as a result of the objections and proposed revisions.
Public access to local improvement roll
36.12 Copies of the proposed local improvement roll shall be available for inspection at the office of the clerk of the municipality until the treasurer of the municipality has certified the local improvement roll.
Effect of certification of local improvement roll
36.13 When certified by the treasurer under subsection 36.11 (2) or section 36.15,
(a) the certified local improvement roll and the special charges set out in it are final and binding, except where otherwise provided in this Regulation; and
(b) the work in respect of which the roll has been prepared and certified is conclusively deemed to have been lawfully undertaken in accordance with this Regulation.
Special charges by-law
36.14 (1) After the treasurer of the municipality has certified the local improvement roll under subsection 36.11 (2) or section 36.15, the municipality shall by by-law provide that,
(a) the amount specially charged on each lot set out in the roll is sufficient to raise that lot's share of the cost by a specified number of annual payments; and
(b) a special charge is imposed in each year on each lot equal to the amount of the payment payable in that year.
(2) The amount of each annual payment shall be entered in the local improvement roll by the treasurer.
(3) The annual payments with respect to a work shall not extend beyond its lifetime.
Amendments to local improvement roll
36.15 The treasurer of the municipality shall make any corrections in the local improvement roll that are necessary to give effect to changes made in accordance with sections 36.16 and 36.17 and shall certify the corrected roll.
Apportioning special charges if lot subdivided
36.16 (1) If a lot that is or is to be specially charged is subdivided into two or more new lots, the municipality shall apportion the amount of special charges that would have otherwise been charged on the original lot among the new lots by imposing special charges.
(2) The apportionment of the amount of special charges among the new lots shall be done as follows:
1. If the sufficient agreement provides for a specified method of apportioning special charges among the new lots when an original lot is subdivided, the municipality shall apportion the amount among the new lots in accordance with the specified method of apportioning special charges.

2. If the sufficient agreement does not provide for a specified method of apportioning special charges among the new lots when an original lot is subdivided, the municipality may apportion the amount in any manner the municipality considers just and equitable, having regard to the relative degree of benefit received by each of the new lots.

Reduction or increase in special charge due to gross error

36.17 (1) The treasurer shall, at any time after the certification of the local improvement roll, reduce or increase any special charge for the current year and the remaining years for which the special charge is imposed if the treasurer determines that the special charge is incorrect by reason of any gross or manifest error.

(2) Before reducing or increasing a special charge, the municipality shall give notice of the proposed reduction or increase to the owners of the lots specially charged for the work and to which the reduction or increase applies.

(3) By filing an objection with the clerk, a person may object to the reduction or increase to the special charge on the grounds that the reduction or increase is incorrect or not warranted.

(4) The treasurer shall consider the objection and may make any decision the treasurer considers fair and equitable.

(5) Where there is a reduction in the special charge, the amount of the reduction shall be borne by the municipality.

(6) Where there is an increase in the special charge, the amount of the increase shall be applied towards payment of the special charges imposed to raise the owners' share of the cost of the work.

Proportion of municipality's and owner's share cannot be changed

36.18 The treasurer shall not change the proportion of the municipality's and the owners' share of the cost, except to the extent that the proportion may be affected by a decision made under section 36.11 or 36.17.

8. The heading before section 37 of the Regulation is revoked and the following substituted:

PART IV

TRANSITIONAL PROVISIONS

Commencement

9. This Regulation comes into force on the day it is filed.

Made by:

Kathleen O'Day Wynne

Minister of Municipal Affairs and Housing

Date made: October 23, 2012.

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Municipal Act, 2001

Loi de 2001 sur les municipalités

ONTARIO REGULATION 586/06

LOCAL IMPROVEMENT CHARGES — PRIORITY LIEN STATUS

Consolidation Period: From July 31, 2009 to the e-Laws currency date.

Last amendment: O. Reg. 287/09.

This Regulation is made in English only.

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Definitions

1. (1) In this Regulation,

"committee of revision" means a committee of revision established under section 19;

"construct" includes reconstruct, extend, enlarge, improve and alter, and "construction" has a corresponding meaning;

"cost", as applied to a work, means capital cost;

"drive approach" means pavement on a highway that is constructed to serve as an approach to a particular lot;

"engineer" includes a person whom the municipality requires or authorizes to perform any duty that this Regulation requires or authorizes an engineer to perform;

"frontage", when used in reference to a lot abutting on a work, means the side or limit of the lot that abuts on the work;

"lifetime", as applied to a work, means its lifetime as estimated by the engineer or, in the case of an appeal, as finally determined by the committee of revision;

"lot" means a parcel of land that is required to be separately assessed under the *Assessment Act*;

"municipality's share of the cost" means the portion of the cost of a work that is,

(a) payable by the municipality, and

(b) not to be specially charged under this Regulation;

"owner" means, with respect to a lot, the person appearing to be its owner by the last returned assessment roll, as most recently revised, in the absence of evidence to the contrary;

"owners' share of the cost" means the portion of the cost of a work that is to be specially charged under this Regulation;

"pavement" means any type of highway surfacing;

"paving" includes laying down or constructing any kind of pavement;

"private" means, with respect to a work or property, a work or property that is not owned by the municipality or a local board of the municipality;

"sewer" includes a sanitary sewer and a storm drain;

"special charge" means a fee or charge imposed under the Act in accordance with this Regulation in respect of the cost of a work undertaken as a local improvement, and "specially charged" has a corresponding meaning;

"sufficient agreement" means an agreement determined to be sufficient under section 36.4;

"value" means, with respect to a lot, its assessed value according to the last returned assessment roll, as most recently revised;

"work" means a capital work. O. Reg. 586/06, s. 1 (1).

(2) For greater certainty, the definition of "work" in subsection (1) includes, without limitation,

(a) constructing a highway;
(b) constructing any works for the collection, production, treatment, storage, supply or distribution of water or for the collection, transmission, treatment or disposal of sewage; (2) Clause 1 (2) (b) of the Regulation is amended by striking out “or distribution of water” and substituting “distribution or conservation of water”.

(c) paving a highway;
(d) constructing a curb, gutter, sidewalk or retaining wall in, on or along a highway;
(e) constructing a boulevard on a highway;
(f) sodding any part of a highway and planting trees, shrubs and other plants on a highway;
(g) extending a system of gas or heat works, including any related works that may be necessary for supplying gas or heat to the owners of lots for whose benefit the extension is provided;
(h) constructing a park, square or other public place;
(i) constructing a retaining wall, dyke, breakwater, groyne, crib or other shore protection work along a body of water;
(j) constructing and erecting equipment, plant or works on a highway for the purpose of supplying electric light, including standards and underground conduits and wires;
(k) constructing a highway or subway under a railway or another highway;
(l) widening pavement on a highway;
(m) constructing a water service pipe from the water main to the edge of the highway;
(n) constructing a private sewer connection from the main sewer to the edge of the highway;
(o) constructing a drive approach on a highway; and (3) Subsection 1 (2) of the Regulation is amended by striking out “and” at the end of clause (o), by adding “and” at the end of clause (p) and by adding the following clause:
(q) constructing energy efficiency works or renewable energy works.
(p) constructing noise abatement works on a highway. O. Reg. 586/06, s. 1 (2).
(q) constructing energy efficiency works or renewable energy works.
Section 1 of the Regulation is amended by adding the following subsection:
(3) If a municipality undertakes a work as a local improvement, a special charge imposed with respect to the work in accordance with this Regulation has priority lien status as described in section 1 of the Act.

Scope of local improvement
2. (1) Any work may be undertaken as a local improvement. O. Reg. 586/06, s. 2 (1).
(2) The power to undertake a work as a local improvement includes the power to acquire an existing work, and this Regulation applies as if the municipality were undertaking the work so acquired. O. Reg. 586/06, s. 2 (2).
(3) If the municipality has power to undertake a private work, under section 23 of the Act or under any other provision of any Act, it may undertake the private work as a local improvement, and this Regulation applies to undertaking the private work as a local improvement as if the municipality were undertaking its own work. O. Reg. 586/06, s. 2 (3).
Section 2 of the Regulation is revoked and the following substituted:
Scope of local improvement
2. (1) If a municipality has the authority to undertake a work, including a private work, under section 9, 10 or 11 of the Act or under any other provision of any Act, the municipality may undertake the work as a local improvement in accordance with this Regulation.
(2) The power to undertake a work as a local improvement includes, without limitation, the power to,
(a) undertake the work as a local improvement, including undertaking the work on private property;
(b) acquire an existing work and where it does, this Regulation applies as if the municipality were undertaking the work so acquired;
(c) undertake a work as a local improvement for the benefit of a single lot; and
(d) raise the cost of undertaking a work as a local improvement by imposing special charges, including special charges on a single lot.
(3) Where a municipality undertakes a private work as a local improvement, this Regulation applies to undertaking the private work as a local improvement as if the municipality were undertaking its own work.
(4) Nothing in this Regulation authorizes a municipality to enter and undertake a work as a local improvement on private property without the permission of the owner or other person having the authority to grant such permission.

Reduction includes exemption
3. For greater certainty, in this Regulation a reference to reducing a charge or other amount includes reducing it to zero. O. Reg. 586/06, s. 3.

Notice

4. (1) Any person or body that is required to give notice under this Regulation shall, except as otherwise provided, give notice in the form, in the manner and at the time that the person or body considers adequate to give reasonable notice. O. Reg. 586/06, s. 4 (1).

(2) A notice to an owner for the purposes of subsections 6 (1), 21 (2), 25 (1) and 26 (2) is sufficiently given if it is,

Subsection 4 (2) of the Regulation is amended by striking out the portion before clause (a) and substituting the following:

(2) A notice to an owner under this Regulation is sufficiently given if it is,

(a) served personally;

(b) sent by mail to the owner's place of business or residence as set out in the municipality's last returned assessment roll, as most recently revised; or

(c) left at or sent by mail to the owner's actual place of business or residence, if known. O. Reg. 586/06, s. 4 (2).

5. The Regulation is amended by adding the following heading before section 5:

PART II

IMPOSITION AND APPORTIONMENT OF THE COSTS OF LOCAL IMPROVEMENTS ON THE BASIS OF FRONTAGE

Local improvement charges by-law

5. (1) If the municipality has the authority to undertake a work it may, in accordance with this Regulation, pass a by-law to undertake the work as a local improvement for the purpose of raising all or any part of the cost of the work by imposing special charges on,

(a) lots that abut on the work;

(b) lots that do not abut on the work but will be immediately benefited by it; or

(c) a combination of the lots described in clauses (a) and (b). O. Reg. 586/06, s. 5 (1).

(2) If the municipality undertakes a work as a local improvement, a special charge imposed with respect to the work in accordance with this Regulation has priority lien status as described in section 1 of the Act. O. Reg. 586/06, s. 5 (2).

(3) A by-law for undertaking a work as a local improvement shall specify the estimated cost of the work, the owners' share of the cost and the municipality's share of the cost. O. Reg. 586/06, s. 5 (3).

(4) If a by-law has been passed for undertaking a work as a local improvement and the municipality wishes to make a change in the work to be undertaken, it may, with the approval of the Ontario Municipal Board, amend the by-law to provide for undertaking the work it now proposes, and in that case this Regulation, except sections 6, 7 and 8, applies to the altered work as if it had been provided for in the original by-law. O. Reg. 586/06, s. 5 (4).

Notice of local improvement charges by-law

6. (1) Before passing a by-law to undertake a work as a local improvement under section 5, the municipality shall give notice of its intention to pass the by-law, to the public and to the owners of the lots liable to be specially charged. O. Reg. 586/06, s. 6 (1).

(2) The notice shall include,

(a) the estimated cost of the work;

(b) the estimated lifetime of the work;

(c) the estimated special charges per metre of frontage for the lots liable to be specially charged;

(d) when the special charges described in clause (c) shall be paid;

(e) if the municipality intends to apply to the Ontario Municipal Board under section 8 for approval to undertake the work as a local improvement,

(i) a statement that the municipality intends to apply to the Board for this purpose,

(ii) a description of the right to object, under section 8, to the work being undertaken as a local improvement, and

(iii) the last day for filing an objection under section 8;

(f) if the municipality has received an approval, recommendation or sufficient petition under clause 7 (2) (a), (b) or (c) with respect to the work, a statement of that fact;

(g) if the municipality has not received an approval, recommendation or sufficient petition under clause 7 (2) (a), (b) or (c) with respect to the work,

(i) a description of the right to petition council not to undertake the work as a local improvement,

(ii) the last day for making the petition, and

(iii) the effect of the petition. O. Reg. 586/06, s. 6 (2).

Local improvement not to proceed for two years if petition received

7. (1) If, within 30 days after notice is given to the public under section 6, the municipality receives a sufficient petition, as determined under section 10, against undertaking the work as a local improvement, the

municipality shall not undertake the work as a local improvement within two years after receiving the petition. O. Reg. 586/06, s. 7 (1).

(2) Despite subsection (1), a petition of the owners does not prevent the municipality from undertaking the work as a local improvement if it has received,

(a) the approval of the Ontario Municipal Board under section 8 to undertake the work as a local improvement;

(b) a recommendation from the Minister of Health and Long-Term Care or the board of health for the municipality that the construction of the work is necessary or desirable in the public interest on sanitary grounds; or

(c) a sufficient petition, as determined under section 10, in favour of undertaking the work as a local improvement. O. Reg. 586/06, s. 7 (2).

Application to Ontario Municipal Board

8. (1) The municipality may apply to the Ontario Municipal Board for approval to undertake a work as a local improvement and shall provide any information or material that the Board requires in connection with the application. O. Reg. 586/06, s. 8 (1).

(2) Within 30 days after the municipality gives notice to the public under section 6 indicating that it intends to apply to the Board for approval under this section, any owner liable to be specially charged may file an objection to the work being undertaken as a local improvement. O. Reg. 586/06, s. 8 (2).

(3) The objection shall be filed with the clerk of the municipality and shall set out the objections and the reasons in support of them. O. Reg. 586/06, s. 8 (3).

(4) If no objections are filed under this section, the municipality is deemed to have received the Board's approval. O. Reg. 586/06, s. 8 (4).

(5) If an objection is filed under this section, the municipality shall forward the objection to the Board, together with the application or as soon after making the application as is reasonable. O. Reg. 586/06, s. 8 (5).

(6) The Board shall hold a hearing to consider the application and the objections and may make any order with respect to the work as it considers appropriate. O. Reg. 586/06, s. 8 (6).

(7) Once the municipality has given notice under section 6 indicating that it intends to apply to the Board for approval under this section,

(a) the municipality shall not undertake the work as a local improvement until,

(i) the Board's approval has been received or is deemed to have been received, or

(ii) the municipality has given a new notice under section 6 that deals with the work and does not indicate that the municipality intends to apply to the Board under this section; and

(b) the passing of a by-law to authorize undertaking the work as a local improvement is deemed not to be a contravention of this Regulation if the by-law provides that it shall not take effect until the municipality receives the Board's approval. O. Reg. 586/06, s. 8 (7).

PETITIONS

Petitions

9. (1) A petition in favour of or against undertaking a work as a local improvement,

(a) shall contain a description of the lot of which each petitioner is the owner, by its assessment roll number as shown on the last returned assessment roll, as most recently revised, or by another description that will enable the clerk of the municipality to identify the lot; and

(b) shall be filed with the clerk, and is deemed to be received by the municipality when it is so filed. O. Reg. 586/06, s. 9 (1).

(2) A petition in favour of undertaking a work as a local improvement shall be signed by at least two-thirds of the owners representing at least one-half of the value of the lots liable to be specially charged for the work. O. Reg. 586/06, s. 9 (2).

(3) A petition against undertaking a work as a local improvement,

(a) shall be signed by at least a majority of the owners representing at least one-half of the value of the lots liable to be specially charged for the work; and

(b) shall be filed with the clerk within 30 days after notice is given to the public under section 6. O. Reg. 586/06, s. 9 (3).

Sufficiency of petition

10. (1) A petition for or against undertaking a work as a local improvement is sufficient if it meets the requirements of section 9 and of this section. O. Reg. 586/06, s. 10 (1).

(2) The sufficiency of a petition shall be determined and certified by the clerk of the municipality. O. Reg. 586/06, s. 10 (2).

(3) If the clerk has determined and certified the sufficiency of a petition, it is deemed to be a sufficient petition even if, afterwards,

(a) the committee of revision increases or reduces the number of lots to be specially charged; or

(b) there is a change in the assessment of lots to be specially charged. O. Reg. 586/06, s. 10 (3).

(4) If the value of a lot cannot, for any reason, be ascertained from the last returned assessment roll, as most recently revised, the clerk shall determine and certify the value for the purposes of this Regulation. O. Reg. 586/06, s. 10 (4).

(5) In determining the sufficiency of a petition,

(a) two or more persons who are jointly assessed for a lot shall be treated as one owner only; and

(b) both, if there are two persons, or a majority of them, if there are more than two, must sign the petition in order for the lot to be counted for the purposes of subsection 9 (2) or clause 9 (3) (a). O. Reg. 586/06, s. 10 (5).

(6) The clerk's certified determination of the sufficiency of a petition and of the value of a lot are final and binding. O. Reg. 586/06, s. 10 (6).

Withdrawal of petition

11. A person who has signed a petition,

(a) may withdraw his or her name from the petition, by filing a written withdrawal with the clerk, before the clerk has certified the sufficiency of the petition;

(b) cannot withdraw his or her name after the clerk has certified the sufficiency of the petition. O. Reg. 586/06, s. 11.

HOW COSTS ARE BORNE

Cost of local improvement

12. (1) Except as otherwise provided in this Regulation, for the purposes of raising the cost of undertaking a work as a local improvement, the municipality shall,

(a) determine the municipality's share of the cost, if any; and

(b) specially charge the owners' share of the cost by imposing an equal special charge per metre of frontage,

(i) on the lots that abut directly on the work,

(ii) on lots that do not abut on the work but will be immediately benefited by it, or

(iii) on a combination of lots described in subclauses (i) and (ii). O. Reg. 586/06, s. 12 (1).

6. Paragraph 2 of subsection 12 (2) of the Regulation is revoked and the following substituted:

2. Reasonable administrative costs, including the cost of advertising and of giving notices.

(2) The following may be included in the cost of a work:

1. Engineering expenses.
2. The cost of advertising and of giving notices.
3. Interest on short and long-term borrowing.
4. Compensation for lands taken for the purposes of the work or injuriously affected by it, and the expenses incurred by the municipality in connection with determining the compensation.
5. The estimated cost of incurring long-term debt, including any discount allowed to the purchasers of the debt. O. Reg. 586/06, s. 12 (2).

(3) The special charge per metre of frontage may be different for lots described in subclause (1) (b) (i) than for lots described in subclause (1) (b) (ii). O. Reg. 586/06, s. 12 (3).

(4) If lots described in subclause (1) (b) (ii) that are to be specially charged for a work are not equally benefited by the work, the lots shall be divided into as many areas as there are different levels of benefit, so that each area includes all the lots that receive the same level of benefit. O. Reg. 586/06, s. 12 (4).

(5) The municipality shall assign the cost of the work that is specially charged among the areas created under subsection (4) in the manner the municipality considers fair, and the portion of the cost to be borne by an area shall be specially charged on the lots in the area by an equal special charge per metre of frontage. O. Reg. 586/06, s. 12 (5).

(6) The municipality may provide that the cost of a work to be specially charged on lots is not required to be paid with respect to one or more of the lots that are exempt from taxation. O. Reg. 586/06, s. 12 (6).

(7) If any Act, regulation or by-law provides that special charges under this Regulation are not required to be paid with respect to a lot, the following rules apply:

1. The lot is, despite the exemption, subject to this Regulation for all purposes and shall be specially charged. However, the special charges that become payable while the lot remains exempt shall be paid by the municipality and are not collectable from the owner.
2. The owner of the lot may not petition in favour of or against undertaking a work as a local improvement.
3. The owner of the lot and its value shall not be considered in determining the sufficiency of a petition. O. Reg. 586/06, s. 12 (7).

Cost of water service pipe, private service connection, drive approach

13. (1) Subject to subsection (2), the cost of a water service pipe, private sewer connection or drive approach that is specially charged shall be specially charged on the particular lot for which it was constructed. O. Reg. 586/06, s. 13 (1).

(2) Unless the two sides of a highway are served by separate water mains or sewers, the cost of water service pipes and private sewer connections shall be the cost of the work from the centre of the highway to the edge of the highway, regardless of the location of the water main or sewer. O. Reg. 586/06, s. 13 (2).

Deduction of grants, etc., from cost of work

14. The amount of a grant or other contribution in cash to be received by the municipality and to be applied towards the cost of any work shall be deducted from the entire cost of the work, subject to subsection 15 (2). O. Reg. 586/06, s. 14.

Municipality's share of cost

15. (1) The municipality's share of the cost of a work shall include any excess cost that is caused by the work being constructed with a greater capacity than is required for the purposes of the lots that are specially charged. O. Reg. 586/06, s. 15 (1).

(2) The amount of a grant or other contribution that is to be applied towards any excess cost described in subsection (1) shall be applied to reduce the municipality's share of the cost. O. Reg. 586/06, s. 15 (2).

Reductions and increases in special charges

16. (1) If a lot has a flankage and a frontage that abuts on a work and the size and nature of the lot is such that all or part of the work that abuts on the flankage is of no benefit to the lot, a reduction shall be made in the amount to be specially charged in respect of that flankage, sufficient to adjust the amount charged on that lot on a just and equitable basis as compared with the other specially charged lots. O. Reg. 586/06, s. 16 (1).

(2) If all or part of a lot is unfit for building purposes, a reduction shall be made in the amount that is to be specially charged on the lot, sufficient to adjust that amount on a just and equitable basis as compared with the amount to be charged on the other specially charged lots that are fit for building purposes. O. Reg. 586/06, s. 16 (2).

(3) If a lot has a larger frontage than the threshold described in subsection (4) and will not benefit from a work to the same degree as other lots benefited by the work, a reduction shall be made in the amount to be specially charged on the lot, sufficient to adjust that amount on a just and equitable basis as compared with the other specially charged lots. O. Reg. 586/06, s. 16 (3).

(4) The threshold referred to in subsection (3) is,

(a) the number of metres that the municipality specifies by by-law; or

(b) if the matter is not dealt with by by-law, 30 metres. O. Reg. 586/06, s. 16 (4).

(5) A reduction or increase shall be made in the amount to be specially charged on a triangular or irregularly shaped lot, sufficient to adjust that amount on a just and equitable basis as compared with the other specially charged lots, having regard to the situation, value and superficial area of the lot. O. Reg. 586/06, s. 16 (5).

(6) A reduction or increase required by this section shall be made by deducting from or adding to the total frontage of the lot liable to be specially charged a number of metres sufficient to make the proper reduction or increase, but the whole of the lot shall be charged with the amount to be specially charged on the lot. O. Reg. 586/06, s. 16 (6).

(7) The amount of any reduction or increase in the amount to be specially charged on a lot shall be added to or deducted from the municipality's share of the cost. O. Reg. 586/06, s. 16 (7).

Reduction in special charges

17. (1) If the municipality is of the opinion that any lot abutting on the work will not benefit from it, or will not benefit from it to the same extent as other lots benefited by the work, the municipality may reduce the amount to be specially charged on that lot, to adjust the amount on a just and equitable basis as compared with the other specially charged lots. O. Reg. 586/06, s. 17 (1).

(2) If the municipality reduces the amount to be specially charged to zero, the amount of the reduction in the amount to be specially charged on the lot shall continue to be included in the owners' share of the cost of the work and specially charged on the reduced frontage. O. Reg. 586/06, s. 17 (2).

(3) If the municipality reduces the amount to be specially charged to an amount that is greater than zero, the amount of the reduction in the amount to be specially charged on the lot shall be added to the municipality's share of the cost. O. Reg. 586/06, s. 17 (3).

(4) A reduction under this section shall be made by deducting from the total frontage of the lot a number of metres sufficient to make the proper reduction, but the whole of the lot shall be charged with the amount, if any, to be specially charged on the lot. O. Reg. 586/06, s. 17 (4).

Apportioning special charges if lot subdivided

18. (1) If a lot that is or is to be specially charged is subdivided into two or more new lots, the municipality may apportion the amount described in subsection (2) among the new lots according to the extent of their respective frontages by imposing an equal special charge per metre of frontage. O. Reg. 586/06, s. 18 (1).

(2) The amount that may be apportioned under subsection (1) is the sum of,

(a) the special charges that would otherwise have been charged on the original lot; and

(b) any special charges that would, but for this section, become part of the municipality's share of the cost because of any new highway provided for by the subdivision. O. Reg. 586/06, s. 18 (2).

(3) Despite subsection (1), if the municipality is of the opinion that the new lots do not all benefit from the work to the same degree, the municipality may apportion the special charges among the new lots in any manner the municipality considers just and equitable, having regard to the relative degree of benefit received by each of the new lots. O. Reg. 586/06, s. 18 (3).

(4) Section 21 applies, with necessary modifications, to special charges imposed under subsection (1). O. Reg. 586/06, s. 18 (4).

(5) The local improvement roll shall be amended to reflect the changes made under this section. O. Reg. 586/06, s. 18 (5).

PROCEDURE FOR IMPOSING SPECIAL CHARGES

Committee of revision

19. (1) The municipality may establish a committee of revision consisting of three or five members appointed by the council. O. Reg. 586/06, s. 19 (1).

(2) Every member of the committee shall be a person who is qualified to be elected as a member of the council. O. Reg. 586/06, s. 19 (2).

(3) A majority of the members of the committee constitutes a quorum. O. Reg. 586/06, s. 19 (3).

Local improvement roll

20. Before a special charge is imposed, the treasurer of the municipality shall prepare a local improvement roll setting out,

(a) the cost of the work;

(b) every lot to be specially charged, the name of the owner and the number of metres of its frontage to be specially charged;

(c) every lot that, but for subsection 12 (7), would be exempt from being specially charged, and the number of metres of its frontage;

(d) the special charges per metre of frontage with which each lot is to be specially charged;

(e) when the special charges described in clause (d) shall be paid; and

(f) the lifetime of the work. O. Reg. 586/06, s. 20.

Notice of hearing

21. (1) Before a special charge is imposed, the municipality shall set a time and a place for the committee of revision to hold a hearing about,

(a) objections against the proposed local improvement roll; and

(b) the municipality's proposed revisions to the proposed local improvement roll. O. Reg. 586/06, s. 21 (1).

(2) The municipality shall give notice of the hearing to the public and to the owner of every lot to be specially charged. O. Reg. 586/06, s. 21 (2).

(3) Any person who owns a lot to be specially charged may object to a special charge by filing an objection, setting out the objection and the reasons in support of it, with the clerk of the municipality not later than seven days before the day set for the hearing. O. Reg. 586/06, s. 21 (3).

(4) The municipality may propose a revision to the proposed local improvement roll by filing a proposed revision, setting out the proposed revision and the reasons in support of it, with the clerk not later than seven days before the day set for the hearing. O. Reg. 586/06, s. 21 (4).

(5) If no objection or proposed revision is received under this section, the treasurer shall certify the local improvement roll, without a hearing by the committee. O. Reg. 586/06, s. 21 (5).

Statement of cost of work

22. (1) Before a special charge is imposed, the engineer and the treasurer of the municipality shall prepare and certify a statement showing the actual cost of the work. O. Reg. 586/06, s. 22 (1).

(2) If the final cost of the work is not yet known and, in the opinion of the engineer and treasurer, work whose cost amounts to 75 per cent of the final cost has been completed, the engineer and treasurer shall estimate the actual cost of the work for the purpose of subsection (1). O. Reg. 586/06, s. 22 (2).

(3) When an estimate is used as described in subsection (2),

(a) the engineer and the treasurer shall certify the final cost of the work when it is known;

(b) if the final cost as certified under clause (a) is more than the amount set out in the statement or the amount determined by the committee of revision under section 24, the excess shall be borne by the municipality; and

(c) if the final cost as certified under clause (a) is less than the amount set out in the statement or the amount determined by the committee of revision under section 24, the difference shall be applied towards payment of the special charges imposed with respect to the work. O. Reg. 586/06, s. 22 (3).

Public access to local improvement roll and statement of cost

23. Copies of the local improvement roll prepared under section 20 and of the statement of cost prepared under section 22,

(a) shall be available for inspection at the office of the clerk of the municipality until the treasurer of the municipality has certified the local improvement roll; and

(b) shall be provided to the committee of revision before the start of any hearing under section 21. O. Reg. 586/06, s. 23.

Committee of revision may correct local improvement roll

24. At a hearing held under section 21, the committee of revision may review the proposed local improvement roll and correct it as to any or all of the following matters:

1. The cost of the work.
2. The names of the owners of the lots.
3. The frontage or other measurements of the lots.
4. The amount of the reduction or increase to be made under section 16 or 17 in respect of any lot.
5. The lots that would be exempt from being specially charged, but for subsection 12 (7).
6. The lifetime of the work.
7. The charge per metre of frontage to be imposed on any lot.
8. If all or part of the owners' share of the cost is to be specially charged on lots that do not abut on the work,
   i. the non-abutting lots that are to be specially charged, and
   ii. the amount of the special charge to be imposed on them. O. Reg. 586/06, s. 24.

Power of committee of revision to add lot to be specially charged

25. (1) During a hearing held under section 21, if it appears to the committee of revision that any lot that has not been specially charged should be specially charged or, as a result of a proposed revision by the municipality under section 21, a special charge for any lot should be changed, the committee shall adjourn its hearing for at least 14 days and shall cause notice to be given to the owner of the lot. O. Reg. 586/06, s. 25 (1).

(2) If the committee of revision determines that a lot should be specially charged, the committee shall determine the amount to be specially charged on the lot. O. Reg. 586/06, s. 25 (2).

(3) Despite subsection (1), the committee of revision may, with the written consent of the owner of the lot, dispense with an adjournment or reduce it to less than 14 days. O. Reg. 586/06, s. 25 (3).

Special charge imposed if circumstances change

26. (1) If a reduction is made under section 16 or 17 with respect to a lot and circumstances change so that the reduction is no longer warranted, the municipality may impose on the lot the special charge that would originally have been imposed, for the year in which the circumstances change and for the remaining years in which special charges are imposed. O. Reg. 586/06, s. 26 (1).

(2) Before an increased special charge is imposed under subsection (1), notice of the proposed special charge shall be given to the owner of the lot. O. Reg. 586/06, s. 26 (2).

(3) A person may object to the increase to the special charge on the grounds that the special charge is incorrect or not warranted by filing a written objection, setting out the objection and the reasons in support of it, with the clerk of the municipality within 10 days after notice is given under subsection (2). O. Reg. 586/06, s. 26 (3).

(4) The committee of revision shall hold a hearing to consider the objection and may make any decision the municipality could have made. O. Reg. 586/06, s. 26 (4).

Committee of revision may reduce special charge in case of gross error

27. (1) The committee of revision may, at any time after the certification of the local improvement roll, reduce any special charge for the current year and the remaining years for which the special charge is imposed if it determines that the special charge is incorrect by reason of any gross or manifest error. O. Reg. 586/06, s. 27 (1).

(2) The amount of the reduction shall be borne by the municipality. O. Reg. 586/06, s. 27 (2).

Committee of revision cannot change proportion of municipality's and owners' share of costs

28. The committee of revision does not have the authority to change the proportion of the municipality's and the owners' share of the cost, except to the extent that the proportion may be affected by a decision made under section 24, 25, 26 or 27. O. Reg. 586/06, s. 28.

Amendments to local improvement roll

29. (1) The treasurer of the municipality shall make any corrections in the local improvement roll that are necessary to give effect to a decision of the committee of revision, and shall certify the corrected roll. O. Reg. 586/06, s. 29 (1).

(2) The local improvement roll, when certified by the treasurer under subsection (1) or 21 (5), and the special charges set out in the certified local improvement roll are final and binding, except where otherwise provided in this Regulation. O. Reg. 586/06, s. 29 (2).

(3) When the local improvement roll is certified by the treasurer under subsection (1) or 21 (5), the work in respect of which the roll has been prepared and certified is conclusively deemed to have been lawfully undertaken in accordance with this Regulation. O. Reg. 586/06, s. 29 (3).

Special charges by-law

30. (1) After the treasurer of the municipality has certified the local improvement roll under section 21 or 29, the municipality shall by by-law provide that,

(a) the amount specially charged on each lot set out in the roll shall be sufficient to raise that lot's share of the cost by a specified number of annual payments; and

(b) a special charge shall be imposed in each year on each lot equal to the amount of the payment payable in that year. O. Reg. 586/06, s. 30 (1).

(2) The amount of each annual payment shall be entered in the local improvement roll. O. Reg. 586/06, s. 30 (2).

(3) The annual payments with respect to a work shall not extend beyond its lifetime. O. Reg. 586/06, s. 30 (3).

Annual payments commuted to one present value payment

31. (1) Despite section 30, the municipality may allow two or more annual payments with respect to a lot to be commuted for a single payment equal to the present value of the annual payments. O. Reg. 586/06, s. 31 (1).

(2) For the purpose of calculating the present value, the municipality shall use the rate of interest it considers appropriate. O. Reg. 586/06, s. 31 (2).

Agreement between municipalities re joint local improvement

32. (1) Two or more municipalities may enter into an agreement to undertake any work as a joint local improvement. O. Reg. 586/06, s. 32 (1).

(2) The agreement may specify,

(a) which municipality will undertake the work;

(b) the manner in which the cost of the work is to be financed;

(c) the proportions in which the amount described in subsection (3) shall be borne by the municipalities respectively; and

(d) the times at which amounts are to be paid from one municipality to another. O. Reg. 586/06, s. 32 (2).

(3) The amount mentioned in clause (2) (c) is the portion of the cost of the work that is payable by the municipality that will undertake the work and not to be specially charged under this Regulation. O. Reg. 586/06, s. 32 (3).

(4) The municipality that will undertake the work has all the powers and duties in respect of the work that may be exercised or are to be performed by a municipality that undertakes a work as a local improvement and, for the purposes of undertaking the work, it is deemed to lie wholly within and to be under the exclusive jurisdiction of the municipality that will undertake it. O. Reg. 586/06, s. 32 (4).

(5) The clerk of the municipality that will undertake the work shall give a copy of the by-law imposing special charges to the clerk of any other municipality where a lot on which special charges have been imposed is located. O. Reg. 586/06, s. 32 (5).

(6) The special charges required by the by-law to be imposed and collected in any year on lots in any municipality, other than the municipality that will undertake the work, shall be collected by the treasurer of the municipality in which the lots are located as if the special charges had been imposed by that municipality, and the proceeds of the special charges shall form part of the operating revenues of the municipality collecting them. O. Reg. 586/06, s. 32 (6).

(7) A municipality that is a party to an agreement under this section may assume all or a part of the cost of any work undertaken under this section that is to be specially charged on lots in the municipality, and thereafter that cost shall be borne by that municipality. O. Reg. 586/06, s. 32 (7).

Special charges do not encumber land

33. (1) Special charges imposed on land under this Regulation do not constitute an encumbrance on the land unless they are unpaid and in arrears. O. Reg. 586/06, s. 33 (1).

(2) Subsection (1) applies,

(a) as between vendor and purchaser; and

(b) in respect of a covenant,

(i) against encumbrances,

(ii) for the right to convey, or

(iii) for quiet possession free from encumbrances. O. Reg. 586/06, s. 33 (2).

DEBT

Reserve fund for payment of long-term debt

34. (1) If the municipality incurs long-term debt with respect to the cost of undertaking a work as a local improvement, special charges imposed and collected in accordance with this Regulation with respect

to the work shall be placed in a reserve fund for the payment of the long-term debt and the fund, including interest, shall not be used for any other purpose until the debt is paid in full. O. Reg. 586/06, s. 34 (1).

(2) Subsection (1) does not apply to a present value payment under section 31 if the municipality reduced the amount of the long-term debt it incurred with respect to the work to reflect the present value payment. O. Reg. 586/06, s. 34 (2).

35. Revoked: O. Reg. 287/09, s. 1.

Borrowing or special charges by-law not invalid if local improvement roll certified

36. (1) If the local improvement roll with respect to a work is certified under section 21 or 29, no by-law for borrowing money or imposing special charges with respect to the work shall be quashed, set aside or otherwise found to be invalid because it is illegal or for any other defect in it. O. Reg. 586/06, s. 36 (1).

(2) A court in which a proceeding is taken to quash, set aside or otherwise find a by-law described in subsection (1) to be invalid may, on the conditions the court considers appropriate, order the municipality to amend or replace the by-law so that it would be valid even in the absence of that subsection. O. Reg. 586/06, s. 36 (2).

(3) The municipality, on the request of any person to whom the municipality has incurred any liability, obligation or debt under a by-law described in subsection (1), may amend or replace the by-law so that it would be valid even in the absence of that subsection. O. Reg. 586/06, s. 36 (3).

(4) Every liability, obligation or debt incurred by the municipality under a by-law that is amended in the circumstances described in subsection (2) or (3) is as valid and binding as if the amended or replacement by-law had been in force at the time the liability, obligation or debt was incurred. O. Reg. 586/06, s. 36 (4).

7. The Regulation is amended by adding the following Part:

PART III

LOCAL IMPROVEMENTS ON PRIVATE PROPERTY BY AGREEMENT

Purpose, Sufficient Agreements and By-Laws

Local improvements, private property

36.1 In accordance with this Part, a municipality may raise the cost of undertaking works as local improvements on private property by imposing special charges on the lots of consenting property owners upon which all or part of the works are or will be located.

Local improvements by agreement

36.2 (1) This Part applies to a municipality undertaking work as a local improvement on private property if,

(a) the municipality and the owners of the lots which would be specially charged to raise all or any portion of the cost of the work enter into a sufficient agreement in which the owners consent to their lots being specially charged; and

(b) the municipality is not undertaking the work in accordance with Part II.

(2) An agreement described in subsection (1) may provide for the apportionment of the cost of the work among the specially charged lots on any basis that the municipality considers appropriate, but the method of apportionment must be authorized under Part XII of the Act.

(3) Despite subsection (2), the method of apportionment provided for in an agreement described in subsection (1) shall not result in special charges that are based on, are in respect of or are computed by reference to the assessment of the specially charged lots as shown on the assessment roll for any year under the *Assessment Act*.

(4) An agreement described in subsection (1) shall be signed by the municipality and the owners of all the lots which would be specially charged, if the municipality undertakes the work as a local improvement in accordance with this Part.

(5) The agreement signed by the municipality and the owners of all the lots which would be specially charged must include,

(a) the estimated cost of the work;

(b) the estimated lifetime of the work;

(c) a description of the apportionment method and the amount of the special charges for the lots to be specially charged;

(d) without limiting clause (c), the manner in which a cost over run or under run is to be dealt with, if the actual cost of work differs from the estimated cost of the work; and

(e) when the special charges for the lots are to be paid.

Cost of a work

36.3 The following may be included in the cost of a work under this Part:

1. Engineering expenses.
2. Reasonable administrative costs, including the cost of advertising and of giving notices.
3. Interest on short and long-term borrowing.
4. Compensation for lands taken for the purposes of the work or injuriously affected by it and the expenses incurred by the municipality in connection with determining the compensation.

5. The estimated cost of incurring long-term debt, including any discount allowed to the purchasers of the debt.

Sufficient agreement

36.4 (1) An agreement described in section 36.2 is sufficient if it meets the requirements of section 36.2 and of this section.

(2) The clerk of the municipality shall determine the sufficiency of an agreement and, where it is sufficient, the clerk shall certify the agreement.

(3) The clerk's certification of the agreement as sufficient is final and binding.

(4) A person who has signed an agreement may withdraw his or her name from the agreement by filing a written withdrawal with the clerk, before the clerk has certified the sufficiency of the agreement but the person cannot withdraw his or her name from the agreement after the clerk has certified the sufficiency of the agreement.

(5) In determining the sufficiency of an agreement, where a lot is owned by two or more persons, the owner of the lot is deemed not to have signed the agreement unless all of the owners of the lot have signed the agreement.

Local improvement charges by-law

36.5 (1) If the municipality has the authority to undertake a work, it may, in accordance with this Part, pass a by-law to undertake the work as a local improvement for the purpose of raising all or any part of the cost of the work by imposing special charges on lots upon which all or some part of the local improvement is or will be located.

(2) A by-law under subsection (1) may be a by-law to authorize the undertaking of a specific work for which the municipality has given notice under clause 36.6 (2) (a) or a by-law to authorize the undertaking of works which satisfy the requirements of a municipal program for which the municipality has given notice under clause 36.6 (2) (b).

Notice of local improvement charges by-law

36.6 (1) Before passing a by-law to undertake a work as a local improvement under section 36.5, the municipality shall give notice to the public of its intention to pass the by-law.

(2) The public notice of the intention to pass the by-law shall include,

(a) a description of a specific work the municipality intends to undertake; or

(b) a description of a program that the municipality has or intends to establish to undertake the types of works set out in the notice.

Clarification

36.7 A municipality may undertake a work as a local improvement under this Part in accordance with a sufficient agreement despite receiving a petition under subsection 7 (1) against undertaking the work as a local improvement under Part II within the previous two years.

Application of ss. 31-36

36.8 Sections 31 to 36 apply, with necessary modifications, for the purpose of a municipality undertaking a work as a local improvement under this Part.

Non-application of exemption

36.9 If an Act, regulation or by-law provides that special charges under this Regulation are not required to be paid with respect to a lot, despite the exemption, the lot is subject to this Part for all purposes and shall be specially charged.

Procedure for Imposing Special Charges

Local improvement roll

36.10 Before a special charge is imposed, the treasurer of the municipality shall prepare a local improvement roll setting out,

(a) the cost of the work;

(b) every lot to be specially charged and the name of the owner of each lot;

(c) the special charges with which each lot is to be specially charged;

(d) when the special charges are to be paid; and

(e) the lifetime of the work.

Notice and certification of proposed roll

36.11 (1) Before a special charge is imposed, the municipality shall give notice of the proposed local improvement roll that is prepared to the owners of lots liable to be specially charged.

(2) The treasurer shall certify the proposed local improvement roll after,

(a) considering objections to the roll received from the owners, if any;

(b) considering proposed revisions to the roll received from the municipality, if any; and

(c) making any corrections to the roll that the treasurer considers fair and equitable as a result of the objections and proposed revisions.

Public access to local improvement roll

36.12 Copies of the proposed local improvement roll shall be available for inspection at the office of the clerk of the municipality until the treasurer of the municipality has certified the local improvement roll.

Effect of certification of local improvement roll
36.13 When certified by the treasurer under subsection 36.11 (2) or section 36.15,
(a) the certified local improvement roll and the special charges set out in it are final and binding, except where otherwise provided in this Regulation; and
(b) the work in respect of which the roll has been prepared and certified is conclusively deemed to have been lawfully undertaken in accordance with this Regulation.
Special charges by-law
36.14 (1) After the treasurer of the municipality has certified the local improvement roll under subsection 36.11 (2) or section 36.15, the municipality shall by by-law provide that,
(a) the amount specially charged on each lot set out in the roll is sufficient to raise that lot's share of the cost by a specified number of annual payments; and
(b) a special charge is imposed in each year on each lot equal to the amount of the payment payable in that year.
(2) The amount of each annual payment shall be entered in the local improvement roll by the treasurer.
(3) The annual payments with respect to a work shall not extend beyond its lifetime.
Amendments to local improvement roll
36.15 The treasurer of the municipality shall make any corrections in the local improvement roll that are necessary to give effect to changes made in accordance with sections 36.16 and 36.17 and shall certify the corrected roll.
Apportioning special charges if lot subdivided
36.16 (1) If a lot that is or is to be specially charged is subdivided into two or more new lots, the municipality shall apportion the amount of special charges that would have otherwise been charged on the original lot among the new lots by imposing special charges.
(2) The apportionment of the amount of special charges among the new lots shall be done as follows:
1. If the sufficient agreement provides for a specified method of apportioning special charges among the new lots when an original lot is subdivided, the municipality shall apportion the amount among the new lots in accordance with the specified method of apportioning special charges.
2. If the sufficient agreement does not provide for a specified method of apportioning special charges among the new lots when an original lot is subdivided, the municipality may apportion the amount in any manner the municipality considers just and equitable, having regard to the relative degree of benefit received by each of the new lots.
Reduction or increase in special charge due to gross error
36.17 (1) The treasurer shall, at any time after the certification of the local improvement roll, reduce or increase any special charge for the current year and the remaining years for which the special charge is imposed if the treasurer determines that the special charge is incorrect by reason of any gross or manifest error.
(2) Before reducing or increasing a special charge, the municipality shall give notice of the proposed reduction or increase to the owners of the lots specially charged for the work and to which the reduction or increase applies.
(3) By filing an objection with the clerk, a person may object to the reduction or increase to the special charge on the grounds that the reduction or increase is incorrect or not warranted.
(4) The treasurer shall consider the objection and may make any decision the treasurer considers fair and equitable.
(5) Where there is a reduction in the special charge, the amount of the reduction shall be borne by the municipality.
(6) Where there is an increase in the special charge, the amount of the increase shall be applied towards payment of the special charges imposed to raise the owners' share of the cost of the work.
Proportion of municipality's and owner's share cannot be changed
36.18 The treasurer shall not change the proportion of the municipality's and the owners' share of the cost, except to the extent that the proportion may be affected by a decision made under section 36.11 or 36.17.

TRANSITIONAL PROVISIONS

8. The heading before section 37 of the Regulation is revoked and the following substituted:
PART IV
TRANSITIONAL PROVISIONS
Transition re *Local Improvement Act*
37. (1) In this section,
"old Act" means the *Local Improvement Act*, as it read on December 31, 2002. O. Reg. 586/06, s. 37 (1).
(2) Any matter or proceeding commenced by a municipality under the old Act on or before March 31, 2003,
(a) may be continued after that date; and

(b) if it is continued, shall be continued and finally disposed of as if that Act were still in force. O. Reg. 586/06, s. 37 (2).

(3) For the purpose of subsection (2), the undertaking of a work as a local improvement is deemed to have been commenced under the old Act on the earliest of,

(a) the day the municipality passes a by-law to undertake the work as a local improvement;

(b) the first day the municipality gives notice, in Form 1, 2 or 3 of the old Act, of its intention to undertake the work as a local improvement; and

(c) the day a petition in favour of undertaking the work as a local improvement is received by the clerk of the municipality. O. Reg. 586/06, s. 37 (3).

Transition re Ontario Regulation 119/03

38. (1) In this section,

"old Regulation" means Ontario Regulation 119/03 (Local Improvement Charges — Priority Lien Status) made under the Act, as it read on the day before this Regulation comes into force. O. Reg. 586/06, s. 38 (1).

(2) Any matter or proceeding commenced by a municipality under the old Regulation on or before the day this Regulation comes into force,

(a) may be continued after that date; and

(b) if it is continued, shall be continued and finally disposed of as if the old Regulation were still in force. O. Reg. 586/06, s. 38 (2).

(3) For the purpose of subsection (2), the undertaking of a work as a local improvement is deemed to have been commenced under the old Regulation on the day the municipality gave public notice under section 3 of that regulation. O. Reg. 586/06, s. 38 (3).

39. Omitted (revokes other Regulations). O. Reg. 586/06, s. 39.

40. Omitted (provides for coming into force of provisions of this Regulation). O. Reg. 586/06, s. 40.

END NOTES

[1] [G.R. No. 166471, March 22, 2011], TAWANG MULTI-PURPOSE COOPERATIVE, PETITIONER, VS. LA TRINIDAD WATER DISTRICT, RESPONDENT.

[2] Municipal Act, 2001
"Purposes 2. Municipalities are created by the Province of Ontario to be responsible and accountable governments with respect to matters within their jurisdiction and each municipality is given powers and duties under this Act and many other Acts for the purpose of providing good government with respect to those matters. 2006, c. 32, Sched. A, s. 2."
[3] *Corporation*: A legal entity created under the authority of a statue, which permits a groups of people, as shareholders, to apply to the government for an independent organization to be created, which then pursues set objectives, and is empowered with legal rights usually only reserved for individuals, such as to sue and be sued, own property, hire employees or loan and borrow money. Duhaime On-Line Legal Dictionary. http://www.duhaime.org/LegalDictionary.aspx as of June 28, 2011

[4] **Body corporate 4.** (1) The inhabitants of every municipality are incorporated as a body corporate. 2001, c. 25, s. 4. **Non-application** (2) The *Corporations Act* and the *Corporations Information Act* do not apply to a municipality. 2006, c. 32, Sched. A, s. 4.

[5] **Powers of a natural person** 9. A municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act. 2006, c 32, Sched. A, s. 8.

[6] *"Notwithstanding the last mentioned fact or any of those considerations arising out of the ownership of the lands in question and the right of an owner to deal with the lands belonging to him or it, as to such owner may seem fit,…"* Attorney-General for British Columbia and the Minister of Lands v. Brooks-Bidlake and Whitall, Ltd., 63 SCR 466.

[7] BELONGINGS (Black's Law Dictionary, 9th Edition, 2009, p. 175) – 1. Personal Property; *EFFECTS* – see personal property under property. 2. All property, including realty.

[8] **Powers exercised by council 5.** (1) The powers of a municipality shall be exercised by its council. 2001, c. 25, s. 5 (1). **Powers exercised by by-law** (3) A municipal power, including a municipality's capacity, rights, powers and privileges under section 9, shall be exercised by by-law unless the municipality is specifically authorized to do otherwise. 2001, c. 25, s. 5 (3); 2006, c. 32, Sched. A, s. 5. **Scope** (4) Subsections (1) to (3) apply to all municipal powers, whether conferred by this Act or otherwise. 2001, c. 25, s. 5 (4).

[9] **Broad authority, single-tier municipalities 10.** (1) A single-tier municipality may provide any service or thing that the municipality considers necessary or desirable for the public. 2006, c. 32, Sched. A, s. 8.

[10] **Broad authority, single-tier municipalities 10.** (1) A single-tier municipality may provide any service or thing that the municipality considers necessary or desirable for the public. 2006, c. 32, Sched. A, s. 8.
By-laws (2) A single-tier municipality may pass by-laws respecting the following matters:
1. Governance structure of the municipality and its local boards.
2. Accountability and transparency of the municipality and its operations and of its local boards and their operations.
3. Financial management of the municipality and its local boards.
4. Public assets of the municipality acquired for the purpose of exercising its authority under this or any other Act.
5. Economic, social and environmental well-being of the municipality.
6. Health, safety and well-being of persons.
7. Services and things that the municipality is authorized to provide under subsection (1).
8. Protection of persons and property, including consumer protection.
9. Animals.
10. Structures, including fences and signs.
11. Business licensing. 2006, c. 32, Sched. A, s. 8.

One power not affecting another (3) The power to pass a by-law respecting a matter set out in a paragraph of subsection (2) is not limited or restricted by the power to pass a by-law respecting a matter set out in another paragraph of subsection (2). 2006, c. 32, Sched. A, s. 8.

[11] **Child and Family Services Act 3. (1)** Every approved agency and every approved corporation shall appoint a person to act as the chief executive officer of the approved agency or approved corporation. (3) An approved agency or approved corporation that operates more than one approved service, children's institution or children's mental health centre, as the case may be, may appoint more than one person as the chief executive officer and may designate the approved service, children's institution or children's mental health centre for which each chief executive officer shall be responsible. (4) Subsections (1) and (3) do not apply to a society in so far as it is providing services under section 15 of the Act. : Note: subsection 4 is the only mention of a society under Section 3.

[12] **Health Protection and Promotion Act** "board of health" means a board of health established or continued under this Act and includes, (a) the regional municipalities of Durham, Halton, Niagara, Peel, Waterloo and York and the County of Oxford, (b) a single-tier municipality that, under the Act establishing or continuing it, has the powers, rights and duties of a local board of health or a board of health established under this Act, and (c) an agency, board or organization prescribed by regulation; ("conseil de santé").

[13] **Long-Term Care Homes Act, 2007, Committee of management, appointment** 132. **(1)** The council of a municipality establishing and maintaining a municipal home or the councils of the municipalities establishing and maintaining a joint home shall appoint from among the members of the council or councils, as the case may be, a committee of management for the municipal home or joint home. 2007, c. 8, s. 132 (1).

[14] **Police Services Act, PART III, MUNICIPAL POLICE SERVICES BOARDS, Police services boards** 27. **(1)** There shall be a police services board or, as provided in subsection 5 (3), one or more police services boards, for every municipality that maintains a police force. 2002, c. 18, Sched. N, s. 61 (1). Boards of commissioners of police continued as police services boards (2) Every board of commissioners of police constituted or continued under the *Police Act*, being chapter 381 of the Revised Statutes of Ontario, 1980, or any other Act and in existence on the 31st day of December, 1990, is continued as a police services board. R.S.O. 1990, c. P.15, s. 27 (2).Name (3) A board shall be known as *(insert name of municipality)* Police Services Board and may also be known as Commission des services policiers de *(insert name of municipality)*. R.S.O. 1990, c. P.15, s. 27 (3).

[15] **Public Libraries Act, Definitions, 1.** In this Act, "board" in Part I means a public library board, a union board, a county library board or a county library co-operative board; ("conseil")

[16] **Power to establish corporations 203.** (1) Without limiting sections 9, 10 and 11, those sections authorize a municipality to do the following things in accordance with such conditions and restrictions as may be prescribed: 1. To establish corporations. 2. To nominate or authorize a person to act as an incorporator, director, officer or member of a corporation. 3. To exercise any power as a member of a corporation. 4. To acquire an interest in or to guarantee such securities issued by a corporation as may be prescribed. 5. To exercise any power as the holder of such securities issued by a corporation as may be prescribed. 2006, c. 32, Sched. A, s. 88.

Duties of corporations, etc. (2) A corporation established by a municipality and a secondary corporation and the directors and officers of the corporation shall comply with such requirements as may be prescribed. 2009, c. 33, Sched. 21, s. 6 (7).

Exceptions (3) This section does not apply with respect to a corporation established under **section 142 of the *Electricity Act, 1998***, a corporation established under **section 13 of the *Housing Development Act***, a local housing corporation established under **Part III of the *Social Housing Reform Act, 2000*** or any other corporation that a municipality is expressly authorized under any other Act to establish or control. 2006, c. 32, Sched. A, s. 88.

Definition (3.1) For the purposes of this section, "secondary corporation" means a corporation established by a corporation that was established under subsection (1) and a corporation deemed under the regulations to be a secondary corporation. 2009, c. 33, Sched. 21, s. 6 (8).

Regulations (3.2) The Lieutenant Governor in Council may make regulations providing that specified corporations are deemed to be secondary corporations. 2009, c. 33, Sched. 21, s. 6 (8).

Regulations re corporations (4) The Lieutenant Governor in Council may make regulations governing the powers of a municipality under this section and governing corporations established under subsection (1) and secondary corporations, including regulations, (a) prescribing the purposes for which a municipality may exercise its powers referred to in this section and imposing conditions and restrictions on the use of those

powers; (b) prescribing the purposes for which a corporation may carry on business or engage in activities; (c) prescribing securities for the purposes of paragraphs 4 and 5 of subsection (1); (d) imposing conditions and requirements that apply to a corporation and its directors and officers; (e) providing that specified corporations are deemed to be or are deemed not to be local boards for the purposes of any provision of this Act or for the purposes of the definition of "municipality" in such other Acts as may be specified; (f) providing that specified corporations are deemed for the purposes of any Act or specified provisions of an Act not to be operating a public utility in such circumstances as may be prescribed; (g) exempting a municipality from the application of section 106 with respect to specified corporations; (h) providing for transitional matters relating to a municipality's exercise of its powers under section 106 or relating to a specified corporation's exercise of its powers. 2006, c. 32, Sched. A, s. 88; 2009, c. 33, Sched. 21, s. 6 (9).
Conflict (5) If there is a conflict between a regulation made under this section and a provision of this Act, other than this section, or of any other Act or regulation, the regulation made under this section prevails. 2006, c. 32, Sched. A, s. 88.

[17] **By-laws** (2) A single-tier municipality may pass by-laws respecting the following matters: 1. Governance structure of the municipality and its local boards. 2. Accountability and transparency of the municipality and its operations and of its local boards and their operations. 3. Financial management of the municipality and its local boards. 4. Public assets of the municipality acquired for the purpose of exercising its authority under this or any other Act. 5. Economic, social and environmental well-being of the municipality. 6. Health, safety and well-being of persons. 7. Services and things that the municipality is authorized to provide under subsection (1). 8. Protection of persons and property, including consumer protection. 9. Animals. 10. Structures, including fences and signs. 11. Business licensing. 2006, c. 32, Sched. A, s. 8.

[18] See Regulation 599/06
[19] 92. 9. Shop, Saloon, Tavern, Auctioneer, and other Licences in order to the raising of a Revenue for Provincial, Local, or Municipal Purposes.
[20] **One power not affecting another** (3) The power to pass a by-law respecting a matter set out in a paragraph of subsection (2) is not limited or restricted by the power to pass a by-law respecting a matter set out in another paragraph of subsection (2). 2006, c. 32, Sched. A, s. 8.

[21] **Services or things provided by others** (4) The power of a municipality to pass a by-law respecting the matter set out in paragraph 7 of subsection (2) does not include the power to pass a by-law respecting services or things provided by a person other than the municipality or a municipal service board of the municipality. 2006, c. 32, Sched. A, s. 8.

[22] **Exception** (5) Nothing in subsection (4) prevents a municipality from passing a by-law with respect to services or things provided by any person to the extent necessary, (a) to ensure the physical operation of a system of the municipality or of a municipal service board of the municipality is not impaired; or (b) to ensure the municipality, a municipal service board of the municipality or a system of the municipality or municipal service board meet any provincial standards or regulations that apply to them. 2006, c. 32, Sched. A, s. 8. Sched. A, s. 8; 2007, c. 8, s. 218 (1).

[23] **"system"** means one or more programs or facilities (including real and personal property) of a person used to provide services and things to the person or to any other person and includes administration related to the programs, facilities, services and things; ("réseau", "système"), Municipal Act.

[24] SPHERES OF JURISDICTION
Broad authority, lower-tier and upper-tier municipalities 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 lower-tier municipality and an upper-tier municipality may pass by-laws, subject to the rules set out in subsection (4), respecting the following matters:
1. Governance structure of the municipality and its local boards.
2. Accountability and transparency of the municipality and its operations and of its local boards and their operations.
3. Financial management of the municipality and its local boards.
4. Public assets of the municipality acquired for the purpose of exercising its authority under this or any other Act.
5. Economic, social and environmental well-being of the municipality.
6. Health, safety and well-being of persons.
7. Services and things that the municipality is authorized to provide under subsection (1).

8. Protection of persons and property, including consumer protection. 2006, c. 32, Sched. A, s. 8.
[25] **By-laws** (2) A single-tier municipality may pass by-laws respecting the following matters: 1. Governance structure of the municipality and its local boards. 2. Accountability and transparency of the municipality and its operations and of its local boards and their operations. 3. Financial management of the municipality and its local boards. 4. Public assets of the municipality acquired for the purpose of exercising its authority under this or any other Act. 5. Economic, social and environmental well-being of the municipality. 6. Health, safety and well-being of persons. 7. Services and things that the municipality is authorized to provide under subsection (1). 8. Protection of persons and property, including consumer protection. 9. Animals. 10. Structures, including fences and signs. 11. Business licensing. 2006, c. 32, Sched. A, s. 8.

[26] See Regulation 599/06

[27] 92. 9. Shop, Saloon, Tavern, Auctioneer, and other Licences in order to the raising of a Revenue for Provincial, Local, or Municipal Purposes.

[28] **By-laws re: matters within spheres of jurisdiction** (3) A lower-tier municipality and an upper-tier municipality may pass by-laws, subject to the rules set out in subsection (4), respecting matters within the following spheres of jurisdiction:
1. Highways, including parking and traffic on highways.
2. Transportation systems, other than highways.
3. Waste management.
4. Public utilities.
5. Culture, parks, recreation and heritage.
6. Drainage and flood control, except storm sewers.
7. Structures, including fences and signs.
8. Parking, except on highways.
9. Animals.
10. Economic development services.
11. Business licensing. 2006, c. 32, Sched. A, s. 8.
[29] And regulation

[30] Rules (4) The following are the rules referred to in subsections (1), (2) and (3):
1. If a sphere or part of a sphere of jurisdiction is not assigned to an upper-tier municipality by the Table to this section, the upper-tier municipality does not have the power to pass by-laws under that sphere or part and does not have the power to pass by-laws under subsection (1) or (2) that, but for this paragraph, could also be passed under that sphere or part.
2. If a sphere or part of a sphere of jurisdiction is assigned to an upper-tier municipality exclusively by the Table to this section, its lower-tier municipalities do not have the power to pass by-laws under that sphere or part and do not have the power to pass by-laws under subsection (1) or (2) that, but for this paragraph, could also be passed under that sphere or part.
3. If a sphere or part of a sphere of jurisdiction is assigned to an upper-tier municipality non-exclusively by the Table to this section, both the upper-tier municipality and its lower-tier municipalities have the power to pass by-laws under that sphere or part.

[31] 4. If a lower-tier municipality has the power under a specific provision of this Act, other than this section, or any other Act to pass a by-law, its upper-tier municipality does not have the power to pass the by-law under this section.
5. If an upper-tier municipality has the power under a specific provision of this Act, other than this section, or any other Act to pass a by-law, a lower-tier municipality of the upper-tier municipality does not have the power to pass the by-law under this section.
6. Paragraphs 4 and 5 apply to limit the powers of a municipality despite the inclusion of the words “without limiting sections 9, 10 and 11” or any similar form of words in the specific provision.
[32] 7. The power of a municipality with respect to the following matters is not affected by paragraph 4 or 5, as the case may be:
i. prohibiting or regulating the placement or erection of any sign, notice or advertising device within 400 metres of any limit of an upper-tier highway,
ii. any other matter prescribed by the Minister. 2006, c. 32, Sched. A, s. 8.
[33] Services or things provided by others
(6) The power of a municipality to pass a by-law respecting the matter set out in paragraph 7 of subsection (2) does not include the power to pass a by-law respecting services or things provided by a person other than the municipality or a municipal service board of the municipality. 2006, c. 32, Sched. A, s. 8.

Services or things provided by other tier
(7) The power of a municipality to pass a by-law under subsection (3)[33] under each sphere of jurisdiction does not, except as otherwise provided, include the power to pass a by-law respecting services or things provided by its upper-tier or lower-tier municipality, as the case may be, of the type authorized by that sphere. 2006, c. 32, Sched. A, s. 8.

[34] 11. Services or things provided by others
(8) The power of a municipality to pass a by-law under subsection (3) [34] under the following spheres of jurisdiction does not, except as otherwise provided, include the power to pass a by-law respecting services or things provided by any person, other than the municipality or a municipal service board of the municipality, of the type authorized by that sphere:

1. Public utilities.
2. Waste management.
3. Highways, including parking and traffic on highways.
4. Transportation systems, other than highways.
5. Culture, parks, recreation and heritage.
6. Parking, except on highways. 2006, c. 32, Sched. A, s. 8.

[35] Exception (9) Nothing in subsection (6), (7) or (8) prevents a municipality passing a by-law with respect to services or things provided by any person to the extent necessary,
(a) to ensure the physical operation of a system of the municipality or of a municipal service board of the municipality is not impaired; or
(b) to ensure the municipality, a municipal service board of the municipality or a system of the municipality or municipal service board meet any provincial standards or regulations that apply to them. 2006, c. 32, Sched. A, s. 8.
Definition (10) In this section,
"local board" means a local board as defined in section 10. 2006, c. 32, Sched. A, s. 8.
[36] **Demolition and conversion of residential rental properties** 99.1 (1) A local municipality may prohibit and regulate the demolition of residential rental properties and may prohibit and regulate the conversion of residential rental properties to a purpose other than the purpose of a residential rental property. 2006, c. 32, Sched. A, s. 40.
Same (2) The power to pass a by-law respecting a matter described in subsection (1) includes the power, (a) to prohibit the demolition of residential rental properties without a permit; (b) to prohibit the conversion of residential
rental properties to a purpose other than the purpose of a residential rental property without a permit; and (c) to impose conditions as a requirement of obtaining a permit. 2006, c. 32, Sched. A, s. 40.

[37] **Restriction 99.1** (3) The municipality cannot prohibit or regulate the demolition or conversion of a residential rental property that contains less than six dwelling units. 2006, c. 32, Sched. A, s. 40.

[38] **Effect of building code, etc. 99.1** (4) Despite section 35 of the *Building Code Act, 1992*, in the event that the *Building Code Act, 1992* or a regulation made under that Act and a by-law prohibiting or regulating the demolition or conversion of a residential rental property treat the same subject-matter in different ways, that Act or the regulation under that Act prevails and the by-law is inoperative to the extent that the Act or regulation and the by-law treat the same subject-matter. 2006, c. 32, Sched. A, s. 40.

[39] **Same 99.1** (5) If a permit to demolish a residential rental property is issued under this section, no permit is required under section 8 of the *Building Code Act, 1992* to demolish the property. 2006, c. 32, Sched. A, s. 40.

[40] **Report 99.1** (6) The municipality shall report statistics and other information concerning the demolition and conversion of residential rental properties to the Minister and shall do so at the times and in the form and manner specified by the Minister. 2006, c. 32, Sched. A, s. 40.

[41] **Agreements for municipal capital facilities 110.** (9) If a municipality designated as a service manager under the *Social Housing Reform Act, 2000* has entered into an agreement under this section with respect to housing capital facilities, any other municipality that has not entered into an agreement under this section with respect to the capital facilities and that contains all or part of the land on which the capital facilities are or will be located may exercise the power under subsections (3), (6) and (7) with respect to the land and the capital facilities but, (a) a tax exemption under subsection (6) applies to taxation for its own purposes; and (b) clauses (8) (b(the clerk of any other municipality that would, but for the by-law, have had authority to levy

rates on the assessment for the land exempted by the by-law; and) and (c (the secretary of any school board if the area of jurisdiction of the board includes the land exempted by the by-law. 2001, c. 25, s. 110 (8).) do not apply. 2001, c. 25, s. 110 (9).

[42] **Agreements for municipal capital facilities** 110. (1) This section applies to an agreement entered into by a municipality for the provision of municipal capital facilities by any person, including another municipality, if the agreement provides for one or more of the following: 1. Lease payments in foreign currencies as provided for in subsection (2). 2. Assistance as provided for in subsection (3). 3. Tax exemptions as provided for in subsection (6). 4. Development charges exemptions as provided for in subsection (7). 2006, c. 32, Sched. A, s. 51.
Contents of agreements (2) An agreement may allow for the lease, operation or maintenance of the facilities and for the lease payments to be expressed and payable partly or wholly in one or more prescribed foreign currencies. 2001, c. 25, s. 110 (2).
Assistance by municipality (3) Despite section 106, a municipality may provide financial or other assistance at less than fair market value or at no cost to any person who has entered into an agreement to provide facilities under this section and such assistance may include, (a) giving or lending money and charging interest; (b) giving, lending, leasing or selling property; (c) guaranteeing borrowing; and (d) providing the services of employees of the municipality. 2001, c. 25, s. 110 (3).
Restriction (4) The assistance shall only be in respect of the provision, lease, operation or maintenance of the facilities that are the subject of the agreement. 2001, c. 25, s. 110 (4).
Notice of agreement by-law (5) Upon the passing of a by-law permitting a municipality to enter into an agreement under this section, the clerk of the municipality shall give written notice of the by-law to the Minister of Education. 2001, c. 25, s. 110 (5).
Tax exemption (6) Despite any Act, the council of a municipality may exempt from all or part of the taxes levied for municipal and school purposes land or a portion of it on which municipal capital facilities are or will be located that, (a) is the subject of an agreement under subsection (1); (b) is owned or leased by a person who has entered an agreement to provide facilities under subsection (1); and (c) is entirely occupied and used or intended for use for a service or function that may be provided by a municipality. 2001, c. 25, s. 110 (6); 2006, c. 19, Sched. O, s. 3 (1).
Development charges exemption (7) Despite the *Development Charges Act, 1997*, the council of a municipality may exempt from the payment of all or part of the development charges imposed by the municipality under that Act land or a portion of it on which municipal capital facilities are or will be located that, (a) is the subject of an agreement under subsection (1); (b) is owned or leased by a person who has entered an agreement to provide facilities under subsection (1); and (c) is entirely occupied and used or intended for use for a service or function that may be provided by a municipality. 2006, c. 19, Sched. O, s. 3 (2).
Notice of tax exemption by-law (8) Upon the passing of a by-law under subsection (6), the clerk of the municipality shall give written notice of the contents of the by-law to, (a) the assessment corporation; (b) the clerk of any other municipality that would, but for the by-law, have had authority to levy rates on the assessment for the land exempted by the by-law; and (c) the secretary of any school board if the area of jurisdiction of the board includes the land exempted by the by-law. 2001, c. 25, s. 110 (8).
Same (11) An agreement under this section may provide for contributions to the reserve fund by any person. 2001, c. 25, s. 110 (11).
Restriction on tax exemption (15) The tax exemption under subsection (6) or (12) shall not be in respect of a special levy under section 311 or 312 for sewer and water. 2001, c. 25, s. 110 (15).
Effective date (16) A by-law passed under subsection (6) or (7) or a resolution passed under subsection (12) or (13) shall specify an effective date which shall be the date of passing of the by-law or resolution or a later date. 2006, c. 19, Sched. O, s. 3 (5).
Tax refund, etc. (17) Section 357 applies with necessary modifications to allow for a cancellation, reduction or refund of taxes that are no longer payable as a result of a by-law or resolution passed under this section. 2001, c. 25, s. 110 (17).
Taxes struck from roll (18) Until the assessment roll has been revised, the treasurer of the local municipality shall strike taxes from the tax roll that are exempted by reason of a by-law or resolution passed under this section. 2001, c. 25, s. 110 (18).
Deemed exemption (19) Subject to subsection (15), the tax exemption under subsection (6) or (12) shall be deemed to be an exemption under section 3 of the *Assessment Act*, but shall not affect a payment required under section 27 of that Act. 2001, c. 25, s. 110 (19).

[43] **When agreement entered into** (9) If a municipality designated as a service manager under the *Social Housing Reform Act, 2000* has entered into an agreement under this section with respect to housing capital facilities, any other municipality that has not entered into an agreement under this section with respect to the

capital facilities and that contains all or part of the land on which the capital facilities are or will be located may exercise the power under subsections (3), (6) and (7) with respect to the land and the capital facilities but, (a) a tax exemption under subsection (6) applies to taxation for its own purposes; and (b) clauses (8) (b(the clerk of any other municipality that would, but for the by-law, have had authority to levy rates on the assessment for the land exempted by the by-law; and) and (c (the secretary of any school board if the area of jurisdiction of the board includes the land exempted by the by-law. 2001, c. 25, s. 110 (8).) do not apply. 2001, c. 25, s. 110 (9).

[44] **Tax exemption by school board** (12) Despite any Act, a school board that is authorized to enter into agreements for the provision of school capital facilities by any person may, by resolution, exempt from all or part of the taxes levied for municipal and school purposes land or a portion of it on which the school capital facilities are or will be located that, (a) is the subject of the agreement; (b) is owned or leased by a person who has entered an agreement to provide school capital facilities; and (c) is entirely occupied and used or intended for use for a service or function that may be provided by a school board. 2001, c. 25, s. 110 (12); 2006, c. 19, Sched. O, s. 3 (3).
Education development charges exemption (13) Despite Division E of Part IX of the *Education Act*, a school board that is authorized to enter into agreements for the provision of school capital facilities by any person may exempt from the payment of all or part of the education development charges imposed by the school board under that Part land or a portion of it on which school capital facilities are or will be located that, (a) is the subject of the agreement; (b) is owned or leased by a person who has entered an agreement to provide school capital facilities; and (c) is entirely occupied and used or intended for use for a service or function that may be provided by a school board. 2006, c. 19, Sched. O, s. 3 (4).
Notice of tax exemption by school board (14) Upon the passing of a resolution under subsection (12), the secretary of the school board shall give written notice of the contents of the resolution to, (a) the assessment corporation; (b) the clerk and the treasurer of any municipality that would, but for the resolution, have had authority to levy rates on the assessment for the land exempted by the resolution; and (c) the secretary of any other school board if the area of jurisdiction of the board includes the land exempted by the resolution. 2001, c. 25, s. 110 (14).

[45] **Reserve fund** (10) The council of a municipality may establish a reserve fund to be used for the exclusive purpose of renovating, repairing or maintaining facilities that are provided under an agreement under this section. 2001, c. 25, s. 110 (10).

[46] **Regulations** (20) The Lieutenant Governor in Council may make regulations, (a) defining municipal capital facilities for the purposes of this section; (b) prescribing eligible municipal capital facilities that may and may not be the subject of agreements under subsection (1); (c) prescribing eligible municipal capital facilities for which municipalities may and may not grant tax exemptions under subsection (6) or development charges exemptions under subsection (7); (d) prescribing rules, procedures, conditions and prohibitions for municipalities entering agreements under subsection (1); (e) defining and prescribing eligible school capital facilities for which school boards may and may not grant tax exemptions under subsection (12) or exemptions from education development charges under subsection (13); (f) prescribing foreign currencies in which a municipality may make lease payments under such conditions as may be prescribed. 2001, c. 25, s. 110 (20); 2006, c. 19, Sched. O, s. 3 (6, 7).

[47] **Municipal Act, 2001, ONTARIO REGULATION 599/06, MUNICIPAL SERVICES CORPORATIONS**
Economic development corporations 9. (1) If a municipality establishes a corporation for the sole purpose of providing one or more economic development services, the municipality may also designate the corporation as a "designated economic development corporation". O. Reg. 599/06, s. 9 (1). (2) Despite section 21 of this Regulation, if a municipality designates a corporation under subsection (1), the corporation is a local board of the municipality for the purposes of section 326 of the Act. O. Reg. 599/06, s. 9 (2). (3) Economic development services provided by and for the purposes of a corporation designated by a municipality under subsection (1) are prescribed as special services for the purposes of clause 326 (1) (a) of the Act. O. Reg. 599/06, s. 9 (3). (4) In this section, "economic development services" means, (a) the promotion of the municipality for any purpose, including by the collection and dissemination of information and the development of economic development strategic plans, (b) the acquisition, development and disposal of sites in the municipality for residential, industrial, commercial and institutional uses, (c) provision of public transportation systems, (d) provision of residential housing, (e) provision of general parking facilities, (f) providing a counselling service to or encouraging the establishment and initial growth of small businesses operating or proposing to operate in the municipality, (g) undertaking community improvement consistent with a community improvement plan approved by the municipality under subsection 28 (4) of the *Planning Act*, (h) improvement, beautification and maintenance of municipally-owned land, buildings and

structures in an area designated by the municipality beyond the standard provided at the expense of the municipality generally, and promotion of any area of the municipality as a business or shopping area, (i) provision of facilities for amusement or for conventions and visitors' bureaus, (j) provision of culture and heritage systems. O. Reg. 599/06, s. 9 (4).

[48] **By-laws re special services** 326. (1) A municipality may by by-law, (a) identify a special service; (b) determine which of the costs, including capital costs, debenture charges, charges for depreciation or a reserve fund, of the municipality are related to that special service; (c) designate the area of the municipality in which the residents and property owners receive or will receive an additional benefit from the special service that is not received or will not be received in other areas of the municipality; (d) determine the portion and set out the method of determining the portion of the costs determined in clause (b) which represent the additional costs to the municipality of providing the additional benefit in the area designated in clause (c); (e) determine whether all or a specified portion of the additional costs determined in clause (d) shall be raised under subsection (4). 2001, c. 25, s. 326 (1); 2006, c. 32, Sched. A, s. 136 (1).

[49] ONTARIO REGULATION 322/12 Plus ONTARIO REGULATION 586/06
LOCAL IMPROVEMENT CHARGES — PRIORITY LIEN STATUS – End of document.

[50] **PART XI, SALE OF LAND FOR TAX ARREARS Registration of tax arrears certificate**
373. (1) Where any part of tax arrears is owing with respect to land in a municipality on January 1 in the third year following that in which the real property taxes become owing, the treasurer of the municipality, unless otherwise directed by the municipality, may prepare and register a tax arrears certificate against the title to that land. 2001, c. 25, s. 373 (1).

[51] **Power of entry** 386.1 (1) For the purpose of assisting a municipality to determine whether it is desirable to acquire land that has been offered for public sale under subsection 379 (2) but for which there is no successful purchaser, the municipality may, during the 24 months following the public sale referred to in subsection 379 (5), enter on and inspect the land. 2002, c. 17, Sched. A, s. 76 (1); 2006, c. 32, Sched. A, s. 159 (1).
Entry to dwellings (3) A person who is carrying out an inspection on behalf of a municipality under this Part shall not enter or remain in any room or place actually being used as a dwelling unless, (a) the consent of the occupier is obtained, the occupier first having been informed that the right of entry may be refused and, if refused, entry made only under the authority of a warrant issued under section 386.3; or (b) a warrant issued under section 386.3 is obtained. 2002, c. 17, Sched. A, s. 76 (1). (4), (5) Repealed: 2006, c. 32, Sched. A, s. 159 (2).
Inspection without warrant 386.2 (1) The following apply to an inspection under this Part carried out without a warrant: 1. At least seven days before entering to carry out an inspection, the municipality shall, by personal service or by prepaid mail, serve a written notice of the inspection on the owners and occupants of the land as shown by the records of the land registry office and by the last returned assessment roll of the municipality in which the land is located. 2. The notice shall specify the date on which the municipality intends to enter on the land to commence the inspection. 3. If the municipality intends to enter on the land more than once during a period of time, the notice shall specify that period. 4. If the municipality intends to leave equipment on the land for a period of time, the notice shall set out a description of the equipment and the period of time during which the municipality intends to leave it on the land. 5. A notice served under this section by prepaid mail shall be deemed to have been received on the fifth day after the date of mailing of the notice. 6. A municipality shall not use force against any individual in carrying out the inspection. 7. A municipality shall only enter on land to carry out an inspection between the hours of 6 a.m. and 9 p.m. unless, after or concurrent with serving the notice under paragraph 1, the municipality has given at least 24 hours written notice of the intent to inspect the land at other hours to the occupants by personal service, prepaid mail or by posting the notice on the land in a conspicuous place. 2002, c. 17, Sched. A, s. 76 (1).
Waiver of requirements (2) The owners and occupants may waive any requirements relating to the notice described in paragraph 1 of subsection (1). 2002, c. 17, Sched. A, s. 76 (1).
Same (3) The occupants may waive any requirements relating to entries described in paragraph 7 of subsection (1). 2002, c. 17, Sched. A, s. 76 (1).

[52] **Fortification of land** 133. (1) Without limiting sections 9, 10 and 11, a municipality that is responsible for the enforcement of the *Building Code Act, 1992* may, (a) regulate in respect of the fortification of and protective elements applied to land in relation to the use of the land; and (b) prohibit the excessive fortification of land or excessive protective elements being applied to land in relation to the use of the land. 2001, c. 25, s. 133 (1); 2006, c. 32, Sched. A, s. 70 (1).

[53] **Definitions 133.** (2) In this section, "land" means land, including buildings, mobile homes, mobile buildings, mobile structures, outbuildings, fences, erections, physical barriers and any other structure on the land or on or in any structure on the land; ("bien-fonds") , "protective elements" include surveillance equipment. ("éléments protecteurs") 2001, c. 25, s. 133 (2). (3) Repealed: 2006, c. 32, Sched. A, s. 70 (2).

[54] **By-law and building code 133.** (4) A permit shall not be issued under the *Building Code Act, 1992* if the proposed building or construction or use of the building will contravene a by-law to which this section applies. 2001, c. 25, s. 133 (4); 2009, c. 33, Sched. 21, s. 6 (1).
Conflict (5) Despite section 35 of the *Building Code Act, 1992*, if there is a conflict between the building code under the *Building Code Act, 1992* and a by-law to which this section applies, the building code prevails. 2001, c. 25, s. 133 (5); 2009, c. 33, Sched. 21, s. 6 (2).

[55] **Period for compliance for existing fortifications 133.** (6) If a municipality makes an order to do work under subsection 445 (1) with respect to a contravention of the by-law, the order shall give not less than three months to complete the work if the fortifications or protective elements were present on the land on the day the by-law is passed. 2006, c. 32, Sched. A, s. 70 (3). (7)-(9) Repealed: 2006, c. 32, Sched. A, s. 70 (3).

[56] **Power to establish corporations 203.** (1) Without limiting sections 9, 10 and 11, those sections authorize a municipality to do the following things in accordance with such conditions and restrictions as may be prescribed: 1. To establish corporations. 2. To nominate or authorize a person to act as an incorporator, director, officer or member of a corporation. 3. To exercise any power as a member of a corporation. 4. To acquire an interest in or to guarantee such securities issued by a corporation as may be prescribed. 5. To exercise any power as the holder of such securities issued by a corporation as may be prescribed. 2006, c. 32, Sched. A, s. 88.
Duties of corporations, etc. (2) A corporation established by a municipality and a secondary corporation and the directors and officers of the corporation shall comply with such requirements as may be prescribed. 2009, c. 33, Sched. 21, s. 6 (7).
Exceptions (3) This section does not apply with respect to a corporation established under section 142 of the *Electricity Act, 1998*, a corporation established under **section 13[56] of the *Housing Development Act***, a local housing corporation established under Part III[56] of the *Social Housing Reform Act, 2000* or any other corporation that a municipality is expressly authorized under any other Act to establish or control. 2006, c. 32, Sched. A, s. 88.
Definition (3.1) For the purposes of this section, "secondary corporation" means a corporation established by a corporation that was established under subsection (1) and a corporation deemed under the regulations to be a secondary corporation. 2009, c. 33, Sched. 21, s. 6 (8).
Regulations (3.2) The Lieutenant Governor in Council may make regulations providing that specified corporations are deemed to be secondary corporations. 2009, c. 33, Sched. 21, s. 6 (8).
Regulations re corporations (4) The Lieutenant Governor in Council may make regulations governing the powers of a municipality under this section and governing corporations established under subsection (1) and secondary corporations, including regulations, (a) prescribing the purposes for which a municipality may exercise its powers referred to in this section and imposing conditions and restrictions on the use of those powers; (b) prescribing the purposes for which a corporation may carry on business or engage in activities; (c) prescribing securities for the purposes of paragraphs 4 and 5 of subsection (1); (d) imposing conditions and requirements that apply to a corporation and its directors and officers; (e) providing that specified corporations are deemed to be or are deemed not to be local boards for the purposes of any provision of this Act or for the purposes of the definition of "municipality" in such other Acts as may be specified; (f) providing that specified corporations are deemed for the purposes of any Act or specified provisions of an Act not to be operating a public utility in such circumstances as may be prescribed; (g) exempting a municipality from the application of section 106 with respect to specified corporations; (h) providing for transitional matters relating to a municipality's exercise of its powers under section 106 or relating to a specified corporation's exercise of its powers. 2006, c. 32, Sched. A, s. 88; 2009, c. 33, Sched. 21, s. 6 (9).
Conflict (5) If there is a conflict between a regulation made under this section and a provision of this Act, other than this section, or of any other Act or regulation, the regulation made under this section prevails. 2006, c. 32, Sched. A, s. 88.

[57] **Incorporation of non-profit housing corporation** 13. (1) A municipality, either solely or together with one or more other persons, may incorporate under the laws of Ontario one or more non-profit housing corporations having as the objects of incorporation the provision and operation of housing accommodation with or without any public space, recreational facilities and commercial space or buildings appropriate

thereto primarily for persons of low or modest income at rentals below the current rental market in the area in which the accommodation is located. R.S.O. 1990, c. H.18, s. 13 (1).

Provisions applicable to corporation incorporated by municipality (2) A municipality that incorporates a corporation as referred to in subsection (1) may own or control all or any part of the shares, capital or assets, as the case may be, of the corporation, provided however that, notwithstanding any of the provisions of the *Corporations Act* or the *Business Corporations Act*, the directors of the corporation shall not declare, nor the corporation pay, any dividends on any issued shares of the corporation, and no part of the income of the corporation shall be payable to or otherwise available for the personal benefit of any shareholder or member of the corporation and its letters patent, supplementary letters patent or articles may so provide. R.S.O. 1990, c. H.18, s. 13 (2).

Acquisition of land by corporation (3) Where a corporation is incorporated as referred to in subsection (1), the corporation shall not acquire lands for its purposes except with the approval of the Minister or except in accordance with the provisions of an official plan or a policy statement, which official plan provisions or policy statement have been approved by the Minister under section 17. R.S.O. 1990, c. H.18, s. 13 (3).

Approval not required (4) Section 65 of the *Ontario Municipal Board Act* does not apply to a corporation as referred to in subsection (1). R.S.O. 1990, c. H.18, s. 13 (4).

[58] **PART III LOCAL HOUSING CORPORATIONS** ESTABLISHMENT AND GOVERNANCE, **Local housing corporations. Authority to incorporate 23.** (1) The Minister may incorporate corporations with share capital under the *Business Corporations Act* as local housing corporations, to perform the duties and exercise the powers of local housing corporations under this Act. 2000, c. 27, s. 23 (1).

Status: (2) A local housing corporation is not an agent of Her Majesty for any purpose, despite the *Crown Agency Act* and it is not an administrative unit of the Government of Ontario. 2000, c. 27, s. 23 (2).

Deeming re status (3) A local housing corporation shall be deemed not to be a commercial enterprise for the purposes of subsection 106 (1) of the *Municipal Act, 2001* and subsection 82 (1) of the *City of Toronto Act, 2006* nor to be a local board of a service manager or of any municipality. 2000, c. 27, s. 23 (3); 2002, c. 17, Sched. F, Table; 2006, c. 32, Sched. C, s. 61 (3).

First directors (4) If the articles of incorporation of a local housing corporation name as a first director an individual who is a director of a local housing authority, his or her consent to act as a first director is not required and he or she may resign as a director at any time. 2000, c. 27, s. 23 (4).

Same (5) If an individual named as a first director is unable to act or resigns on or before a date prescribed by the Minister, the Minister may appoint his or her replacement and the replacement shall be deemed not to be a first director. 2000, c. 27, s. 23 (5).

Minister's powers (6) Upon the incorporation of a local housing corporation, the Minister may do anything the board of directors is permitted to do by subsection 117 (1) of the *Business Corporations Act* (first directors meeting) and a by-law or a decision authorized by this subsection, (a) need not be submitted to the shareholders of the local housing corporation for confirmation, rejection or amendment; (b) is effective as of the date it is made; (c) is as effective as it would have been had it been made in accordance with the *Business Corporations Act*; (d) may, in the case of a by-law, be amended or repealed in accordance with section 116 of the *Business Corporations Act* as if it were a by-law that had been made by resolution of the directors of the local housing corporation and confirmed by its shareholders. 2000, c. 27, s. 23 (6).

First share issuance (7) Upon the incorporation of a local housing corporation, it shall be deemed to have issued to the prescribed service manager the prescribed number of common shares for nominal consideration. 2000, c. 27, s. 23 (7).

Authority to acquire shares 24. A related service manager and a related municipality are authorized to acquire common shares in the capital of a local housing corporation as a result of a share issuance, share transfer or amalgamation described in sections 25 and 26. 2000, c. 27, s. 24.

Restrictions re shares Restrictions on share issuance 25. (1) A local housing corporation shall not issue shares without the prior written consent of the Minister unless, (a) they are issued to, (i) the related service manager, (ii) a related municipality, (iii) a non-profit corporation controlled by the related service manager or a related municipality, but only if an object of the non-profit corporation is the provision of housing, or (iv) a non-profit housing corporation that is incorporated under section 13 of the *Housing Development Act* and that is controlled by the related service manager or a related municipality; and (b) the share issuance does not result in the related service manager owning legally or beneficially less than a majority of the issued and outstanding common shares in the capital of the local housing corporation. 2000, c. 27, s. 25 (1).

Restrictions on share transfers, etc. (2) A shareholder of a local housing corporation shall not, without the prior written consent of the Minister, transfer or encumber the shareholder's legal or beneficial ownership in shares in the capital of the local housing corporation, and the local housing corporation shall not, without the prior written consent of the Minister, permit, acquiesce in, approve, ratify, recognize or register any transfer or encumbrance of legal or beneficial ownership in shares in its capital, unless, (a) the transfer or

encumbrance is made to or in favour of, (i) the related service manager, (ii) a related municipality, (iii) a non-profit corporation controlled by the related service manager or a related municipality, but only if an object of the non-profit corporation is the provision of housing, or (iv) a non-profit housing corporation that is incorporated under section 13 of the *Housing Development Act* and that is controlled by the related service manager or a related municipality; and (b) the transfer or encumbrance does not and cannot result in the related service manager owning legally or beneficially less than a majority of the issued and outstanding common shares in the capital of the local housing corporation. 2000, c. 27, s. 25 (2).

Restriction on amalgamation 26. (1) A local housing corporation shall not amalgamate with another corporation without the prior written consent of the Minister unless the other corporation is, (a) a non-profit corporation controlled by the related service manager or a related municipality, but only if an object of the non-profit corporation is the provision of housing; or (b) a non-profit housing corporation that is incorporated under section 13 of the *Housing Development Act* and that is controlled by the related service manager or a related municipality. 2000, c. 27, s. 26 (1).

Arrangement (2) Despite clause 2 (3) (a) of the *Business Corporations Act*, a local housing corporation may amalgamate with a corporation described in clause (1) (a) or (b) by way of an arrangement described in clause 182 (1) (d) of the *Business Corporations Act*. 2000, c. 27, s. 26 (2).

Restriction on voluntary dissolution 27. A local housing corporation shall not, without the prior written consent of the Minister, be voluntarily dissolved unless all real property that was transferred to the local housing corporation by a transfer order has been transferred to one or more of the following persons: 1. The related service manager. 2. A related municipality. 3. A non-profit corporation controlled by the related service manager or a related municipality, but only if an object of the non-profit corporation is the provision of housing. 4. A non-profit housing corporation that is incorporated under section 13 of the *Housing Development Act* and that is controlled by the related service manager or a related municipality. 2000, c. 27, s. 27.

Duty of corporation, etc. 28. A local housing corporation, its directors and its shareholders shall ensure that all articles, by-laws, resolutions, agreements and documents filed, made, confirmed, amended, entered into or signed by them do not contravene or conflict with this Act or the regulations. 2000, c. 27, s. 28.

Invalidity of certain actions 29. An act carried out in contravention of section 25, 26, 27 or 28 is invalid and of no force or effect. 2000, c. 27, s. 29.

Conflict 30. This Part prevails over the *Business Corporations Act*. 2000, c. 27, s. 30. ACTIVITIES AND OPERATIONS **Agreements Agreement with Minister, etc. 31.** (1) The Minister may require a local housing corporation to enter into a written agreement with the Minister or the Ontario Mortgage and Housing Corporation containing such terms as the Minister considers reasonable concerning the management or operation of a housing project located in the service area of the corporation's related service manager that has not been transferred to the local housing corporation by a transfer order. 2000, c. 27, s. 31 (1); 2006, c. 32, Sched. E, s. 5 (2).

Same (2) The Minister may require a local housing corporation to enter into an agreement with him or her containing such terms as the Minister considers reasonable concerning the provision of services by the Minister to the corporation. 2000, c. 27, s. 31 (2).

Agreement with another local housing corporation (3) The Minister may require a local housing corporation to enter into an agreement with another local housing corporation containing such terms as the Minister considers reasonable concerning the exercise of the powers of a local housing corporation. 2000, c. 27, s. 31 (3).

Information (4) The Minister may require a local housing corporation to give the Minister such financial or other information with respect to the corporation as the Minister considers reasonable for the purposes of an agreement described in subsection (1), (2) or (3). 2000, c. 27, s. 31 (4).

Notice of agreement (5) The Minister may enter into an agreement described in subsection (1), (2) or (3) on behalf of the local housing corporation and shall give the corporation notice of the agreement no later than 30 days after the later of the day on which the agreement is made and the day on which the corporation is incorporated. 2000, c. 27, s. 31 (5).

Pre-incorporation agreement (6) An agreement described in subsection (1), (2) or (3) that is a pre-incorporation agreement, (a) binds the local housing corporation without being adopted by it as described in section 21 of the *Business Corporations Act*; (b) is effective on the latest of the dates on which certificates of incorporation for the applicable local housing corporations are issued under the *Business Corporations Act*. 2000, c. 27, s. 31 (6).

Relationship to related service manager 32. (1) The related service manager shall establish rules governing the accountability of the local housing corporation to the service manager. 2000, c. 27, s. 32 (1).

Local rules (2) The service manager's accountability rules shall address the operation and activities of the local housing corporation, including such matters as reporting requirements, budgeting and funding, the maintenance of housing projects, audits and investigations, the exchange of information and such other

matters as the service manager considers appropriate to ensure the performance of the local housing corporation's duties under this Act. 2000, c. 27, s. 32 (2).
Provincial rules (3) Until the service manager establishes accountability rules, the service manager and the local housing corporation are bound by such provincial accountability rules relating to the operation and activities of the corporation as may be prescribed. 2000, c. 27, s. 32 (3).
Mandatory provincial rules (4) The service manager and the local housing corporation are bound by provincial accountability rules respecting the following matters: 1. The retention of records by the corporation and access to records by the service manager and others. 2. Such other matters as may be designated in the provincial rules as mandatory. 2000, c. 27, s. 32 (4).
Same, specified housing projects (5) The following rules apply if ownership of a housing project was transferred to the local housing corporation by a transfer order or an operating agreement for a housing project was transferred to the corporation by a transfer order and if the housing project is subject to a housing program prescribed for the purposes of this section: 1. The service manager shall pay to the local housing corporation the amounts determined in the manner prescribed by the Minister at the times specified by the Minister. 2. The local housing corporation shall comply with the provincial requirements established under section 93 respecting the matters described in clauses 93 (2) (c), (d) and (e) and with such related requirements as the service manager may establish. 3. The housing provider shall comply with the prescribed rules respecting the establishment and use of benchmarks and best practices. 2000, c. 27, s. 32 (5).
Same (6) The rules established under subsection (4) and by subsection (5) prevail over any accountability rules established by the service manager. 2000, c. 27, s. 32 (6).
Extended application (7) If a local housing corporation to which a housing project was transferred by a transfer order transfers the housing project to an entity mentioned in paragraph 3 of subsection 50 (2), this section applies as between the related service manager and the entity with respect to that housing project. 2000, c. 27, s. 32 (7).
Language of services 33. If a local housing corporation provides services in an area that is designated in the Schedule to the *French Language Services Act*, it shall provide its services in both English and French with respect to the provision of housing. 2000, c. 27, s. 33.

[59] **Interpretation 269.** (1) In section 270, "local board" means, (a) a local board as defined in section 1, excluding a police services board and a hospital board, (b) an area services board, a local services board, a local roads board and any other board, commission or local authority exercising any power with respect to municipal affairs or purposes in unorganized territory, excluding a school board, a hospital board and a conservation authority, (c) a district social services administration board, (d) a local housing corporation described in section 23 of the *Social Housing Reform Act, 2000*, and (e) any other prescribed body performing a public function. 2001, c. 25, s. 269 (1); 2006, c. 32, Sched. A, s. 112. **Regulations** (2) The Minister may make regulations prescribing bodies which fall within the definition of "local board" in subsection (1). 2001, c. 25, s. 269 (2).

[60] **Social Housing Reform Act, 2000, Local housing corporations, Authority to incorporate**
23. (1) The Minister may incorporate corporations with share capital under the *Business Corporations Act* as local housing corporations, to perform the duties and exercise the powers of local housing corporations under this Act. 2000, c. 27, s. 23 (1). **Status** (2) A local housing corporation is not an agent of Her Majesty for any purpose, despite the *Crown Agency Act* and it is not an administrative unit of the Government of Ontario. 2000, c. 27, s. 23 (2).
Deeming re status (3) A local housing corporation shall be deemed not to be a commercial enterprise for the purposes of subsection 106 (1) of the *Municipal Act, 2001* and subsection 82 (1) of the *City of Toronto Act, 2006* **nor to be a local board of a service manager or of any municipality.** 2000, c. 27, s. 23 (3); 2002, c. 17, Sched. F, Table; 2006, c. 32, Sched. C, s. 61 (3).
First directors (4) If the articles of incorporation of a local housing corporation name as a first director an individual who is a director of a local housing authority, his or her consent to act as a first director is not required and he or she may resign as a director at any time. 2000, c. 27, s. 23 (4).
Same (5) If an individual named as a first director is unable to act or resigns on or before a date prescribed by the Minister, the Minister may appoint his or her replacement and the replacement shall be deemed not to be a first director. 2000, c. 27, s. 23 (5).
Minister's powers (6) Upon the incorporation of a local housing corporation, the Minister may do anything the board of directors is permitted to do by subsection 117 (1) of the *Business Corporations Act* (first directors meeting) and a by-law or a decision authorized by this subsection, (a) need not be submitted to the shareholders of the local housing corporation for confirmation, rejection or amendment; (b) is effective as of the date it is made; (c) is as effective as it would have been had it been made in accordance with the *Business Corporations Act*; (d) may, in the case of a by-law, be amended or repealed in accordance with

section 116 of the *Business Corporations Act* as if it were a by-law that had been made by resolution of the directors of the local housing corporation and confirmed by its shareholders. 2000, c. 27, s. 23 (6).
First share issuance (7) Upon the incorporation of a local housing corporation, it shall be deemed to have issued to the prescribed service manager the prescribed number of common shares for nominal consideration. 2000, c. 27, s. 23 (7).

[61] **POLICIES, Adoption of policies 270.** (1) A municipality shall adopt and maintain policies with respect to the following matters: 1. Its sale and other disposition of land. 2. Its hiring of employees. 3. Its procurement of goods and services. 4. The circumstances in which the municipality shall provide notice to the public and, if notice is to be provided, the form, manner and times notice shall be given. 5. The manner in which the municipality will try to ensure that it is accountable to the public for its actions, and the manner in which the municipality will try to ensure that its actions are transparent to the public. 6. The delegation of its powers and duties. 2006, c. 32, Sched. A, s. 113.

[62] **Policies of local boards,** (2) A local board shall adopt and maintain policies with respect to the following matters: 1. Its sale and other disposition of land. 2. Its hiring of employees. 3. Its procurement of goods and services. 2006, c. 32, Sched. A, s. 113.

[63] **By-laws re special services** 326. (1) A municipality may by by-law, (a) identify a special service; (b) determine which of the costs, including capital costs, debenture charges, charges for depreciation or a reserve fund, of the municipality are related to that special service; (c) designate the area of the municipality in which the residents and property owners receive or will receive an additional benefit from the special service that is not received or will not be received in other areas of the municipality; (d) determine the portion and set out the method of determining the portion of the costs determined in clause (b) which represent the additional costs to the municipality of providing the additional benefit in the area designated in clause (c); (e) determine whether all or a specified portion of the additional costs determined in clause (d) shall be raised under subsection (4). 2001, c. 25, s. 326 (1); 2006, c. 32, Sched. A, s. 136 (1).

[64] **Definitions** 326 (2) In this section, "special service" means a service or activity of a municipality or a local board of the municipality that is, (a) not being provided or undertaken generally throughout the municipality, or (b) being provided or undertaken at different levels or in a different manner in different parts of the municipality. ("service spécial") 2001, c. 25, s. 326 (2).

[65] **Definitions 326.** (2) In this section, "benefit" means a direct or indirect benefit that is currently available or will be available in the future; ("avantage")

[66] **Acquisition of lands in accordance with provisions of plan**, 25. (1) If there is an official plan in effect in a municipality that includes provisions relating to the acquisition of land, which provisions have come into effect after the 28th day of June, 1974, the council may, in accordance with such provisions, 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. **Contribution towards cost,** (2) Any municipality may contribute towards the cost of acquiring land under this section. R.S.O. 1990, c. P.13, s. 25 (2).

[67] **Holding provision by-law,** 36. (1) The council of a local municipality may, in a by-law passed under section 34, by the use of the holding symbol "H" (or "h") in conjunction with any use designation, specify the use to which lands, buildings or structures may be put at such time in the future as the holding symbol is removed by amendment to the by-law. R.S.O. 1990, c. P.13, s. 36 (1).
Condition (2) A by-law shall not contain the provisions mentioned in subsection (1) unless there is an official plan in effect in the local municipality that contains provisions relating to the use of the holding symbol mentioned in subsection (1). R.S.O. 1990, c. P.13, s. 36 (2).

[68] **Designation of community improvement project area (2)** Where there is an official plan in effect in a local municipality or in a prescribed upper-tier municipality that contains provisions relating to community improvement in the municipality, the council may, by by-law, designate the whole or any part of an area covered by such an official plan as a community improvement project area. R.S.O. 1990, c. P.13, s. 28 (2); 2006, c. 23, s. 14 (3).

[69] **Acquisition and clearance of land (3)** When a by-law has been passed under subsection (2), the municipality may, (a) acquire land within the community improvement project area with the approval of the

Minister if the land is acquired before a community improvement plan mentioned in subsection (4) comes into effect and without the approval of the Minister if the land is acquired after the community improvement plan comes into effect; (b) hold land acquired before or after the passing of the by-law within the community improvement project area; and (c) clear, grade or otherwise prepare the land for community improvement. R.S.O. 1990, c. P.13, s. 28 (3); 2001, c. 17, s. 7 (3).

[70] **Powers of council re land (6)** For the purpose of carrying out a community improvement plan that has come into effect, the municipality may, (a) construct, repair, rehabilitate or improve buildings on land acquired or held by it in the community improvement project area in conformity with the community improvement plan, and sell, lease or otherwise dispose of any such buildings and the land appurtenant thereto; (b) sell, lease or otherwise dispose of any land acquired or held by it in the community improvement project area to any person or governmental authority for use in conformity with the community improvement plan. R.S.O. 1990, c. P.13, s. 28 (6); 2001, c. 17, s. 7 (6).

[71] **PART IV, COMMUNITY IMPROVEMENT, COMMUNITY IMPROVEMENT PROJECT AREA** 28. **(1)** In this section, "community improvement" means the planning or replanning, design or redesign, resubdivision, clearance, development or redevelopment, construction, reconstruction and rehabilitation, improvement of energy efficiency, or any of them, of a community improvement project area, and the provision of such residential, commercial, industrial, public, recreational, institutional, religious, charitable or other uses, buildings, structures, works, improvements or facilities, or spaces therefor, as may be appropriate or necessary;

[72] **Grants or loans re eligible costs (7)** For the purpose of carrying out a municipality's community improvement plan that has come into effect, the municipality may make grants or loans, in conformity with the community improvement plan, to registered owners, assessed owners and tenants of lands and buildings within the community improvement project area, and to any person to whom such an owner or tenant has assigned the right to receive a grant or loan, to pay for the whole or any part of the eligible costs of the community improvement plan. 2006, c. 23, s. 14 (8).

[73] **Eligible costs (7.1)** For the purposes of subsection (7), the eligible costs of a community improvement plan may include costs related to environmental site assessment, environmental remediation, development, redevelopment, construction and reconstruction of lands and buildings for rehabilitation purposes or for the provision of energy efficient uses, buildings, structures, works, improvements or facilities. 2006, c. 23, s. 14 (8).

[74] **Grants or loans between upper and lower-tier municipalities (7.2)** The council of an upper-tier municipality may make grants or loans to the council of a lower-tier municipality and the council of a lower-tier municipality may make grants or loans to the council of the upper-tier municipality, for the purpose of carrying out a community improvement plan that has come into effect, on such terms as to security and otherwise as the council considers appropriate, but only if the official plan of the municipality making the grant or loan contains provisions relating to the making of such grants or loans. 2006, c. 23, s. 14 (8).

[75] **Maximum amount (7.3)** The total of the grants and loans made in respect of particular lands and buildings under subsections (7) and (7.2) and the tax assistance as defined in section 365.1 of the *Municipal Act, 2001* or section 333 of the *City of Toronto Act, 2006*, as the case may be, that is provided in respect of the lands and buildings shall not exceed the eligible cost of the community improvement plan with respect to those lands and buildings. 2006, c. 23, s. 14 (8); 2006, c. 32, Sched. C, s. 48 (3).

[76] **Cancellation, reduction or refund of taxes 365.** (1) The council of a local municipality may, in any year, pass a by-law to provide for the cancellation, reduction or refund of taxes levied for local municipal and school purposes in the year by the council in respect of an eligible property of any person who makes an application in that year to the municipality for that relief and whose taxes are considered by the council to be unduly burdensome, as defined in the by-law. 2001, c. 25, s. 365 (1).

[77] **Conditions of sale, etc. (10)** Until a by-law or amending by-law passed under section 34 after the adoption of the community improvement plan is in force in the community improvement project area, no land acquired, and no building constructed, by the municipality in the community improvement project area shall be sold, leased or otherwise disposed of unless the person or authority to whom it is disposed of enters into a written agreement with the municipality that the person or authority will keep and maintain the land and building and the use thereof in conformity with the community improvement plan until such a by-law or amending by-law is in force, but the municipality may, during the period of the development of the plan,

lease any land or any building or part thereof in the area for any purpose, whether or not in conformity with the community improvement plan, for a term of not more than three years at any one time. R.S.O. 1990, c. P.13, s. 28 (10).

[78] **Registration of agreement (11)** An agreement concerning a grant or loan made under subsection (7) or an agreement entered into under subsection (10), may be registered against the land to which it applies and the municipality shall be entitled to enforce the provisions thereof against any party to the agreement and, subject to the provisions of the *Registry Act* and the *Land Titles Act*, against any and all subsequent owners or tenants of the land. R.S.O. 1990, c. P.13, s. 28 (11); 2006, c. 23, s. 14 (10).

[79] **Grants or loans for repairs** 32. **(1)** When a by-law under section 15.1 of the *Building Code Act, 1992* is in force in a municipality, the council of the municipality may pass a by-law for providing for the making of grants or loans to the registered owners or assessed owners of lands in respect of which an order has been made under subsection 15.2 (2) of that Act to pay for the whole or any part of the cost of the repairs required to be done, or of the clearing, grading and levelling of the lands, on such terms and conditions as the council may prescribe. R.S.O. 1990, c. P.13, s. 32 (1); 1997, c. 24, s. 226 (3).
Loans collected as taxes, lien on land (2) The amount of any loan made under a by-law passed under this section, together with interest at a rate to be determined by the council, may be added by the clerk of the municipality to the collector's roll and collected in like manner as municipal taxes over a period fixed by the council, and such amount and interest shall, until payment thereof, be a lien or charge upon the land in respect of which the loan has been made.
Registration of certificate (3) A certificate signed by the clerk of the municipality setting out the amount loaned to any owner under a by-law passed under this section, including the rate of interest thereon, together with a description of the land in respect of which the loan has been made, sufficient for registration, shall be registered in the proper land registry office against the land, and, upon repayment in full to the municipality of the amount loaned and interest thereon, a certificate signed by the clerk of the municipality showing such repayment shall be similarly registered, and thereupon the lien or charge upon the land in respect of which the loan was made is discharged. R.S.O. 1990, c. P.13, s. 32 (2, 3).

[80] **Municipal property standards** 15.1 (1) In sections 15.1 to 15.8 inclusive, "committee" means a property standards committee established under section 15.6;
"occupant" means any person or persons over the age of 18 years in possession of the property;
"owner" includes, (a) the person for the time being managing or receiving the rent of the land or premises in connection with which the word is used, whether on the person's own account or as agent or trustee of any other person, or who would receive the rent if the land and premises were let, and (b) a lessee or occupant of the property who, under the terms of a lease, is required to repair and maintain the property in accordance with the standards for the maintenance and occupancy of property; (Note: SEE: Social Housing Reform Act, 2000, S.O. 2000, CHAPTER 27, Housing Development Act, R.S.O. 1990, Chapter H.18,)
"property" means a building or structure or part of a building or structure, and includes the lands and premises appurtenant thereto and all mobile homes, mobile buildings, mobile structures, outbuildings, fences and erections thereon whether heretofore or hereafter erected, and includes vacant property; ("bien")
"repair" includes the provision of facilities, the making of additions or alterations or the taking of any other action that may be required to ensure that a property conforms with the standards established in a by-law passed under this section. ("réparation") 1997, c. 24, s. 224 (8).
Adoption of policy. (2) Where there is no official plan in effect in a municipality, the council of a municipality may, by by-law approved by the Minister, adopt a policy statement containing provisions relating to property conditions. 1997, c. 24, s. 224 (8**).**

[81] **Inspection of property without warrant**, Contents of order (2) An officer who finds that a property does not conform with any of the standards prescribed in a by-law passed under section 15.1 may make an order, (a) stating the municipal address or the legal description of the property; (b) giving reasonable particulars of the repairs[81] to be made or stating that the site is to be cleared of all buildings, structures, debris or refuse and left in a graded and levelled condition; (c) indicating the time for complying with the terms and conditions of the order and giving notice that, if the repair or clearance is not carried out within that time, the municipality may carry out the repair or clearance at the owner's expense[81]; and (d) indicating the final date for giving notice of appeal from the order. 1997, c. 24, s. 224 (8).

[82] **Demolition control area,** 33. (1) In this section, "dwelling unit" means any property that is used or designed for use as a domestic establishment in which one or more persons may sleep and prepare and serve meals; "residential property" means a building that contains one or more dwelling units, but does not

include subordinate or accessory buildings the use of which is incidental to the use of the main building. R.S.O. 1990, c. P.13, s. 33 (1).
Establishment of demolition control area by by-law (2) When a by-law under section 15.1 of the *Building Code Act, 1992* or a predecessor thereof is in force in a municipality or when a by-law prescribing standards for the maintenance and occupancy of property under any special Act is in force in a municipality, the council of the local municipality may by by-law designate any area within the municipality to which the standards of maintenance and occupancy by-law applies as an area of demolition control and thereafter no person shall demolish the whole or any part of any residential property in the area of demolition control unless the person is the holder of a demolition permit issued by the council under this section. R.S.O. 1990, c. P.13, s. 33 (2); 1997, c. 24, s. 226 (4).

[83] **Municipal by-laws** 35. (1) This Act and the building code supersede all municipal by-laws respecting the construction or demolition of buildings. 1992, c. 23, s. 35 (1).
Different treatments (2) In the event that this Act or the building code and a municipal by-law treat the same subject-matter in different ways in respect to standards for the use of a building described in section 10 or standards for the maintenance or operation of a sewage system, this Act or the building code prevails and the by-law is inoperative to the extent that it differs from this Act or the building code. 1992, c. 23, s. 35 (2); 1997, c. 30, Sched. B, s. 18 (1).
Interpretation (3) For the purpose of this section, a municipal by-law includes a by-law of an upper-tier municipality and a local board as defined in the *Municipal Affairs Act*. 2002, c. 17, Sched. F, Table.
Status of conservation authority regulations 35.1 A regulation made by a conservation authority under this Act is not a regulation within the meaning of Part III (Regulations) of the *Legislation Act, 2006*. 2002, c. 9, s. 52; 2006, c. 21, Sched. F, s. 136 (1).

[84] **Area, density and height 34. 6 (3)** The authority to regulate provided in paragraph 4 of subsection (1) includes and, despite the decision of any court, shall be deemed always to have included the authority to regulate the minimum area of the parcel of land mentioned therein and to regulate the minimum and maximum density and the minimum and maximum height of development in the municipality or in the area or areas defined in the by-law. 2006, c. 23, s. 15 (1).

[85] **Zoning by-laws 34 (1) 4.** For regulating the type of construction and the height, bulk, location, size, floor area, spacing, character and use of buildings or structures to be erected or located within the municipality or within any defined area or areas or upon land abutting on any defined highway or part of a highway, and the minimum frontage and depth of the parcel of land and the proportion of the area thereof that any building or structure may occupy.

[86] **REGISTRY ACT. REGISTRATION AND ITS EFFECT EFFECT OF UNREGISTERED INSTRUMENTS** 70. (1) After the grant from the Crown of land, and letters patent issued therefor, every instrument affecting the land or any part thereof shall be adjudged fraudulent and void against any subsequent purchaser or mortgagee for valuable consideration without actual notice, unless the instrument is registered before the registration of the instrument under which the subsequent purchaser or mortgagee claims. R.S.O. 1990, c. R.20, s. 70 (1).
Exception as to certain leases, (2) This section does not extend to a lease for a term not exceeding seven years where the actual possession goes along with the lease, but it does extend to every lease for a longer term than seven years. R.S.O. 1990, c. R.20, s. 70 (2).
Exception as to certain by-laws, (3) This section does not extend and shall be deemed never to have extended to, (a) a by-law passed before the 6th day of April, 1954 under section 390 of *The Municipal Act*, being chapter 243 of the Revised Statutes of Ontario, 1950 or a predecessor of that section; (b) a by-law passed after the 5th day of April, 1954 under section 390 of *The Municipal Act*, being chapter 243 of the Revised Statutes of Ontario, 1950 or under section 34 of the *Planning Act* or a predecessor of that section of the *Planning Act*; or (c) any other municipal by-law, heretofore or hereafter passed, affecting land that does not directly affect the title to land. R.S.O. 1990, c. R.20, s. 70 (3).

[87] *Court rulings don't support claim of open beaches*. Midland Free Press, May 19, 2000. (This article is a revised and updated version of TINY'S SHORELINE -- A LEGAL HISTORY, which appeared in Issue #14 (Spring 1999) of *The Tiny Cottager)* Midland Free Press, May 19, 2000. p.2.

[88] PUBLIC INTEREST (Black's Law Dictionary, 9th Edition, 2009, p. 1337) – 1. The general welfare of the public that warrants recognition and protection. 2. Something in which the public as a whole has a stake; esp., an interest that justifies governmental regulation.

[89] **Interpretation 1.** (1.1) Except as provided in subsection (1.2), a reference to "this Act" in any provision of this Act shall be deemed to be a reference to this Act excluding sections 15.1 to 15.8. 1997, c. 24, s. 224 (3).

[90] **Same 1.** (1.2) A reference to "this Act" in subsection 1 (1) and sections 2, 16, 19, 20, 21, 27, 31, 36 and 37 includes a reference to sections 15.1 to 15.8. 1997, c. 24, s. 224 (3).

[91] **Municipal by-laws 35. (1)** This Act and the building code supersede all municipal by-laws respecting the construction or demolition of buildings. 1992, c. 23, s. 35 (1).

[92] **Different treatments 35.** (2) In the event that this Act or the building code and a municipal by-law treat the same subject-matter in different ways in respect to standards for the use of a building described in section 10[92] or standards for the maintenance or operation of a sewage system, this Act or the building code prevails and the by-law is inoperative to the extent that it differs from this Act or the building code. 1992, c. 23, s. 35 (2); 1997, c. 30, Sched. B, s. 18 (1).

[93] **35. (3)** For the purpose of this section, a municipal by-law includes a by-law of an upper-tier municipality and a local board as defined in the *Municipal Affairs Act*. 2002, c. 17, Sched. F, Table.

[94] **Status of conservation authority regulations** 35.1 A regulation made by a conservation authority under this Act is not a regulation within the meaning of Part III (Regulations) of the *Legislation Act, 2006*. 2002, c. 9, s. 52; 2006, c. 21, Sched. F, s. 136 (1).

[95] **Part III Definitions 17. In this Part** "regulation" means a regulation, rule, order or by-law of a legislative nature made or approved under an Act of the Legislature by the Lieutenant Governor in Council, a minister of the Crown, an official of the government or a board or commission all the members of which are appointed by the Lieutenant Governor in Council, but does not include, (a) a by-law of a municipality or local board as defined in the *Municipal Affairs Act*, or (b) an order of the Ontario Municipal Board. ("règlement") 2006, c. 21, Sched. F, s. 17. Legislation Act, 2006, S.O. 2006, CHAPTER 21

[96] **Administration** 2. (1) The Minister is responsible for the administration of this Act. 1992, c. 23, s. 2 (1).
Director (2) There shall be a director of the Building and Development Branch of the Ministry of Municipal Affairs and Housing who is appointed by the Lieutenant Governor in Council for the purposes of this Act. 2002, c. 9, s. 5.

[97] **"director"** means the person appointed as director under section 2;

[98] **Entry to dwellings** 16. **(1)** Despite sections 8, 12, 15, 15.2, 15.4, 15.9 and 15.10.1, an inspector or officer shall not enter or remain in any room or place actually being used as a dwelling unless, (a) the consent of the occupier is obtained, the occupier first having been informed that the right of entry may be refused and entry made only under the authority of a warrant issued under this Act; (a.1) a warrant issued under this Act is obtained; (b) the delay necessary to obtain a warrant or the consent of the occupier would result in an immediate danger to the health or safety of any person; (c) the entry is necessary to terminate a danger under subsection 15.7 (3) or 15.10 (3); or (d) the requirements of subsection (2) are met and the entry is necessary to remove a building or restore a site under subsection 8 (6), to remove an unsafe condition under clause 15.9 (6) (b) or to repair or demolish under subsection 15.4 (1). 1992, c. 23, s. 16 (1); 1997, c. 24, s. 224 (9, 10); 2002, c. 9, s. 30; 2006, c. 19, Sched. O, s. 1 (11); 2006, c. 22, s. 112 (9).
Notice (2) Within a reasonable time before entering the room or place for a purpose described in clause (1) (d), the inspector or officer shall serve the occupier with notice of his or her intention to enter it. 1992, c. 23, s. 16 (2); 1997, c. 24, s. 224 (11).

[99] **Building Code, Municipal property standards**, 15.1 (1) In sections 15.1 to 15.8 inclusive, "occupant" means any person or persons over the age of 18 years in possession of the property; ("occupant")

[100] **Obstruction of inspector, etc.** 19. **(1)** No person shall hinder or obstruct, or attempt to hinder or obstruct, a chief building official, inspector, officer or a person authorized by a registered code agency in the exercise of a power or the performance of a duty under this Act. 1997, c. 24, s. 224 (13); 2002, c. 9, s. 35 (1).
Occupied dwellings (2) A refusal of consent to enter or remain in a place actually used as a dwelling is not hindering or obstructing within the meaning of subsection (1) unless the inspector, officer or authorized

person is acting under a warrant issued under this Act or in the circumstances described in clause 16 (1) (b), (c) or (d). 1997, c. 24, s. 224 (13); 2002, c. 9, s. 35 (2).
Assistance (3) Every person shall assist any entry, inspection, examination, testing or inquiry by an inspector, chief building official, officer or a person authorized by a registered code agency in the exercise of a power or performance of a duty under this Act. 1997, c. 24, s. 224 (13); 2002, c. 9, s. 35 (3).
Same (4) No person shall neglect or refuse, (a) to produce any documents, drawings, specifications or things required under clause 15.8 (1) (a) or (e) by an officer or under clause 18 (1) (a) or (e) by an inspector or by a person authorized by a registered code agency; or (b) to provide any information required under clause 15.8 (1) (c) by an officer or under clause 18 (1) (c) by an inspector or by a person authorized by a registered code agency. 2002, c. 9, s. 35 (4).

[101] **Building Code, 1,** "registered code agency" means a person that has the qualifications and meets the requirements described in subsection 15.11 (4); ("organisme inscrit d'exécution du code")
Qualifications for various positions 15.11 (1) Qualifications for registered code agencies (4) A person is not eligible to be appointed as a registered code agency under this Act unless the person has the qualifications and meets the requirements set out in the building code. 2002, c. 9, s. 27; 2006, c. 19, Sched. O, s. 1 (7).
Prohibition (7) No person shall represent, directly or indirectly, that he, she or it has the qualifications or meets the requirements established under this section if the person does not have those qualifications or does not meet those requirements. 2002, c. 9, s. 27; 2006, c. 19, Sched. O, s. 1 (7).

[102] **5.**The holder shall ensure that the member who exercises responsible control for the design activities provided by the holder includes the following information on any document submitted to a chief building official or registered code agency whenever a design activity is provided: i. The holder's name and address of record. ii. The holder's registration number. iii. The member's seal and signature.

[103] **2**.The member shall ensure that if he or she has exercised responsible control for the design activities provided by a holder or carried out design activities and exercised responsible control for design activities as an officer, director, partner or full-time employee of a person who is not a holder, the following information is included on any document submitted to a chief building official or registered code agency whenever a design activity is provided: i. The member's name and identifying number. ii. The member's seal and signature.
[104] **Obstruction or removal of order 20.** No person shall obstruct the visibility of an order and no person shall remove a copy of an order posted under this Act unless authorized to do so by an inspector, officer or registered code agency. 1997, c. 24, s. 224 (14); 2002, c. 9, s. 36.

[104] **Warrant for entry and search 21. (1)** A provincial judge or justice of the peace may at any time issue a warrant in the prescribed form authorizing a person named in the warrant to enter and search a building, receptacle or place if the provincial judge or justice of the peace is satisfied by information on oath that there is reasonable ground to believe that, (a) an offence under this Act has been committed; and (b) the entry into and search of the building, receptacle or place will afford evidence relevant to the commission of the offence. 1992, c. 23, s. 21 (1).
Seizure (2) In a search warrant, the provincial judge or justice of the peace may authorize the person named in the warrant to seize anything that there is reasonable ground to believe will afford evidence relevant to the commission of the offence. 1992, c. 23, s. 21 (2).
Same (3) Anyone who seizes something under a search warrant shall, (a) give a receipt for the thing seized to the person from whom it was seized; and (b) bring the thing seized before the provincial judge or justice of the peace issuing the warrant or another provincial judge or justice to be dealt with according to law. 1992, c. 23, s. 21 (3).
Expiry of warrant (4) A search warrant shall state the date on which it expires, which date shall be not later than fifteen days after the warrant is issued. 1992, c. 23, s. 21 (4).
Time for execution (5) A search warrant may be executed only between 6 a.m. and 9 p.m. unless it provides otherwise. 1992, c. 23, s. 21 (5).
Application (6) Sections 159 and 160 of the *Provincial Offences Act* apply with necessary modifications in respect of any thing seized under this section. 1992, c. 23, s. 21 (6).

[106] **Order of justice re things seized** 159. **(1)** When, under paragraph 3 of subsection 158.2 (2), a thing that has been seized is brought before a justice or a report in respect of it is made to a justice, he or she shall, by order, (a) detain the thing or direct it to be detained in the care of a person named in the order; or (b) direct it to be returned. 2002, c. 18, Sched. A, s. 15 (5); 2006, c. 19, Sched. B, s. 15 (3).
Detention pending appeal, etc. (1.0.1) A direction to return seized items does not take effect for 30 days and does not take effect during any application made or appeal taken in respect of the thing. 2009, c. 33, Sched. 4, s. 1 (61).
Same (1.1) The justice may, in the order, (a) authorize the examination, testing, inspection or reproduction of the thing seized, on the conditions that are reasonably necessary and are directed in the order; and (b) make any other provision that, in his or her opinion, is necessary for the preservation of the thing. 2002, c. 18, Sched. A, s. 15 (5).
Time limit for detention (2) Nothing shall be detained under an order made under subsection (1) for a period of more than three months after the time of seizure unless, before the expiration of that period, (a) upon motion, a justice is satisfied that having regard to the nature of the investigation, its further detention for a specified period is warranted and he or she so orders; or (b) a proceeding is instituted in which the thing detained may be required. R.S.O. 1990, c. P.33, s. 159 (2).
Motion for examination and copying (3) Upon the motion of the defendant, prosecutor or person having an interest in a thing detained under subsection (1), a justice may make an order for the examination, testing, inspection or reproduction of any thing detained upon such conditions as are reasonably necessary and directed in the order. R.S.O. 1990, c. P.33, s. 159 (3).
Motion for release (4) Upon the motion of a person having an interest in a thing detained under subsection (1), and upon notice to the defendant, the person from whom the thing was seized, the person to whom the search warrant was issued and any other person who has an apparent interest in the thing detained, a justice may make an order for the release of any thing detained to the person from whom the thing was seized where it appears that the thing detained is no longer necessary for the purpose of an investigation or proceeding. R.S.O. 1990, c. P.33, s. 159 (4).
Appeal where order by justice of the peace (5) Where an order or refusal to make an order under subsection (3) or (4) is made by a justice of the peace, an appeal lies therefrom in the same manner as an appeal from a conviction in a proceeding commenced by means of a certificate. R.S.O. 1990, c. P.33, s. 159 (5).

[107] **Claim of privilege** 160. (1) Where under a search warrant a person is about to examine or seize a document that is in the possession of a lawyer and a solicitor-client privilege is claimed on behalf of a named client in respect of the document, the person shall, without examining or making copies of the document, (a) seize the document and place it, together with any other document seized in respect of which the same claim is made on behalf of the same client, in a package and seal and identify the package; and (b) place the package in the custody of the clerk of the court or, with the consent of the person and the client, in the custody of another person.
Opportunity to claim privilege (2) No person shall examine or seize a document that is in the possession of a lawyer without giving him or her a reasonable opportunity to claim the privilege under subsection (1).
Examination of documents in custody (3) A judge may, upon the motion made without notice of the lawyer, by order authorize the lawyer to examine or make a copy of the document in the presence of its custodian or the judge, and the order shall contain such provisions as are necessary to ensure that the document is repackaged and resealed without alteration or damage.
Motion to determine privilege (4) Where a document has been seized and placed in custody under subsection (1), the client by or on whose behalf the claim of solicitor-client privilege is made may make a motion to a judge for an order sustaining the privilege and for the return of the document.
Limitation (5) A motion under subsection (4) shall be by notice of motion naming a hearing date not later than thirty days after the date on which the document was placed in custody.
Attorney General a party (6) The person who seized the document and the Attorney General are parties to a motion under subsection (4) and entitled to at least three days notice thereof.
Private hearing and scrutiny by judge (7) A motion under subsection (4) shall be heard in private and, for the purposes of the hearing, the judge may examine the document and, if he or she does so, shall cause it to be resealed. **Order** (8) The judge may by order, (a) declare that the solicitor-client privilege exists or does not exist in respect of the document; (b) direct that the document be delivered up to the appropriate person.
Release of document where no motion under subs. (4) (9) Where it appears to a judge upon the motion of the Attorney General or person who seized the document that no motion has been made under subsection (4) within the time limit prescribed by subsection (5), the judge shall order that the document be delivered to the applicant. R.S.O. 1990, c. P.33, s. 160.

[108] **Service 27. (1)** A notice or order required by this Act to be served may be served personally or by registered mail sent to the last known address of the person to whom notice is to be given or to that person's agent for service. 1992, c. 23, s. 27 (1).
Idem (2) If a notice or order is served by registered mail, the service shall be deemed to have been made on the fifth day after the day of mailing unless the person to whom the notice or order is given or that person's agent for service establishes that, acting in good faith, through absence, accident, illness or other unintentional cause the notice was not received until a later date. 1992, c. 23, s. 27 (2); 1997, c. 24, s. 224 (15).

[109] **Proof of directions, orders, etc. 37. (1)** In any prosecution for an offence under this Act, a copy of a direction or order purporting to have been made under this Act or the regulations and purporting to have been signed by the person authorized by this Act to make the direction or order is, in the absence of evidence to the contrary, proof of the direction or order without proof of the signature or authority. 1992, c. 23, s. 37 (1).
Same (2) A statement as to any matter of record in an office of the chief building official or an officer purporting to be certified by the chief building official or the officer is, without proof of the office or signature of the chief building official or officer, receivable in evidence as proof, in the absence of evidence to the contrary, of the facts stated therein in any civil proceeding or proceeding under the *Provincial Offences Act*. 1997, c. 24, s. 224 (18).

[110] **Immunity from action**
31. (1) No action or other proceeding for damages shall be instituted against the director, a member of the Building Code Commission or the Building Materials Evaluation Commission, or anyone acting under their authority, a person conducting an inquiry under section 30, a chief building official, an inspector or an officer for any act done in good faith in the execution or intended execution of any power or duty under this Act or the regulations or for any alleged neglect or default in the execution in good faith of that power or duty. 1992, c. 23, s. 31 (1); 1997, c. 24, s. 224 (16).
[111] **Code of conduct** 7.1 (1) A principal authority shall establish and enforce a code of conduct for the chief building official and inspectors. 2002, c. 9, s. 12.
Purposes (2) The following are the purposes of a code of conduct: 1. To promote appropriate standards of behaviour and enforcement actions by the chief building official and inspectors in the exercise of a power or the performance of a duty under this Act or the building code. 2. To prevent practices which may constitute an abuse of power, including unethical or illegal practices, by the chief building official and inspectors in the exercise of a power or the performance of a duty under this Act or the building code. 3. To promote appropriate standards of honesty and integrity in the exercise of a power or the performance of a duty under this Act or the building code by the chief building official and inspectors. 2002, c. 9, s. 12. **Contents** (3) A code of conduct must provide for its enforcement and include policies or guidelines to be used when responding to allegations that the code has been breached and disciplinary actions that may be taken if the code is breached. 2002, c. 9, s. 12. **Public notice** (4) The principal authority shall ensure that the code of conduct is brought to the attention of the public. 2002, c. 9, s. 12.

[112] **Liability 31 (2)** Subsection (1) does not relieve the Crown, a municipality, an upper-tier municipality, a board of health, a planning board or a conservation authority of liability in respect of a tort committed by their respective chief building official or inspectors to which they would otherwise be subject and the Crown, municipality or upper-tier municipality, board of health, planning board or conservation authority is liable for any such tort as if subsection (1) were not enacted. 2002, c. 17, Sched. F, Table.
Immunity re registered code agencies (3) The Crown, a municipality, an upper-tier municipality, a board of health, a planning board or a conservation authority is not liable for any harm or damage resulting from any act or omission by a registered code agency or by a person authorized by a registered code agency under subsection 15.17 (1) in the performance or intended performance of any function set out in section 15.15. 2002, c. 9, s. 47; 2002, c. 17, Sched. C, s. 6 (1)

[113] **Offences** 36. **(1)** A person is guilty of an offence if the person, **(a)** knowingly furnishes false information in any application under this Act, in any certificate required to be issued or in any statement or return required to be furnished under this Act or the regulations; **(b)** fails to comply with an order, direction or other requirement made under this Act; or **(c)** contravenes this Act, the regulations or a by-law passed under section 7. 1992, c. 23, s. 36 (1); 1997, c. 24, s. 224 (17); 1997, c. 30, Sched. B, s. 19; 2002, c. 9, s. 53 (1); 2009, c. 33, Sched. 21, s. 2 (8).
Idem (2) Every director or officer of a corporation who knowingly concurs in the furnishing of false information, the failure to comply or the contravention under subsection (1) is guilty of an offence. 1992, c. 23, s. 36 (2).
Penalties (3) A person who is convicted of an offence is liable to a fine of not more than $50,000 for a first offence and to a fine of not more than $100,000 for a subsequent offence. 2005, c. 33, s. 1.
Corporations (4) If a corporation is convicted of an offence, the maximum penalty that may be imposed upon the corporation is $100,000 for a first offence and $200,000 for a subsequent offence and not as provided in subsection (3). 2005, c. 33, s. 1.

[114] **3.1 (1)** A board of health, a planning board or a conservation authority prescribed in the building code is responsible for the enforcement of the provisions of this Act and the building code related to sewage systems in the municipalities and territory without municipal organization prescribed in the building code. 1997, c. 30, Sched. B, s. 3; 1999, c. 12, Sched. M, s. 2 (1).
Inspectors (2) The board of health, planning board or conservation authority shall appoint such sewage system inspectors as are necessary for the enforcement of this Act in the areas in which the board of health, planning board or conservation authority has jurisdiction under subsection (1). 1997, c. 30, Sched. B, s. 3; 1999, c. 12, Sched. M, s. 2 (2).
Powers (3) A sewage system inspector appointed under this section in an area of jurisdiction or, if there is more than one inspector in the area of jurisdiction, the inspector designated by the board of health, planning board or conservation authority has the same powers and duties in relation to sewage systems as does the chief building official in respect of buildings. 1997, c. 30, Sched. B, s. 3; 1999, c. 12, Sched. M, s. 2 (3).
Jurisdiction (4) A board of health, planning board or conservation authority prescribed for the purposes of subsection (1) has jurisdiction for the enforcement of this Act in the prescribed municipalities and territory without municipal organization. 1997, c. 30, Sched. B, s. 3; 1999, c. 12, Sched. M, s. 2 (4).
Responsibility (5) If sewage system inspectors have been appointed under this section, the chief building official and inspectors appointed under section 3 or 4 shall not exercise their powers under this Act in respect of sewage systems. 1997, c. 30, Sched. B, s. 3.
Certificate (6) The medical officer of health or the secretary-treasurer of a planning board or conservation authority shall issue a certificate of appointment bearing his or her signature, or a facsimile of it, to each sewage system inspector appointed by the board of health, planning board or conservation authority. 1997, c. 30, Sched. B, s. 3; 1999, c. 12, Sched. M, s. 2 (5).
Records (7) Every board of health, planning board and conservation authority prescribed for the purposes of subsection (1) shall retain such records as may be prescribed by regulation for the prescribed period of time. 2002, c. 9, s. 7.

[115] **Building code By-laws, resolutions, regulations** 7. (1) The council of a municipality or of an upper-tier municipality that has entered into an agreement under subsection 3 (5) or a board of health prescribed for the purposes of section 3.1 may pass by-laws, a planning board prescribed for the purposes of section 3.1 may pass resolutions and a conservation authority prescribed for the purposes of section 3.1 or the Lieutenant Governor in Council may make regulations, applicable to the matters for which and in the area in which the municipality, upper-tier municipality, board of health, planning board, conservation authority or the Province of Ontario, respectively, has jurisdiction for the enforcement of this Act,

[116] **(8.1)** Section 398 of the *Municipal Act, 2001* or section 264 of the *City of Toronto Act, 2006*, as the case may be, applies, with necessary modifications, to fees established by a municipality or local board under clause (1) (c) and, with the approval of the treasurer of a local municipality, to fees established under clause (1) (c) by a conservation authority whose area of jurisdiction includes any part of the local municipality. 2006, c. 22, s. 112 (7).

[117] **PART XII FEES AND CHARGES, Definitions 390.** In this Part, "by-law" includes a resolution for the purpose of a local board; "fee or charge" means, in relation to a municipality, a fee or charge imposed by the municipality under sections 9, 10 and 11 and, in relation to a local board, a fee or charge imposed by the local board under subsection 391 (1.1); "local board" includes any prescribed body performing a public function and a school board but, for the purpose of passing by-laws imposing fees or charges under this

Part, does not include a school board or hospital board; "person" includes a municipality and a local board and the Crown. 2001, c. 25, s. 390; 2006, c. 32, Sched. A, s. 162.

By-laws re: fees and charges 391. (1) Without limiting sections 9, 10 and 11, those sections authorize a municipality to impose fees or charges on persons, (a) for services or activities provided or done by or on behalf of it; (b) for costs payable by it for services or activities provided or done by or on behalf of any other municipality or any local board; and (c) for the use of its property including property under its control. 2006, c. 32, Sched. A, s. 163 (1).

Local board (1.1) A local board may impose fees or charges on persons, (a) for services or activities provided or done by or on behalf of it; (b) for costs payable by it for services or activities provided or done by or on behalf of any municipality or other local board; and (c) for the use of its property including property under its control. 2006, c. 32, Sched. A, s. 163 (1).

Debt 398. (1) Fees and charges imposed by a municipality or local board on a person constitute a debt of the person to the municipality or local board, respectively. 2001, c. 25, s. 398 (1); 2006, c. 32, Sched. A, s. 170 (1).

Amount owing added to tax roll (2) The treasurer of a local municipality may, and upon the request of its upper-tier municipality, if any, or of a local board whose area of jurisdiction includes any part of the municipality shall, add fees and charges imposed by the municipality, upper-tier municipality or local board, respectively, to the tax roll for the following property in the local municipality and collect them in the same manner as municipal taxes: 1. In the case of fees and charges for the supply of a public utility, the property to which the public utility was supplied. 2. In all other cases, any property for which all of the owners are responsible for paying the fees and charges. 2001, c. 25, s. 398 (2); 2006, c. 32, Sched. A, s. 170 (2).

[118] **Role of various persons 1.1 (1)** It is the role of every person who causes a building to be constructed, **(a)** to cause the building to be constructed in accordance with this Act and the building code and with any permit issued under this Act for the building; **(b)** to ensure that construction does not proceed unless any permit required under this Act has been issued by the chief building official; and **(c)** to ensure that construction is carried out only by persons with the qualifications and insurance, if any, required by this Act and the building code. 2002, c. 9, s. 3.

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Presently OLA information is being used at the University of Guelph. The OLA has done various radio talk shows and have been guest speakers throughout Ontario and Quebec.

The OLA have produced the following reports:

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