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Response to the Ontario Bar Association:

# "Back Off Government: What Municipal Lawyers Need to Know about Crown Patents."



A report created by the
Research Team of the
Ontario Landowners Association

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Response to the Ontario Bar Association paper **"**Back Off Government: What Municipal Lawyers Need to Know about Crown Patents."

*""The definition extended the previous definition of "grant" under the* Public Lands Grants Act*. The previous definition limited Crown grants to those conveying a fee simple or equivalent estate in real property." Letters patent have been defined as "writing of the sovereign, sealed with the Great Seal, whereby a person or company is entitled to do acts or enjoy privileges which could not be done or enjoyed without such authority."*[1]

They are so called because they are open with the seal affixed and ready to be shown for confirmation of the authority of the patentee.

There seems to be some confusion, in regards to the Letters Patents/Crown Grants which should be cleared up. The titled paper has expressed that "there are limits to the legal rights" of a patentee/grantee and it is correct, but these rights and responsibilities are covered under Common Law. Common Law is to be the only "Law" between the government and the citizens. This has been supported, not only by Supreme Court rulings, but also a Professor of Law, in 2009.

*"Hon. Mr. Loranger, QC. , Supreme Court of Canada, Mercer v. Attorney General for Ontario, 5 S.C.R. 538, Date: 1881-11-14. "In political as in civil law, in the absence of any provision specially applicable to the subject, recourse must be had to the common law, to ascertain the relations between the government and the governed.""*

*COMPARATIVE CONSTITUTIONAL LAW (U.S./CANADA/AUSTRALIA), 2009, Professor Helen Irving. "An appreciation of Canadian federalism requires a brief historic overview of the significance of the concept of "property and civil rights." The phrase includes all laws governing the relationships between individuals …as opposed to the law which governs the relationship between citizens and government."*

The Letters Patent/Crown Grants are land/property grants given to the original settlers, which state that the contract also applies to any future owners of the property. This has also been expressed in 2011 from Ownership and Title to Real Property which can be found at the following web-site…http://lawstudies.wikidot.com/laws3112-lecture-3.

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

[1] Guide to the Federal Real Property Act.

We would also like to add a definition of what property is. In *Manrell v. Canada 2003* it was stated:

*" Professor Ziff, in Principles of Property Law, 3rd ed. (Scarborough: Carswell, 2000), says this about property at page 2:*
*"Property is sometimes referred to as a bundle of rights. This simple metaphor provides one helpful way to explore the core concept. It reveals that property is not a thing, but a right, or better, a collection of rights (over things) enforceable against others. Explained another way, the term property signifies a set of relationships among people that concern claims to tangible and intangible items.*
*It is implicit in this notion of "property" that "property" must have or entail some exclusive right to make a claim against someone else."*

The Crown, at the time of issuance of the grant/patent can place conditions on a new grant/patent, under the Public Lands Act, but once the grant/patent has been issued it is beyond the Crown to add more conditions. It is the legislation at the time of issuance that prevails. The Public Lands Act, unless it is read and understood as pertaining to grants that are new grants/patents being issued, the statements in the paper could be misunderstood. Prior Public Land Acts have had the same criteria at the time of issuance. For example in 1853 "An Act to amend the Law for the Sale and the Settlement of the Public Lands, [Assented to 14th June, 1853]", it was the Commissioner of Crown Lands, in other documents is was the Minister of Interior and in other documents the Commissioner of Crown Lands and the Minister of Native Affairs all had the same authorities, but it was implemented for the sale, license or lease of "Crown/Public" property and laid out the land use conditions at the time of issuance or any reservations or terms. The authority of these "Ministers" ceased at the time of issuance of the grant/patent, depending on the stipulations in the Act and the reservations.

*Public Lands Act R.S.O. 1990, CHAPTER P.43*
*Consolidation Period: From May 14, 2009 to the e-Laws currency date*
*Minister to decide as to right to patent*
*22. The Minister has authority to determine all questions that arise as to the rights of persons claiming to be entitled to letters patent of land located or sold under **this Act** (**note: this means to patents that are issued today and must meet the requirements of this present Act) and the Minister's decision is final and conclusive. R.S.O. 1990, c. P.43, s. 22. (**note: this is at the time of issuance).*

There was reference to cancellation of patents. Here are the sections:
23. Cancellation of sale, etc., of land in case of fraud or error, etc.,
31.1 Cancellation of unregistered letters patent,
32.1 Cancellation of erroneous letters patent,
32.1 (1) Cancellation of duplicate letters patent,
43. Grant of forfeited land to former owner. "

*"MNR Policy PL 4.03.01 2.0 INTRODUCTION*

*Patents for land commonly contain reservations and, in some cases, exceptions, land use conditions, qualifications or other restrictions. These restrictions have been imposed as a result of legislation and/or policy that prevailed at the time the land was granted.*
*4.2.2 Land Use Condition*
*Occasional patents issued after 1959 may contain a land use condition authorized by Section 18 (Public Lands Act), to the effect of the following: 'it is a condition of these letters patent that the land granted shall be used for _____purposes only."*
*Typically, land use conditions have been imposed to confine the use of lands to agricultural, conservation authority or municipal purposes."*

The authority of the Crown is in the Grant/Patent, so it is the Crown authority that is being supported, not the legislation. If something in the grant is in contradiction of the grant, the grant prevails, regardless if it is the Crown or a private individual. Please see…

*Ontario (Attorney General) v. Rowntree Beach Assn., 1994 CanLII 7228 (ON S.C.), p. 88 "In Tremblay v. Tay (Township) reflex, (1984), 45 O.R. (2d) 521 at p. 526, 7 D.L.R. (4th) 180, the Court of Appeal said:*
*"As I remarked during the argument, the objective of the grantor was obvious, but his intention was to be discerned in the first instance from the words he used, and if those are clear and unambiguous (as I think they are) neither resort to canons of construction nor "reading the instrument as a whole" can avoid the rule of law that has prevailed almost as long as there have been law reports—if the habendum is repugnant to the grant, the words of the grant govern."*

And from Supreme Court of Canada, A.G. for Alberta v. Huggard Assets Ltd., [1951] S.C.R. 427

*"That conditions must be certain, precise and ascertainable from the terms of the instrument is a rule with ancient roots in the common law; it was applied by this Court as late as last year in Noble v. Alley 14; and a condition, the substance of which lies within the will of the grantor, is outside of that requirement."*

In regards to Beaches, there are in some grants/patents reservations to the Crown for some beach front, whereas in others there are not. It all depends on the grant/patent as each can be different. The following are a few cases that support "private ownership of the beaches", and it is the grant/patent that determine the ownership. Ontario (Attorney General) v. Rowntree Beach Assn., 1994 CanLII 7228 (ON S.C.), Markesteyn v. The Queen, 2001 FCT 792 (CanLII), Supreme Court of Canada Attorney General of Ontario v. Walker, [1975] 2 S.C.R. 78.

We would also like to bring up Saker v. Middlesex Centre (Chief Building Official), 2001 CanLII 28088 (ON S.C.). In this case Saker, the private property owner, had 8 acres that he wanted to put through a natural severance by using the Beds of Navigable Waters Act, which would give him 3 acres on one side and 5 acres on the

other side. Middlesex Centre used Saker's Letters Patent against him and the statement section 17 "here, there is an express grant from the Crown of the "land and waters thereon lying". In short, the Act does not apply. It matters not whether the waterway is navigable since the fee is vested in the grantee." In this statement the Judge is referring to the Beds of Navigable Waters Act.

The paper also expresses, "all registered land subject to a statutory reservation of any public highway." Court cases from 1876 and upheld in 1991, "held that the first patentees of the lands received them subject to a statutory reservation and subject to any express reservations of public highways in the patents."

Again, this would be at the time of issuance. And yet there are court cases from the beginning of this nation to present that support the patentee and the use of Common Law in conjunction with the grants.

Trenton (Town) v. B.W. Powers & Son Ltd., [1969] S.C.R. 584

> *"A judgment at trial granted a declaration that the respondent company was the owner of certain lands and ordered the appellant municipality to pay damages for trespass. An appeal from the said judgment was dismissed by the Court of Appeal and the municipality then appealed further to this Court.*
> *This was really sufficient to dispose of the appeal. To summarize: Hawley had conveyed Street X long before his plan was registered; the root of title to that portion of Ontario Street shown to be under water on Hawley's plan is the Grown grant of the 70-acre water lot made in 1876. In 1901 both properties came into the ownership of Gilmour & Co. Ltd., the predecessor in title of* B.W. Powers & Son Limited, the respondent.

Rowland v. Edmonton (City), 1915 CanLII 32 (S.C.C.)

> *"But it cannot be said and maintained that this man formally dedicated this piece of property and nobody can be deprived of his rights without his consent, or without the provisions of the law. There is no consent proved and the law cannot be construed as depriving him of his right in connection therewith."*

Attorney-General for British Columbia and the Minister of Lands v. Brooks-Bidlake and Whitall, Ltd., 63 SCR 466

> *"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,…"*

The *Phinny v. Macaulay* was also mentioned in the paper. In *Phinny v. Macaulay,*[2008] O.J. No. 3629, some of the reasons for the judges decision, in regards to this case, were directed at legal counsel: "his failure to obtain copies of the relevant Crown Patents in a timely manner to permit review and analysis thereof prior to closing, his failure to disclose to…the information contained in the Crown Lands Plan and the Crown Patents and the impact thereof on the first of the two requisitions."

A Brief History

In 1670 King Charles II granted/patented "The Governor and Company of Adventures of England trading into Hudson Bay" or otherwise know as "The Hudson Bay Company" (HBC). In this patent the HBC was granted substantial rights,

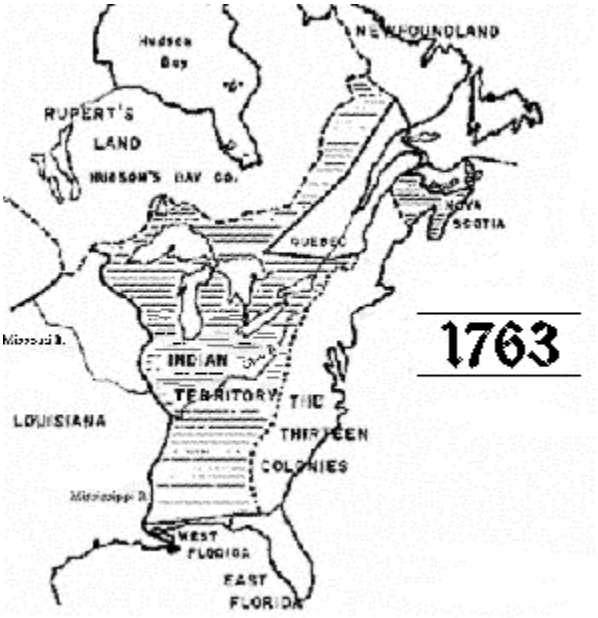
> "…and grant unto them and their successors the…together with all the lands, countries and territories upon the coasts and confines…, which are not now actually possessed by any of our subjects, or by the subjects of any other Christian Prince or State:"[2]

Even in 1670 the King would not breach the possession or previous granting while creating and granting to his own cousin the Hudson Bay Company territories and rights.

Through out the following decades there were a number of tussles between the English and the French for territory, but in 1763 the English, having signed a treaty with France, proclaimed:

> "…granted our Letters Patent, under our Great Seal of Great Britain, to erect, within the Countries and Islands ceded and confirmed to Us by the said Treaty, Four distinct and separate Governments, styled and called by the names of Quebec, East Florida, West Florida and Grenada,…"

Fig. 1




> "…for such Lands, Tenements and Hereditaments, as are now or hereafter shall be in our Power to dispose of; and them to grant to any such Person or Persons upon such Terms, and under such moderate Quit-Rents, Services and Acknowledgments, as have been appointed and settled in our other Colonies, and under such other Conditions as shall appear to us to be necessary and expedient

[2] 1670 Letters Patent "The Governor and Company of Adventures of England trading into Hudson Bay" p. 1

for the Advantage of the Grantees, and the Improvement and settlement of our said Colonies. "[3]

1769 Nullum Tempus Act

In 1769 the Nullum Tempus Act was enacted as George III, and his ancestors, were in need of some guidance in the granting of estates. "*Since his time (King James 1st), and especially in the reigns of Charles II and William III., the crown had been more lavish and unscrupulous than at any former period in granting away its lands and estates to favourites"*[4]….for example at that time the Duke of Portland was an *"opponent of the present ministry, who, to punish him, suggested to Sir James Lowther,"*[5] that Sir Lowther, being in favour, petition the King for the Duke's land…, *"and of large property in the North of England, …which hitherto had been held by Portland as belonging to the Honour of Penrith,"*[6] had been transferred to Sir Lowther. Although "*It was not denied that Portland had enjoyed the ownership of these lands for upward of seventy years without dispute;…"*[7], the land was still granted to Sir Lowther and taken from the Duke. After this event Parliament, for want of better wording, forced King the sign the Nullum Tempus Act, limiting the Crown Prerogative to 60 years.

"*Comments About Underlying Crown Interests*
*Garth C. Gordon, Q.C.*
*April 18, 2005*
*Page 3 Section 5*
*5. Nullum Tempus Occurrit Negi.*

*a. The Crown prerogative – nullum tempus occurrit negi – and the early English legislative response to it was explained to an Australian jury by Forbes, J, in R v Steele 1834 NSW SupC 111 (18 October 1834), Supreme Court of New South Wales.*

"*…By the laws of England, the King, in virtue of his crown, is the possessor of all the unappropriated lands of the kingdom; and all his subjects are presumed to hold their lands, by original grant from the crown. His Majesty by his prerogatives is enabled to dispose of the lands so vested in the Crown. It is part of the law of England, that the prerogatives, can only be exercised in a certain definite and legal manner. His Majesty can only alienate Crown lands by means of record – that is by grant, by letters patent, duly passed under the great seal of the Colony, according to law, and in conformity with his Majesty's instructions to the Governor. It is also a clear case of the same law, that the right of the Crown cannot be taken away, by an adverse possession, under sixty years. The nullum tempus act, as it is called, was expressly passed to limit the remedy for the recovery of lands belonging to the Crown, to sixty years – without the statute, there would have been no limit of time – for it is a maxim of law, that the King cannot be disseized of his possessions; no laches are imputable to him – nullum tempus occurrit negi. Unless therefore the King have been out of possession of the land now claimed,*

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[3] Royal Proclamation, 1763
[4] Charles Duke Yonge, "The Project Gutenberg EBook of The Constitutional History of England From 1760 to 1860, Chapter II, http://www.sakoman.net/pg/html/10807.htm
[5] Ibid
[6] Ibid.
[7] Ibid

*for full sixty years, there is no defense in point of the mere time of adverse possession, to this action."*

Sir Charles Duke Yonge, in regards to Sir George Savile, stated in *the Constitutional History of England From 1760 to 1860*[8]*,* how that security was obtained.

*"Sir George, however, was not discouraged; he renewed his motion in 1769, when it was carried by a large majority, with an additional clause extending its operation to the Colonies of North America; and thus, in respect of its territorial rights, the crown was placed on the same footing as any private individual, and the same length of tenure which enabled a possessor to hold property against another subject henceforth equally enabled him to hold it against the crown…"*

In 2004 the Nullum Tempus Act was upheld in MNR v. Holdcroft and in 2010 A.G. of Nova Scotia v. Allan R. Brill.

In his report to the "House" (Lists of Lands Granted by the Crown in the Province of Quebec from 1763 to 31st December 1890), Charles F. Langlois stated:

*"In many parts of townships not yet erected into municipalities, there are lands whose owners are difficult to find without applying to the Registrar's Office to find out whether the patent has been issued; this will be avoided by means of this present list and all that will have to be done will be to apply to the registrar of each county for the name of the actual owner, when there have been changes in the ownership since the date of the original grant. Finally, the information given in this list will greatly facilitate searches in the registry offices and consequently diminish their cost. This is one of the chief reasons for the present publication."*[9]

In 1771 in the House of Commons Sir Charles James Fox explained how secure a title commencing from the Crown stands.

*"But I firmly believe, as far as I am informed, that no man can have a better title to his estate, than the very title which the crown has vested …."*[10]

There is reference to the "An Act for the protection of the Lands of the Crown in this Province, from Trespass and Injury. [Passed 11th May, 1839]" this statute could only be applied to "*Lands appropriated for the residence of certain Indian Tribes in this Province, as well as the unsurveyed Lands, and Lands of the Crown ungranted and not under location…*" In 1840 there was "An Act to authorise Her Majesty to take Possession of Lands for the erection of Fortifications in this Province, under certain restrictions [Passed 10th February, 1840]. The Proviso being: *"Provided always that no such piece of ground shall be so taken for the public service without the consent of the owner or owners"* unless there was an invasion.

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[8] The Constitutional History of England from 1760 to 1860, p. 53

[9] C.F. Langlois, Printer to Her most Excellent Majesty, 1891, Remarks, pg. 15.

[10] The Speeches of The Right Honourable Charles James Fox in the House of Commons Vol. I, p. 7-8.

In 1860 the “Sale and Management of Public Lands” defined “Public Lands” as:
*“term " Public Lands " shall beheld to apply to the term lands heretofore designated or known as Crown Lands, School Lands, Clergy Lands, Ordnance Lands, (transterred to the Province), which designations for the purposes of administration, shall still continue.”*
Also in 1860 there was also a division of Upper and Lower Canada enacted and in regards to lands granted, etc., Section 3 of the Act Respecting the Line of Division between Upper and Lower Canada was enacted.

> *“3. In case any land granted by Letters Patent under the Great Seal of the late Province of Upper Canada, or granted by Letters Patent under the Great Seal of this Province as being in Upper Canada, or sold by the Crown as being in Upper Canada and not yet under patent, is found under this Act to be either wholly or partly in Lower Canada, and there be nothing in such Letters Patent to exclude a claim to the compensation hereinafter provided for, it shall be lawful for the Governor in Council to make compensation, either in money or land or in land scrip or certificates to be taken in payment for public lands, to the grantee of his heir or legal representative, for such land or so much thereof as may be lost to him by reason of this Act, unless the same be still in the possession of the Crown, in which case Letters Patent for the same may be issued in his favour.”*

Then there is the definition of Crown and Private Lands in the 1864 “Act Respecting Gold Mines.

> *“Seventhly. The words “Crown Lands,” shall be held to mean and include all Crown Land, Ordnance Lands (transferred to the Province, School Lands, Clergy Lands, or lands of the Jesuits’ Estates, Crown Domain or Seigniory of Lauson, which have not been alienated by the Crown;*
> *Eighthly. The words, “Private Lands,” shall be held to include all lands which have been alienated by the Crown;”*

What may also be of interest is Section 7 of this Act, involving licenses. It states:

> *“7. For this section there shall be two descriptions of license, …be called “Crown Land Gold License” and the other “Private Lands Gold License”…”*

The discussion involving the BNA, 1867. There is a lot of reference to Section 92 and subsections 5 which gives the province the “management and sale of public lands and the timber and wood”. Then there is section 92 subsection 13 which gives the province authority over their own property and the ability for the province to protect their property in private civil courts. As Professor Irving stated in 2009. We are repeating this so that you will see that it isn’t our words, but the words of a Professor.

> *COMPARATIVE CONSTITUTIONAL LAW (U.S./CANADA/AUSTRALIA), 2009, Professor Helen Irving*
> *“An appreciation of Canadian federalism requires a brief historic overview of the significance of the concept of “property and civil rights.” The phrase includes all laws governing the relationships between individuals… as opposed to the law which governs the relationship between citizens and government.”*

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

> *"the "lands" therefore which are referred to in sec. 109 of the British North America Act can only be construed to mean those ungranted or public lands belonging to the Crown."*
> *…by the 13th paragraph of the 92nd section of the B.N.A. Act, with the power of legislation over "property and civil rights," it follows that as a consequence all public property, which at the time of confederation belonged to these provinces and which became subject to provincial legislation, must equally belong to them. No. 5. "The management and sale of public lands belonging to the province, and of the timber and wood thereon,—No. 13. Property and civil rights in the province," and No. 16. "Generally all matters of a merely local or private nature in the province." When we come to the clauses relating to "Revenue, debts, assets, taxation," we find, sec. 102, creation of a Consolidated Revenue fund:—*
> *All duties and revenues over which the respective legislatures of Canada, Nova Scotia and New Brunswick, before and at the union, had and have power of appropriation except such portions thereof as are by this act reserved to the respective legislatures of the provinces or are raised by them in accordance with the special powers conferred on them…"*

Then there is the Constitution Act of 1930. This is the amendment to the BNA which brought the Western provinces into the same agreement with the Federal Government as the original provinces at the time of Union:
The Constitution Act, 1930 spelled out what the Provinces were entitled to for property. This property that was transferred at the time of Union was the property that the provinces had authority to legislate for. In the 1930 Constitution it stated that under section thirty of the Manitoba Act, 1870, *"it was provided that all ungranted or waste lands in the Province should be vested in the Crown and administered by the Government of Canada for the purposes of the Dominion, subject to the conditions and stipulations contained in the Agreement for the surrender of Rupert's Land by the Hudson's Bay Company to Her Majesty:*[11]
And *"…a transfer would be made by Canada to the Province of the unalienated natural resources within the boundaries of the Province subject to any trust existing in respect thereof and without prejudice to any interest other than that of the Crown in the same…"*[12]

The transfer of the Public Lands had restrictions on the Province expressing what they did and did not have "legislative authority" over. The provinces are to honor each contract, in regards to past patents and they were to administer for future grants/patents. When the future grants/patents, issued by the province were created, the legislation applied to those grants/patents were to be consistent. It would be the "rules" governing the new issuances, expressed in the reservations, conditions, etc. and these terms were to be upheld.

[11] British North America Act, 1867 and Constitution of 1930, p. 2
[12] Ibid. p. 3

*Transfer of Public Lands Generally*
*2. The Province will carry out in accordance with the terms thereof every contract to purchase or lease any Crown lands, mines or minerals and every other arrangement whereby any person has become entitled to any interest therein as against the Crown, and further agrees not to affect or alter any term of any such contract to purchase, lease or other arrangement by legislation or otherwise. except either with the consent of all the parties thereto other than Canada or in so far as any legislation may apply generally to all similar agreements relating to lands, mines or minerals in the Province or to interest therein, irrespective of who may be the parties thereto.*
*3. Any power or right, which. by any such contract, lease or other arrangement, or by any Act of the Parliament of Canada relating to any of the lands, mines, minerals or royalties hereby transferred, or by any regulation made under any such Act, is reserved to the Governor in Council or to the Minister of the Interior or any other officer of the Government of Canada, may be exercised by such officer of the Government of the Province as may be specified by the Legislature thereof from time to time, and until otherwise directed, may be exercised by the Minister of Mines and Natural Resources of the Province.*
*5. The Province will further be bound by and will, with respect to any lands or interests in lands to which the Hudson's Bay Company may be entitled, carry out the terms and conditions of the Deed of Surrender from the said Company to the Crown as modified by the Dominion Lands Act and the Agreement dated the 23rd day of December, 1924, between His Majesty and the said Company, which said Agreement was approved by Order in Council dated the 19th day of December, 1924 (P.C. 2158), and in particular the Province will grant to the Company any lands in the Province which the Company may be entitled to select and may select from the lists of lands furnished to the Company by the Minister of the Interior under and pursuant to the said Agreement of the 23rd day of December, 1924, and will release and discharge the reservation in patents referred to in clause three of the said agreement, in case such release and discharge has not been made prior to the coming into force of this agreement. Nothing in this agreement, or in any agreement varying the same as hereinafter provided, shall in any way prejudice or diminish the rights of the Hudson's Bay Company or affect any right to or interest in land acquired or held by the said Company pursuant to the Deed of Surrender from it to the Crown, the Dominion Lands Act or the said Agreement of the 23rd day of December, 1924.* [13]

"The case of *Regina v. St. Catherine Milling and Lumber Company* (1886), 13 O.A.R. 148 (SCC)." This case is still cited today, this case has to do with a permit for St. Catherine Milling to cut timber on Native Land. And it confirms that the province has jurisdiction over "Crown/Public Land", which included "Native land under the protection of the Crown", not granted/patented land/property. You can also refer to the Crown Lands Protection Act of 1839.

*Regina v. St. Catherine Milling and Lumber:*

[13] British North America Act, 1867 and Constitution of 1930, p. 4

*"confirmed provincial jurisdiction over provincial Crown lands located within each of the provinces. The majority referred to the following sections of the British North America Act: No. 5 of sec. 92: "The management and sale of Public Lands belonging to the Province, and of the timber and wood thereon." No. 13 of sec. 92: "Property and civil rights in the Province." Section 109: "All lands, mines, minerals, and royalties belonging to the several Provinces of Canada, Nova Scotia, and New Brunswick at the Union, and all Sums then due or payable for such Lands, Mines, Minerals, or Royalties, shall belong to the several Provinces of Ontario, Quebec, Nova Scotia, and New Brunswick in which the same are situate or arise, subject to any Trusts existing in respect thereof, and to any Interest other than that of the Province in the same."*

The "Trusts" and "Interests" existing means Private Property not belonging to the Crown or the Province. It would seem that the Bar Report is agreeing that the Province only has the control over Public/Crown Property. In regards to the continuing statements referring to "property and civil rights" and the "specific authority to enact legislation we would direct attention to;

*Regina v. St. Catherine Milling and Lumber, 1888:*
*'Had its Indian inhabitants been the owners in fee simple of the territory which they surrendered by the Treaty of 1873, "Att. Gen. of Ontario and Mercer" might have been an authority for holding that the Province of Ontario could derive no benefit from the cession, in respect that the land was not vested in the Crown at the time of Union."*

In P.H. Le Noir et al. & J. N. Ritchie, March 1879 (2L. N. 373), the Court held :

*"That the Acts of the Legislature of Nova Scotia were not retrospective, and must be so construed as not to disturb or take away the precedence given by the Patent issued to the respondent;…That the British North America Act, 1867, does not, either expressly, or by inference, divest Her Majesty of this branch of her prerogative, and confer it upon the Provincial Legislatures, or the Lieutenant Governor of the Provinces."*

Again the above are not our words, but the words of Supreme Court Judges, Professors and the Legislators who agreed to and with the Acts and statements.

Another quote from the paper is in regards to the authority of the Municipalities. "The provinces then delegated authority within areas of their exclusive jurisdiction in the Municipal Act (2001)". It would seem, that since the provinces only have "authority" over "public/crown property" they can only delegate to municipalities, or any other corporations, "authority" over the "public/crown property" within their jurisdiction.

The Bob Mackie case. This case has been cited time and time again. He was charged by the Niagara Escarpment Act. So let's be clear about the Bob Mackie case, once and for all. Page 5 Section 20-30

*"Mr. Mackie takes issue with the Commission's view that his use of his property falls outside the purposes of the Act found at section 2 and the objectives of the*

*Act found at section 8. He takes issue with the order from the Niagara Escarpment Commission.*
*This Court has no jurisdiction to deal with either of those issues."*

The J.P. did not have jurisdiction…plain and simple. Presently, Mr. Mackie is appealing to a court of higher competency.

We hope this has cleared up any confusion, in regards to the Crown Grants/Letters Patent and we encourage everyone to seek out all of the court cases cited and the legislation. This is the only way for one to decide. Unless someone has taken thousands of hours to do the research, read the number of Constitutions, Public Land Grants Act, Real Property Acts, Court Cases, etc., there will be confusion. The information pertaining to these documents has been difficult to find and even those that we would feel should have all of this information, in relation to these documents, have not had the time to fully understand this issue. The Ontario Landowners Association is continuing to research every and all legal avenues, in regards to private property rights, and we will do our best to keep you all updated.

Research Team
Ontario Landowners Association