



[www.ontariolandowners.ca](http://www.ontariolandowners.ca)

**Official Plans:  
What Municipal Councils Need to Know. ©**

A report created by the  
Research Team of the  
Ontario Landowners Association  
August, 2013 ©

E.F. Marshall,  
Director of Research  
Ontario Landowners Association  
Director: Canadian Justice Review  
Board  
Associate Research Fellow:  
Meighen Institute for Public Affairs

Tom Black, President  
Ontario Landowners Association  
1-613-831-2642  
thelandowner@bellnet.ca

*“Again it appears to me to be almost inconceivable that the Crown should claim the right to do such things as prostrate fences, take possession of the great industrial works mentioned, or cause any buildings to be destroyed, without being bound at law to compensate the owners therefor.”<sup>1</sup>*

*“This is a fundamental principle, going back at least to Magna Carta, ... “Since Magna Carta the estate of a subject in lands or buildings has been protected against the prerogative of the Crown.”<sup>2</sup>*

---

<sup>1</sup> Attorney General v. De Keyser’s Royal Hotel, Ltd., May 10, 1920

<sup>2</sup> Attorney General v. De Keyser’s Royal Hotel, Ltd., May 10, 1920

# Copyright and Disclaimer

This document was prepared for the Ontario Landowners Association (OLA)  
by E. F. Marshall, Director of Research, OLA

The OLA, including any of its members or staff are not lawyers and any information provided or communicated is not legal advice or counsel. It is for informational purposes only. Please seek legal advice from your lawyer.

Copyright © August, 2013 by the Ontario Landowners Association

## **Table of Content**

Acknowledgement	Page 1
Executive Summary	Page 2
The Municipalities	Page 3
The Planning Act	Page 18
Places to Grow Act	Page 39
The British North America Act, 1867 (Constitution)	Page 43
Conclusion	Page 54
Glossary	Page 56
Criminal Code of Canada – Sections	Page 61
ONTARIO REGULATION 322/12	Page 72
Fig. 1	Page 78

## ACKNOWLEDGEMENT

Terrance J. Green, LLB, MPA, BA  
Senior Partner  
Green & Associates Law Offices  
Suite 712  
170 Laurier St.,  
Ottawa, ON  
K1P 5V5

Phone: 1-613-560-6565, ext, 22  
Fax: 1-613-560-0545  
Email: [tjgreen@bellnet.ca](mailto:tjgreen@bellnet.ca)

We would like to thank Terry, for his time and support during the creation and editing of this document. Terry participated as Legal Advisor in vetting this report. Terry practices law in the fields of animal law, real estate and disabilities law. He has a BA, St Mary's University, 1978, Masters in Public Administration (MPA), University of Winnipeg, 1992, LLB, University of Ottawa 1999.

## EXECUTIVE SUMMARY

Throughout Ontario, the Province is demanding that Municipalities implement Official Plans. Our Municipal Councils are being told that they must implement these plans as dictated under the Places to Grow Act, the Planning Act, the Provincial Policy Statement, the Municipal Act, and so forth. What has not been revealed to our Municipal Representatives is that these “official plans” are placing our municipal councils and staff in very precarious positions, as these plans can be considered “trespass”, a violation of superior documents and the constitutional rights of the people.

There are also the constitutional and questionable legal aspects of these plans that have not been taken into consideration, in regards to what the province may dictate to the municipalities to do and there is also the legislation that is, it would seem, misleading our municipal officials. What also must be considered is the implication that if the municipalities do not subscribe to these official plans they will not receive their gas tax transfers<sup>3</sup>. And yet in the 2011 Annual Expenditure Report (Part I), the President of Association of Municipalities of Ontario, R.F. (Russ) Powers, in his opening statement had this to say about the Gas Tax Transfers:

“AMO administers the Fund for 443 municipalities in Ontario, and the allocation is passed directly to them on a per capita basis, without the need to fill out an application form. In December 2011 Canada’s Gas Tax Fund was enshrined in legislation as a permanent annual transfer for municipal infrastructure.”

This would seem to be a direct transfer from the Federal Government, unless it is AMO that would withhold the funding from a municipality until an Official Plan was agreed to. If these issues have not been revealed and agreements knowingly accepted, by individual municipalities, this is a violation of the municipalities, and the property owners that have elected the "directors/council" of their municipal corporations. A specific plan for transportation is not equivalent to a plan that trespasses on private property.

---

<sup>3</sup> “Integrated Community Sustainability Plan

Under the Gas Tax Fund, municipalities must complete an Integrated Community Sustainability Plan (ICSP). The ICSP must demonstrate a co-ordinated approach to sustainability in terms of social, cultural, environmental and economic objectives through co-operation with municipal partners and the community as a whole. Under the specific provisions of the Ontario Gas Tax Agreement, municipalities that have an Official Plan (OP) are deemed to have met this requirement.” Canada’s Gas Tax Fund: Permanent funding for municipal infrastructure, Transfer of Federal Gas Tax Revenues *Under the New Deal for Cities and Communities*, Association of Municipalities Ontario, p. 16.

## THE MUNICIPALITIES

Throughout Ontario it is being demanded, by the Provincial Government, that Municipalities must create and legislate, through by-law, Official Plans. The municipalities, of which there are many (approx. 444), have been threatened with funding being withheld until they have accepted said official plans<sup>4</sup>. When AMO entered into the agreement with the Federal Government was the plans they agreed to “official plans” that would infringe on a municipality’s ability to implement the responsible management of the municipal corporation<sup>5</sup>? Were the Plans to be implemented only on municipal property and was there the ability in these plans to zone<sup>6</sup>/designate private property, creating a trespass?

With the Association of Municipalities Ontario (AMO) actually administering the Gas Tax Transfers<sup>7</sup>, it would seem that it is AMO that is making these demands and is implementing provincial policy, of which is not the obligation or mandate of AMO to do. The obligation/mandate of AMO is to represent the municipalities to the provincial government, defending the municipal principles supporting all municipalities and yet on page 16 of the 2011 Annual Report from the Associations of Municipalities Ontario (AMO), it states:

### “Integrated Community Sustainability Plan

Under the Gas Tax Fund, municipalities must complete an Integrated Community Sustainability Plan (ICSP). The ICSP must demonstrate a co-ordinated approach to sustainability in terms of social, cultural, environmental and economic objectives through co-operation with municipal partners and the community as a whole. Under the specific provisions of the Ontario Gas Tax Agreement, municipalities that have an Official Plan (OP) are deemed to have met this requirement.

---

<sup>4</sup> The following statement will be added to the December 8<sup>th</sup>, 2005 Council minutes:

“Councillor MacIver stated that no discussion took place during the budget discussion about an official plan being created. The C.A.O. responded by reporting that an official plan works in tandem with the Sustainability Plan and without an Official Plan the Sustainability plan would not be enforceable. Councillor Oosterhof reported that the agreement signed for the gas tax requires a sustainability and terminology in the agreement refers to assumes that municipalities have an existing official plan.” DUFFERIN COUNTY COUNCIL, Thursday, January 12, 2006, The Council of the Corporation of the County of Dufferin met on Thursday, January 12, 2006 at 7:00 p.m. in the Council Chambers, Court House, 51 Zina Street, Orangeville, p. 2.

<sup>5</sup> 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 .... 2006, c. 32, Sched. A, s. 2.

<sup>6</sup> *verb tr.v.* zoned, zon-ing, zones

1. To divide into zones. 2. To designate or mark off into zones. 3. To surround or encircle with or as if with a belt or girdle. <http://www.thefreedictionary.com/zone>  
*verb [with object]* 1. designate (a specific area) for use or development as a particular zone in planning: *the land is zoned for housing* <http://oxforddictionaries.com/definition/english/zone>

<sup>7</sup> “AMO administers the Fund for 443 municipalities in Ontario, and the allocation is passed directly to them on a per capita basis, without the need to fill out an application form. In December 2011 Canada’s Gas Tax Fund was enshrined in legislation as a permanent annual transfer for municipal infrastructure. R.F. (Russ) Powers AMO President, Canada’s Gas Tax Fund: Permanent funding for municipal infrastructure, Transfer of Federal Gas Tax Revenues *Under the New Deal for Cities and Communities*, Association of Municipalities Ontario, p. 3.

Municipalities completed reporting on this requirement of the Municipal Funding Agreement in 2010. The results of this were included in AMO's 2010 Annual Expenditure Report. In 2011 a number of municipalities continued to develop and implement Integrated Community Sustainability Plans.

AMO continues to promote ICSP development and implementation through ongoing support and the *Sustainability Planning Toolkit for Municipalities in Ontario*. In addition, federal support allowed AMO to launch *Leading for Sustainability*, a councillor training module designed to:

- Develop ideas and strategies to advance integrated planning;
- Develop an understanding of how decisions are made;
- Develop and practice tools for building momentum and consensus across groups; and
- Strengthen analytical skills through case studies and discussion.

Reporting on this project will be released separately in September 2012.

Program administration in Ontario has responded to the local need for knowledge and has led to advancement in the sustainability objectives of Canada's Gas Tax Fund. In this manner, AMO looks forward to continuing our positive and cooperative relationship with Infrastructure Canada as we move toward a permanent Gas Tax Fund."<sup>8</sup>

It must be determined, by the municipalities, which entity expressed, that if Official Plans are not implemented, there will be no gas tax transfers, either AMO or the Provincial Government, and are all municipalities in agreement with AMO's implementation? Mark Henderson, Reeve of Jocelyn Township expressed in an email:

"Ontario Municipal Partnership Fund 2012 Technical Guide

"in my words "If my municipal Ontario residents do not receive their equitable share of municipal funds from the province I would plead my case of being short changed to a district court judge".<sup>9</sup>

Perhaps this is an avenue that Municipalities should look into, in regards to the stipulations of the province and AMO.

There is also section 3.1<sup>10</sup> of the Municipal Act which states that each municipality may enter into agreements with the Crown in right of Canada for matters within a municipal corporation's jurisdiction, of which, it would seem, the Gas Tax Transfer is under municipal corporate jurisdiction. Having determined that the withholding of gas tax transfers may not be within the purview of the province or AMO, the municipalities have a form of freedom to create agreements with the Federal government on their own behalf, as it would seem that the province and AMO may not be working in the best interests of the municipal corporate council/directors or staff.

---

<sup>8</sup> Canada's Gas Tax Fund: Permanent funding for municipal infrastructure, Transfer of Federal Gas Tax Revenues *Under the New Deal for Cities and Communities*, Association of Municipalities Ontario, p. 16.

<sup>9</sup> From: Mark Henderson [<mailto:garageplus@yahoo.ca>], Sent: Tuesday, December 04, 2012 1:09 PM

This being the case it would also seem that the municipalities have been misled, and are engaging in planning activities that are placing the municipalities in jeopardy.

Under section 4 of the Municipal Act, municipalities, either upper or lower tier, are merely corporations<sup>11</sup> and under section 4.2 they do not have to subscribe to the “Corporations Act” or the “Corporations Information Act.”<sup>12</sup>

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.<sup>13</sup> A “natural person” cannot commit trespass on to another's private property as expressed in the Criminal Code of Canada. 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<sup>14</sup>.

Under section 5 “Powers exercised by council”, subsection 3 states that municipal corporations 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<sup>15</sup> to that person (section 9 Municipal Act). This in turn limits the ability of municipal corporations to create by-laws for any enforcement beyond its authority/boundaries. 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<sup>16</sup>.

---

<sup>10</sup> Agreements with the federal government

3.1 The Province acknowledges that a municipality has the authority to enter into agreements with the Crown in right of Canada with respect to matters within the municipality's jurisdiction. 2006, c. 32, Sched. A, s. 3.

<sup>11</sup> *Corporation*: A legal entity created under the authority of a statute, 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

<sup>12</sup> **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.

<sup>13</sup> **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.

<sup>14</sup> “*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 Whittall, Ltd., 63 SCR 466.

<sup>15</sup> BELONGINGS (Black's Law Dictionary, 9<sup>th</sup> Edition, 2009, p. 175) – 1. Personal Property; *EFFECTS* – see personal property under property. 2. All property, including realty.

<sup>16</sup> **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).

Section 9<sup>17</sup> of the Municipal Act is self-explanatory. A municipality only has the same rights, capacity, privileges or authority/power as a person.

Sections 10<sup>18</sup> and 11 grants the municipal corporation the authority to create by-laws for what belongs to the municipality as a corporation under the Municipal Act or any other Act. This includes the creations of by-laws for, under section 10:

- services,
- local boards and their operations that are accountable including their financial management,
- the public assets (*4. Public assets<sup>19</sup> of the municipality acquired for the purpose of exercising its authority under this or any other Act.*), of the municipalities for economic, social and environmental development<sup>20</sup> of the municipal assets,
- the protection of people on municipal properties including that the municipalities must be considerate of what consumer products they are selling/leasing/renting to the people,
- animals on municipal properties (including the authority to require muzzling of dogs<sup>21</sup> on municipal property),

---

<sup>17</sup> 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.

<sup>18</sup> **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.

<sup>19</sup> “municipal property asset” means an asset of the municipality that is land, equipment or other goods. O. Reg. 599/06, s. 14 (2).

<sup>20</sup> ECONOMIC DEVELOPMENT SERVICES - means, in respect of a municipality, the promotion of the municipality by the municipality for any purpose by the collection and dissemination of information and the acquisition, development and disposal of sites by the municipality for industrial, commercial and institutional uses. – Municipal Act, Section 1

<sup>21</sup> Definition (2) In this section,

“animal” has the same meaning as in section 11.1. 2006, c. 32, Sched. A, s. 46 (2).

104. Repealed: 2006, c. 32, Sched. A, s. 47.

- fences and signs owned by the municipalities
- and business licenses that are allowed under section 92.9<sup>22</sup> of the BNA.

Subsection 4<sup>23</sup> of 10 restricts the municipal corporations from interfering with "services or things provided by a person other than the municipality or a municipal service board of the municipality" unless, as expressed in subsection 5<sup>24</sup>, the service is being provided under contract (by-law) to the municipality or one of its "local boards", as defined under section 10 (6)<sup>25</sup>.

Section 11<sup>26</sup> is the Spheres of Jurisdiction. This entails the authority of both lower and upper tier corporations to create by-laws for what belongs to either, as

Muzzling of dogs 105. (1) If a municipality requires the muzzling of a dog under any circumstances, the council of the municipality shall, upon the request of the owner of the dog, hold a hearing to determine whether or not to exempt the owner in whole or in part from the requirement. 2002, c. 17, Sched. A, s. 22 (1).

Conditions (2) An exemption may be granted subject to such conditions as council considers appropriate. 2001, c. 25, s. 105 (2).

(3) Repealed: 2006, c. 32, Sched. A, s. 48.

Request does not stay requirement (4) A request of the owner of a dog for a hearing under this section does not act as a stay of the muzzling requirement. 2001, c. 25, s. 105 (4); 2002, c. 17, Sched. A, s. 22 (2).

<sup>22</sup> 92. 9. Shop, Saloon, Tavern, Auctioneer, and other Licences in order to the raising of a Revenue for Provincial, Local, or Municipal Purposes.

<sup>23</sup> 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.

<sup>24</sup> 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.

<sup>25</sup> **Definition 10. (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*,  
 (b) a board of health as defined in subsection 1 (1) of the *Health Protection and Promotion Act*,  
 (c) a committee of management established under the *Long-Term Care Homes Act, 2007*,  
 (d) a police services board established under the *Police Services Act*,  
 (e) a board as defined in section 1 of the *Public Libraries Act*, or  
 (f) a corporation established in accordance with section 203. 2006, c. 32, Sched. A, s. 8; 2007, c. 8, s. 218 (1).

<sup>26</sup> 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).

expressed in the "table"<sup>27</sup> 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 3<sup>28</sup> of 11 allows the municipal corporations 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 knowingly and willingly entered into agreements with the municipality<sup>29</sup>,

---

8. Protection of persons and property, including consumer protection. 2006, c. 32, Sched. A, s. 8.

<sup>27</sup> See end of document.

<sup>28</sup> **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.

<sup>29</sup> Purchase or lease by-laws

36. (1) The council of a municipality may pass by-laws providing for acquiring, by purchase, lease or otherwise, any property or part thereof designated under this Part, including any interest therein, for the use or purposes of this Part and for disposing of such property, or any interest therein, by sale, lease or otherwise, when no longer so required, upon such terms and conditions as the council considers necessary for the purposes of this Part. R.S.O. 1990, c. O.18, s. 36 (1).

Expropriating by-law

(2) Subject to the Expropriations Act, the council of every municipality may pass by-laws providing for the expropriation of any property designated under this Part and required for the purposes of this Part and may sell, lease or otherwise dispose of the property, when no longer so required, upon such terms and conditions as the council considers necessary for the purposes of this Part. R.S.O. 1990, c. O.18, s. 36 (2).

Easements

37. (1) Despite subsection 36 (1), after consultation with its municipal heritage committee, if one is established, the council of a municipality may pass by-laws providing for the entering into of easements or covenants with owners of real property or interests in real property, for the conservation of property of cultural heritage value or interest. 2002, c. 18, Sched. F, s. 2 (19).

- 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<sup>30</sup> of the municipal assets,

---

Idem

(2) Any easement or covenant entered into by a council of a municipality may be registered, against the real property affected, in the proper land registry office. R.S.O. 1990, c. O.18, s. 37 (2).

<sup>30</sup> And regulation 599/06 under the Municipal Act. *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)<sup>30</sup> 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).

Status of corporation 21. (1) A corporation is not a local board for the purposes of any Act. O. Reg. 599/06, s. 21 (1).

(2) Despite subsection (1), a corporation shall be deemed to be a local board for purposes of subsection 270 (2) of the Act, and for the purposes of the *Environmental Assessment Act*, the *Municipal Conflict of Interest Act*, the *Emergency Management and Civil Protection Act*, and subsection 56.2 (3) of the *Capital Investment Plan Act*, 1993. O. Reg. 599/06, s. 21 (2).

(3) Despite subsection (1), if a corporation is wholly-owned, it shall be deemed to be a local board for the purposes of the *Development Charges Act*, 1997. O. Reg. 599/06, s. 21 (3).

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).

Definitions (2) In this section,

“benefit” means a direct or indirect benefit that is currently available or will be available in the future; (“avantage”)

“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).

- municipal drains under the *Drainage Act*,
- and business licenses that are allowed under section 92.9<sup>31</sup> of the BNA.

Section 11 (4)<sup>32</sup> are the rules of jurisdiction between upper and lower tier municipal corporations. 11. 4. 4, 5, and 6<sup>33</sup>, restricts the municipal corporation with the

---

Limitation (3) An area designated by a municipality for a year under clause (1) (c) cannot include an area in which the residents and property owners do not currently receive an additional benefit but will receive it in the future unless the expenditures necessary to make the additional benefit available appear in the budget of the municipality for the year adopted under section 289 or 290 or the municipality has established a reserve fund to finance the expenditures over a period of years. 2001, c. 25, s. 326 (3).

Levies (4) For each year a by-law of a municipality under this section remains in force, the municipality shall, except as otherwise authorized by regulation,

(a) in the case of a local municipality, levy a special local municipality levy under section 312 on the rateable property in the area designated in clause (1) (c) to raise the costs determined in clause (1) (e);

(b) in the case of an upper-tier municipality, direct each lower-tier municipality which includes any part of the area designated in clause (1) (c) to levy a special upper-tier levy under section 311 on the rateable property in that part of the municipality to raise its share of the costs determined in clause (1) (e). 2001, c. 25, s. 326 (4).

Regulations (5) The Minister may make regulations providing for any matters which, in the opinion of the Minister, are necessary or desirable for the purposes of this section, including,

(a) prescribing services that cannot be identified as a special service under clause (1) (a);

(b) establishing conditions and limits on the exercise of the powers of a municipality under this section, including making the exercise of the powers subject to the approval of any person or body;

(c) prescribing the amount of the costs or the classes of costs for the purpose of clause (1) (b);

(d) prescribing the area or rules for determining the area for the purpose of clause (1) (c);

(e) prescribing the amount of the additional costs or the rules for determining the additional costs for the purpose of clause (1) (d);

(f) providing for a process of appealing a by-law under this section and the powers the person or body hearing the appeal may exercise;

(g) providing that an appeal under clause (f) may apply to all or any aspect of the by-law;

(h) providing for rules or authorizing the person or body hearing an appeal under clause (f) to determine when by-laws subject to appeal come into force, including a retroactive date not earlier than the day on which the by-law was passed;

(i) for the purpose of subsection (4), exempting or delegating to a municipality the power to exempt specified rateable property from all or part of a special local municipality levy or a special upper-tier levy for a specified special service. 2001, c. 25, s. 326 (5); 2006, c. 32, Sched. A, s. 136 (2).

<sup>31</sup> 92. 9. Shop, Saloon, Tavern, Auctioneer, and other Licences in order to the raising of a Revenue for Provincial, Local, or Municipal Purposes. " I have tried to find in the Imperial Act a power given to the Local Legislatures, by way of exception, to impose indirect taxes by licences duties on any industry (commercial or non-commercial), occupation, trade, profession, other than on "shop, saloon, tavern, auctioneers," and others of the same kind, ejusdem generis, but I have not found such a power. It would not be necessary for me to add anything, for as I have already remarked, I am of opinion, that as the power has not been given to Local Legislatures, it comes within the legislative authority of the Federal Parliament,..." Constitution of Canada. The B.N.A. Act, 1867; Its Interpretation, etc., p. 207

<sup>32</sup> 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.

division of powers between upper and lower corporations under this or any other Act. 11.4.7<sup>34</sup> restricts municipal corporation from placing their corporate signs within 400 meters of any highway. This includes advertising signs owned by the lower tiered municipal corporation and its ability to place a sign within the 400 meter distance of an upper tier highway.

Under section 11 subsection 6 and 7<sup>35</sup> the municipal corporations are restricted from creating by-laws that interfere with any other service or goods provider, including whether those services are provided by either upper or lower tier municipal corporations. And under subsection 8<sup>36</sup> both upper and lower tier corporations 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<sup>37</sup>. The municipal corporations do not have authority to create by-laws for "private" entities or private property.

---

<sup>33</sup> 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.

<sup>34</sup> 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.

<sup>35</sup> 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)<sup>35</sup> 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.

<sup>36</sup> 11. Services or things provided by others

(8) The power of a municipality to pass a by-law under subsection (3)<sup>36</sup> 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.

<sup>37</sup> 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.

Under section 10<sup>38</sup> of the Municipal Act a board and/or single tier municipal corporation may provide services that the municipal corporation 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<sup>39</sup>,*

*(b) a board of health as defined in subsection 1 (1) of the Health Protection and Promotion Act<sup>40</sup>,*

*(c) a committee of management established under the Long-Term Care Homes Act, 2007<sup>41</sup>,*

*(d) a police services board established under the Police Services Act<sup>42</sup>,*

*(e) a board as defined in section 1 of the Public Libraries Act<sup>43</sup>, or*

*(f) a corporation established in accordance with section 203<sup>44</sup>. 2006, c. 32,”*

---

Definition **(10)** *In this section,*

*“local board” means a local board as defined in section 10<sup>37</sup>. 2006, c. 32, Sched. A, s. 8.*

<sup>38</sup> **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.

<sup>39</sup> **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.

<sup>40</sup> **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”).

<sup>41</sup> **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).

<sup>42</sup> **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).

<sup>43</sup> **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”)

<sup>44</sup> **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

In regards to the “Legislated Authority” for the Municipal corporations to make by-laws...Section 10 – 12 of the Municipal Act, this is granted through Section 92 subsection 8 of the BNA, where the province has the authority to grant Municipal Institutions/corporations the right to make by-laws. It would seem, the province's authority to create Letters Patent to incorporate a new municipal corporate entity and the authority to create contracts with the said entities (92 (16) BNA), is the limited authority the Province has in regards to the Municipal corporations. That being said, it would seem the province has left the Municipal corporations to create by-laws, knowing that these types of by-laws cannot be up-held in the courts<sup>45</sup>, leaving the corporations (staff, Council) open to “Torts” (Law Suits). 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.*

---

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.

<sup>45</sup> Georgian Bluffs (Township) v. Moyer, 2012 ONCA 700, DOCKET: C53734

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 corporate 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).

The forced demands by the province and/or AMO on our municipal corporations could be deemed beyond their authority as the province and/or AMO, like any “person” or even the Crown does not have any right, title or interest in private property ergo, it cannot demand that private property be designated/zoned or a private property owner to do or not do something on/with the private property owner’s property. This is evident in Regulation 322/12<sup>46</sup> under the Municipal Act, which is supported by Part VI, section 28 of the Planning 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.”*

---

<sup>46</sup> 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](http://www.e-Laws.gov.on.ca). Made by: Kathleen O’Day Wynne *Minister of Municipal Affairs and Housing* (for the complete regulation see end of document).  
Date made: October 23, 2012.

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 Places to Grow Act, the Planning Act, the Ontario Planning and Development Act, the Provincial Policy Statement 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 that is created to restrict and to regulate is for public/Crown properties and public/Crown entities/employees. This includes any corporation that is created by the province and/or municipal board to fulfill a “public service”, as in Social Housing, community planning boards, local appeal bodies, heritage committees, etc.

When Municipal corporations implement by-laws that are in conflict or frustrate Acts of Parliament, superior legislation, Crown contracts or Crown Grants/Letters Patent, the Council and staff can be found liable to tort action. This includes all members of staff, particularly, the by-law inspector, Clerks, CAOs, Planners, and Council, as it is function of these entities to know and understand the implication of all Acts and any conflicts/frustrations that may arise.

Please note section 448.2 of the Municipal Act:

**PART XV**  
**MUNICIPAL LIABILITY**

**448.2**

***Liability for torts***

*(2) Subsection (1) does not relieve a municipality of liability to which it would otherwise be subject in respect of a tort committed by a member of council or an officer, employee or agent of the municipality or a person acting under the instructions of the officer, employee or agent. 2001, c. 25, s. 448 (2).<sup>47</sup>*

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...”

---

<sup>47</sup> Municipal Act [http://www.e-laws.gov.on.ca/html/statutes/english/elaws\\_statutes\\_01m25\\_e.htm#BK541](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_01m25_e.htm#BK541), as of June 30, 2011

If the municipal corporation could not implement a property standard by-law on private property, then why would a municipality consider that it was within the corporate jurisdiction to designate or zone private property? Moving forward with official plans place our municipalities in serious jeopardy and all elected officials should be concerned that what is implemented now will create even more serious situations in future. This is not to say that municipal council/directors and staff cannot create an official plan, it is only to say that they can only create said plan for what belongs to the municipal corporation, and that is not someone else's private property.

Now with recent events, we have received a letter from a private property owner that was sent to him by the Chief Building Inspector in his area. In this letter, at the advice of the municipality's legal department, is the statement:

"You have recognized this authority by submitting and pursuing an application to rezone the subject lands."<sup>48</sup>

Had this person not applied for a "rezoning" the municipal corporation did not have authority to demand application or to implement any zoning. The corporation made the demand for application anyways on the threat that the person would be charged for not applying. This is doing indirectly what the municipality cannot do directly, which is illegal.

*"Angers, pro Regina and The Queen Insurance Co., Held by Superior Court, Montreal, Torrance, J., affirmed by Queen's Bench, Montreal, and confirmed by the Jud. Com. Of the Privy Council (21 L. C. J. 77; 22 L. C. J. 307; 16 C. L. J. 198; 3 L.R. App. Cases 1090)."*<sup>49</sup>

*"It is an evasion of the Act from which the Local Legislature derives its power. The Local Legislature cannot, no more than private individuals, act as it were in fraud of the law, that is, do by indirect means what it cannot effect directly..."*<sup>50</sup>

Through the application process they are unlawfully expropriating a person's private property rights and because the municipality is not saying "no, you do not need to apply" and are telling property owners "you must apply for our permission under the Planning Act and the Building Code, etc.," they are actually violating the legislation, so every application and every permit has been issued under "false pretense" which is in the Criminal Code of Canada.

The "zoning" under the Planning Act is not applicable to private property, neither is the Building Code. There is nothing in the Municipal Act or any other Act that grants municipal corporations, or any entity, the authority to demand application on private property. The zoning, planning, etc., is all for the various municipal properties, boards,

---

<sup>48</sup> Town of Lincoln letter to Theodore John Lizak, dated August 8, 2013.

<sup>49</sup> Constitution of Canada. The B.N.A. Act, 1867; Its Interpretation, etc., p. 207

<sup>50</sup> Constitution of Canada. The B.N.A. Act, 1867; Its Interpretation, etc., p. 209

social housing, etc., but not private property. Unfortunately, the majority of municipal council/directors and staff have been lead to believe, through misinformation, that they do have this authority.

Because of the above statement, to the private property owner, it would seem, the municipality has now placed the council/directors and staff in the position of committing a criminal act as expressed in the Criminal Code of Canada. In July, 2013<sup>51</sup> there has been an application to the courts of "torts of trespass", Criminal charges, etc., against all of a council/directors and agents/staff, involved in the tort situation, and it is only a matter of time before someone else will use some of the CCC against another council/directors or staff. There is also "tort action" under section 448.2 of the Municipal Act because, as stated in the Municipal Councillor's Guide, 2010, you are responsible to know the legislation, past by-laws and all court rulings, and yet that document also misleads and had quite the disclaimer leaving you, again wide open.

The province, through the municipalities is trying to do indirectly what it cannot do directly. It is a standard of law that *"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."*<sup>52</sup>

---

<sup>51</sup> Court File No. 49890 - VERNON REGISTRY

<sup>52</sup> [G.R. No. 166471, March 22, 2011], TAWANG MULTI-PURPOSE COOPERATIVE, PETITIONER, VS. LA TRINIDAD WATER DISTRICT, RESPONDENT.

## THE PLANNING ACT

Under section 1 of the Planning Act are definitions. It is expressed that "*provincial plan*" means, (d) a development plan approved under the Ontario Planning and Development Act 1994". What is missing from the OPD is a definition of what "official plan" actually means. In the document under section 1<sup>53</sup> it refers the reader to section 1 of the Planning Act for a definition of official plan. There is no definition, in section 1, of the Planning Act. It would seem that the OPD is misleading the reader and the OPD may not, due to lack of interpretation, actually stand.

Continuing with section 1 of the Planning Act it states that "*public work*" means any improvement of a structural nature or other undertaking that is within the jurisdiction of the council of a municipality or a local board". Please note the statement of "structural nature" and under the definition of "*residential unit*" means a unit that, (a) consists of a self-contained set of rooms located in a building or structure". This reference to "structure" is supported by the report, in 2009, "Social Housing Renovation and Retrofit Program (SHRRP), Program Guidelines, June 2009", which expresses, to municipalities:

*"Social Housing Renovation and Retrofit Program – Highlights*

*The Social Housing Renovation and Retrofit Program (SHRRP) is a capital grant program that funds the repair and regeneration of eligible social housing projects. The SHRRP will:*

- Improve the health and safety of residents living in social housing communities*
- Provide enhanced accessibility for seniors and persons with disabilities*
- Contribute to the reduction of social housing project operating costs*
- Assist in the reduction of waiting lists for social housing, including restoration of vacant or abandoned units."<sup>54</sup>*

Under section 1 subsection 3 Designation<sup>55</sup>, the Minister of Municipal Affairs may designate any other ministry of the Province as a public body. Under subsection 2<sup>56</sup> the

---

<sup>53</sup> Ontario Planning and Development Act, 1994, S.O. 1994, CHAPTER 23, SCHEDULE A

Last amendment: 2006, c. 21, Sched. F, s. 136 (1).

"official plan" means an official plan as defined in section 1 of the *Planning Act*, ("plan officiel")

\*\*Note: there is no definition of "official plan" in section 1 of the Planning Act.

Power to acquire land

19. (1) For the purpose of developing any feature of a development plan, the Minister may, in the name of Her Majesty, acquire by purchase, lease or otherwise or, subject to the *Expropriations Act*, expropriate any land or interest in it within the area covered by the plan and sell, lease or otherwise dispose of any such land or interest. 1994, c. 23, Sched. A, s. 19 (1).

Designated minister

(2) The Lieutenant Governor in Council may designate any minister of the Crown to have responsibility over any land acquired under subsection (1) and the minister so designated may, for the purpose of developing any feature of the development plan,

(a) clear, grade or otherwise prepare the land for development or construct, repair or improve buildings, works and facilities on it; or

(b) sell, lease or otherwise dispose of any of the land or interest in it. 1994, c. 23, Sched. A, s. 19 (2).

<sup>54</sup> "Social Housing Renovation and Retrofit Program (SHRRP), Program Guidelines, June 2009", P. 1

term public body excludes all other ministries other than the Ministry of Municipal Affairs in regards to the following sections:

17 (24)<sup>57</sup>, (36)<sup>58</sup> and (40)<sup>59</sup>, 22 (7.4)<sup>60</sup>, 34 (19)<sup>61</sup>, 38 (4)<sup>62</sup>, 45 (12)<sup>63</sup>, 51 (39)<sup>64</sup>, (43)<sup>65</sup> and (48)<sup>66</sup> and 53 (19)<sup>67</sup> and (27)<sup>68</sup>

---

<sup>55</sup> (3) Despite subsection (2), the Minister may by regulation designate any other ministry of the Province of Ontario to be a public body for the purpose of the provisions referred to in subsection (2). 1996, c. 4, s. 1 (4).

<sup>56</sup> (2) The term "public body" in subsection (1) excludes all ministries of the Province of Ontario except the Ministry of Municipal Affairs and Housing in respect of subsections (appeals)...

<sup>57</sup> Approvals 17. (1) Except as otherwise provided in this section, the Minister is the approval authority in respect of the approval of a plan as an official plan for the purposes of this section. 1996, c. 4, s. 9

Right to appeal (24) If the plan is exempt from approval, any of the following may, not later than 20 days after the day that the giving of notice under subsection (23) is completed, appeal all or part of the decision of council to adopt all or part of the plan to the Municipal Board by filing a notice of appeal with the clerk of the municipality:

1. A person or public body who, before the plan was adopted, made oral submissions at a public meeting or written submissions to the council.
2. The Minister.
3. The appropriate approval authority.
4. In the case of a request to amend the plan, the person or public body that made the request. 2006, c. 23, s. 9 (4).

<sup>58</sup> Appeal to O.M.B. (36) Any of the following may, not later than 20 days after the day that the giving of notice under subsection (35) is completed, appeal all or part of the decision of the approval authority to the Municipal Board by filing a notice of appeal with the approval authority:

1. A person or public body who, before the plan was adopted, made oral submissions at a public meeting or written submissions to the council.
2. The Minister.
3. In the case of a request to amend the plan, the person or public body that made the request. 2006, c. 23, s. 9 (6).

No appeal re second unit policies (36.1) Despite subsection (36), there is no appeal in respect of the policies described in subsection 16 (3), including, for greater certainty, any requirements or standards that are part of such policies. 2011, c. 6, Sched. 2, s. 3 (2).

Exception (36.2) Subsection (36.1) does not apply to an official plan or official plan amendment adopted in accordance with subsection 26 (1). 2006, c. 23, s. 9 (6).

<sup>59</sup> Appeal to O.M.B. (40) If the approval authority fails to give notice of a decision in respect of all or part of a plan within 180 days after the day the plan is received by the approval authority, any person or public body may appeal to the Municipal Board with respect to all or any part of the plan in respect of which no notice of a decision was given by filing a notice of appeal with the approval authority. 1996, c. 4, s. 9; 2004, c. 18, s. 3 (1).

<sup>60</sup> Appeal to O.M.B. (7) When a person or public body requests an amendment to the official plan of a municipality or planning board, any of the following may appeal to the Municipal Board in respect of all or any part of the requested amendment, by filing a notice of appeal with the clerk of the municipality or the secretary-treasurer of the planning board, if one of the conditions set out in subsection (7.0.2) is met:

1. The person or public body that requested the amendment.
2. The Minister.
3. The appropriate approval authority. 2006, c. 23, s. 11 (5).

Exception (7.4) Despite subsection (7.1), a person or public body may appeal to the Municipal Board in respect of all or any part of a requested amendment described in clause (7.2) (a) or (b) if the requested amendment,

- (a) is in respect of the official plan of a lower-tier municipality; and
- (b) conforms with the official plan of the upper-tier municipality. 2006, c. 23, s. 11 (6).

<sup>61</sup> Zoning by-laws 34. (1) Zoning by-laws may be passed by the councils of local municipalities:  
Restricting use of land

1. For prohibiting the use of land, for or except for such purposes as may be set out in the by-law within the municipality or within any defined area or areas or abutting on any defined highway or part of a highway.

Appeal to O.M.B. (19) Not later than 20 days after the day that the giving of notice as required by subsection (18) is completed, any of the following may appeal to the Municipal Board by filing with the clerk of the municipality a notice

---

of appeal setting out the objection to the by-law and the reasons in support of the objection, accompanied by the fee prescribed under the *Ontario Municipal Board Act*.

1. The applicant.
2. A person or public body who, before the by-law was passed, made oral submissions at a public meeting or written submissions to the council.
3. The Minister. 2006, c. 23, s. 15 (10).

No appeal re second unit policies (19.1) Despite subsection (19), there is no appeal in respect of a by-law that gives effect to the policies described in subsection 16 (3), including, for greater certainty, no appeal in respect of any requirement or standard in such a by-law. 2011, c. 6, Sched. 2, s. 5.

<sup>62</sup> Interim control by-law 38. (1) Where the council of a local municipality has, by by-law or resolution, directed that a review or study be undertaken in respect of land use planning policies in the municipality or in any defined area or areas thereof, the council of the municipality may pass a by-law (hereinafter referred to as an interim control by-law) to be in effect for a period of time specified in the by-law, which period shall not exceed one year from the date of the passing thereof, prohibiting the use of land, buildings or structures within the municipality or within the defined area or areas thereof for, or except for, such purposes as are set out in the by-law.

Appeal to O.M.B. (4) Any person or public body to whom notice of a by-law was given under subsection (3) may, within sixty days from the date of the passing of the by-law, appeal to the Municipal Board by filing with the clerk of the municipality a notice of appeal setting out the objection to the by-law and the reasons in support of the objection. R.S.O. 1990, c. P.13, s. 38 (4); 1994, c. 23, s. 23 (2).

<sup>63</sup> Powers of committee 45. (1) The committee of adjustment, upon the application of the owner of any land, building or structure affected by any by-law that is passed under section 34 or 38, or a predecessor of such sections, or any person authorized in writing by the owner, may, despite any other Act, authorize such minor variance from the provisions of the by-law, in respect of the land, building or structure or the use thereof, as in its opinion is desirable for the appropriate development or use of the land, building or structure, if in the opinion of the committee the general intent and purpose of the by-law and of the official plan, if any, are maintained. R.S.O. 1990, c. P.13, s. 45 (1); 2006, c. 23, s. 18 (1); 2009, c. 33, Sched. 21, s. 10 (11).

Appeal to O.M.B. (12) The applicant, the Minister or any other person or public body who has an interest in the matter may within 20 days of the making of the decision appeal to the Municipal Board against the decision of the committee by filing with the secretary-treasurer of the committee a notice of appeal setting out the objection to the decision and the reasons in support of the objection accompanied by payment to the secretary-treasurer of the fee prescribed by the Municipal Board under the *Ontario Municipal Board Act* as payable on an appeal from a committee of adjustment to the Board. 1994, c. 23, s. 26 (2).

<sup>64</sup> Plan of subdivision approvals 51. (1), (2) REPEALED: 2002, c. 17, Sched. B, s. 19 (1).

Appeal (39) Subject to subsection (43), not later than 20 days after the day that the giving of notice under subsection (37) is completed, any of the following may appeal the decision, the lapsing provision or any of the conditions to the Municipal Board by filing with the approval authority a notice of appeal that must set out the reasons for the appeal, accompanied by the fee prescribed under the *Ontario Municipal Board Act*.

1. The applicant.
2. A person or public body who, before the approval authority made its decision, made oral submissions at a public meeting or written submissions to the approval authority.
3. The Minister.
4. The municipality in which the land is located or the planning board in whose planning area the land is located.
5. If the land is not located in a municipality or in the planning area of a planning board, any person or public body. 2006, c. 23, s. 22 (8).

<sup>65</sup> Appeal 51. (43) At any time before the approval of the final plan of subdivision under subsection (58), any of the following may appeal any of the conditions to the Municipal Board by filing with the approval authority a notice of appeal that must set out the reasons for the appeal, accompanied by the fee prescribed under the *Ontario Municipal Board Act*.

1. The applicant.
2. A public body that, before the approval authority made its decision, made oral submissions at a public meeting or written submissions to the approval authority.
3. The Minister.
4. The municipality in which the land is located or the planning board in whose planning area the land is located.
5. If the land is not located in a municipality or in the planning area of a planning board, any public body. 2006, c. 23, s. 22 (9).

And yet under section 1 "*public body*" means a municipality, a local board, a ministry, department, board, commission, agency or official of a provincial or federal government or a First Nation" and in the Municipal Act a:

*"local board" means any school board, public utility commission, transportation commission, public library board, board of park management, board of health, police services board, planning board or any other board, commission, committee, body or local authority established or exercising any power or authority under any general or special Act with respect to any of the affairs or purposes of a municipality or of two or more municipalities or portions thereof; ("conseil local") Municipal Act, 2001, S.O. 2001, CHAPTER 25"*

---

<sup>66</sup> Appeal (48). Any of the following may appeal any of the changed conditions imposed by the approval authority to the Municipal Board by filing with the approval authority a notice of appeal that must set out the reasons for the appeal, accompanied by the fee prescribed under the *Ontario Municipal Board Act*.

1. The applicant.
2. A person or public body who, before the approval authority gave approval to the draft plan of subdivision, made oral submissions at a public meeting or written submissions to the approval authority or made a written request to be notified of changes to the conditions.
3. The Minister.
4. The municipality in which the land is located or the planning board in whose planning area the land is located.
5. If the land is not located in a municipality or in the planning area of a planning board, any person or public body. 2006, c. 23, s. 22 (10).

<sup>67</sup> Consents 53. (1) An owner of land or the owner's agent duly authorized in writing may apply for a consent as defined in subsection 50 (1) and the council or the Minister, as the case may be, may, subject to this section, give a consent if satisfied that a plan of subdivision of the land is not necessary for the proper and orderly development of the municipality. 1994, c. 23, s. 32.

Appeal (19). Any person or public body may, not later than 20 days after the giving of notice under subsection (17) is completed, appeal the decision or any condition imposed by the council or the Minister or appeal both the decision and any condition to the Municipal Board by filing with the clerk of the municipality or the Minister a notice of appeal setting out the reasons for the appeal, accompanied by the fee prescribed under the *Ontario Municipal Board Act*. 1994, c. 23, s. 32; 1996, c. 4, s. 29 (6). Notice of decision (17) If the council or the Minister gives or refuses to give a provisional consent, the council or the Minister shall ensure that written notice of it is given within 15 days, containing the information prescribed to,

- (a) the applicant;
- (b) each person or public body that made a written request to be notified of the decision or conditions;
- (c) REPEALED: 1996, c. 4, s. 29 (4).
- (d) the Minister, with respect to a decision by a council to give a provisional consent, if the Minister has notified the council that he or she wishes to receive a copy of all decisions made to give a provisional consent; and
- (e) any other person or public body prescribed. 1994, c. 23, s. 32; 1996, c. 4, s. 29 (4).

<sup>68</sup> Appeal (27). Any person or public body may, not later than 20 days after the giving of notice under subsection (24) is completed, appeal any of the changed conditions imposed by the council or the Minister by filing with the clerk of the municipality or the Minister a notice of appeal setting out the reasons for the appeal, accompanied by the fee prescribed under the *Ontario Municipal Board Act*. 1994, c. 23, s. 32; 1996, c. 4, s. 29 (10).

Under subsection 4<sup>69</sup> the Minister may exclude any board, commission, agency or official of the Province of Ontario from the definition of “public body” set out in subsection (1) in respect of the provisions referred to in subsection (2).

Section 1.1 are the purposes of the Planning Act.

(a) to promote sustainable economic development<sup>70</sup> in a healthy natural environment within the policy and by the means provided under this Act;

(“economic development services” means, in respect of a municipality, the promotion of the municipality by the municipality for any purpose by the collection and dissemination of information and the acquisition, development and disposal of sites by the municipality for industrial, commercial and institutional uses; Municipal Act, section 1)

(b) to provide for a land use planning system led by provincial policy<sup>71</sup>;

(c) to integrate matters of provincial interest<sup>72</sup> in provincial and municipal planning decisions;

(Property in Lands, Mines, etc. - 109. All Lands, Mines, Minerals, and Royalties belonging to the several Provinces of Canada, Nova Scotia, and New Brunswick at the Union, and all Sums then due or payable for such Lands, Mines, Minerals, or Royalties, shall belong to the several Provinces of Ontario, Quebec, Nova Scotia, and New Brunswick in which the same are situate or arise, subject to any Trusts existing in respect thereof, and to any Interest other than that of the Province in the same. British North America Act, 1867 – Constitution of Canada.)

---

<sup>69</sup> Exclusion

(4) The Minister may by regulation exclude any board, commission, agency or official of the Province of Ontario from the definition of “public body” set out in subsection (1) in respect of the provisions referred to in subsection (2). 1996, c. 4, s. 1 (4).

<sup>70</sup> “economic development services” means, in respect of a municipality, the promotion of the municipality by the municipality for any purpose by the collection and dissemination of information and the acquisition, development and disposal of sites by the municipality for industrial, commercial and institutional uses;

<sup>71</sup> Property in Lands, Mines, etc.

109. All Lands, Mines, Minerals, and Royalties belonging to the several Provinces of Canada, Nova Scotia, and New Brunswick at the Union, and all Sums then due or payable for such Lands, Mines, Minerals, or Royalties, shall belong to the several Provinces of Ontario, Quebec, Nova Scotia, and New Brunswick in which the same are situate or arise, subject to any Trusts existing in respect thereof, and to any Interest other than that of the Province in the same.<sup>(57)</sup>

(57) Manitoba, Alberta and Saskatchewan were placed in the same position as the original provinces by the *Constitution Act, 1930*, 20-21 Geo. V, c. 26 (U.K.).

These matters were dealt with in respect of British Columbia by the *British Columbia Terms of Union* and also in part by the *Constitution Act, 1930*.

Newfoundland was also placed in the same position by the *Newfoundland Act*, 12-13 Geo. V1, c. 22 (U.K.).

With respect to Prince Edward Island, see the Schedule to the *Prince Edward Island Terms of Union*.

<sup>72</sup> Property in Lands, Mines, etc.

109. All Lands, Mines, Minerals, and Royalties belonging to the several Provinces of Canada, Nova Scotia, and New Brunswick at the Union, and all Sums then due or payable for such Lands, Mines, Minerals, or Royalties, shall belong to the several Provinces of Ontario, Quebec, Nova Scotia, and New Brunswick in which the same are situate or arise, subject to any Trusts existing in respect thereof, and to any Interest other than that of the Province in the same.<sup>(57)</sup>

(57) Manitoba, Alberta and Saskatchewan were placed in the same position as the original provinces by the *Constitution Act, 1930*, 20-21 Geo. V, c. 26 (U.K.).

These matters were dealt with in respect of British Columbia by the *British Columbia Terms of Union* and also in part by the *Constitution Act, 1930*.

Newfoundland was also placed in the same position by the *Newfoundland Act*, 12-13 Geo. V1, c. 22 (U.K.).

With respect to Prince Edward Island, see the Schedule to the *Prince Edward Island Terms of Union*.

- (d) to provide for planning processes that are fair by making them open, accessible, timely and efficient;
- (e) to encourage co-operation and co-ordination among various interests<sup>73</sup>;
- (f) to recognize the decision-making authority and accountability of municipal councils in planning. 1994, c. 23, s. 4.

Part I of the Act is for Provincial Administration of the Provincial Interests, which are restricted under section 109 of the Constitution and are "*subject to any Trusts existing in respect thereof, and to any Interest other than that of the Province in the same.*"

*2. The Minister, the council of a municipality, a local board, a planning board and the Municipal Board, in carrying out their responsibilities under this Act, shall have regard to, among other matters, matters of provincial interest<sup>74</sup> such as,*

- (a) the protection of ecological systems, including natural areas, features and functions<sup>75</sup>*
- (b) the protection of the agricultural resources<sup>76</sup> of <sup>77</sup> the Province;*

<sup>73</sup> INTEREST (Black's Law Dictionary, 9<sup>th</sup> 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.

<sup>74</sup> Property in Lands, Mines, etc.

109. All Lands, Mines, Minerals, and Royalties belonging to the several Provinces of Canada, Nova Scotia, and New Brunswick at the Union, and all Sums then due or payable for such Lands, Mines, Minerals, or Royalties, shall belong to the several Provinces of Ontario, Quebec, Nova Scotia, and New Brunswick in which the same are situate or arise, subject to any Trusts existing in respect thereof, and to any Interest other than that of the Province in the same.<sup>(57)</sup>

(57) Manitoba, Alberta and Saskatchewan were placed in the same position as the original provinces by the *Constitution Act, 1930*, 20-21 Geo. V, c. 26 (U.K.).

These matters were dealt with in respect of British Columbia by the *British Columbia Terms of Union* and also in part by the *Constitution Act, 1930*.

Newfoundland was also placed in the same position by the *Newfoundland Act*, 12-13 Geo. V1, c. 22 (U.K.).

With respect to Prince Edward Island, see the Schedule to the *Prince Edward Island Terms of Union*.

<sup>75</sup> Property in Lands, Mines, etc.

109. All Lands, Mines, Minerals, and Royalties belonging to the several Provinces of Canada, Nova Scotia, and New Brunswick at the Union, and all Sums then due or payable for such Lands, Mines, Minerals, or Royalties, shall belong to the several Provinces of Ontario, Quebec, Nova Scotia, and New Brunswick in which the same are situate or arise, subject to any Trusts existing in respect thereof, and to any Interest other than that of the Province in the same.<sup>(57)</sup>

(57)

Manitoba, Alberta and Saskatchewan were placed in the same position as the original provinces by the *Constitution Act, 1930*, 20-21 Geo. V, c. 26 (U.K.).

These matters were dealt with in respect of British Columbia by the *British Columbia Terms of Union* and also in part by the *Constitution Act, 1930*.

Newfoundland was also placed in the same position by the *Newfoundland Act*, 12-13 Geo. V1, c. 22 (U.K.).

With respect to Prince Edward Island, see the Schedule to the *Prince Edward Island Terms of Union*.

<sup>76</sup> OMAFRA-U of G Partnership Supported Animal Research Facilities

The University of Guelph has many facilities available for housing animals. Please view each facility to find out more about the facility and the type of animals they care for:

Alfred Campus/ Campus D'Alfred (organic dairy)

Alma Aquaculture

Arnell Equine

Arnell Swine

- (c) *the conservation and management of natural resources and the mineral resource base*<sup>78</sup>;
- (d) *the conservation of features of significant architectural, cultural, historical, archaeological or scientific interest*<sup>79</sup>;
- (e) *the supply, efficient use and conservation of energy and water*<sup>80</sup>;
- (f) *the adequate provision and efficient use of communication, transportation, sewage and water services and waste management systems*<sup>81</sup>;
- (g) *the minimization of waste*<sup>82</sup>;
- (h) *the orderly development of safe and healthy communities*<sup>83</sup>
- (h.1) *the accessibility for persons with disabilities to all facilities, services and matters to which this Act applies*<sup>84</sup> ;
- (i) *the adequate provision and distribution of educational, health, social, cultural and recreational facilities*<sup>85</sup>;
- (j) *the adequate provision of a full range of housing, including affordable housing*<sup>86</sup>;

---

Arkell Poultry  
 Campus Animal Facilities Isolation Unit  
 Elora Beef  
 Elora Dairy  
 Kemptville Campus  
 New Liskeard Agriculture  
 Ponsonby General Animal Facility  
 Ponsonby Dairy  
 Ponsonby Sheep

<sup>77</sup> OF – 1. Belonging to. DK Dictionary, 2002, p. 200  
 BELONG (Black's Law Dictionary, 9<sup>th</sup> 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, 9<sup>th</sup> Edition, 2009, p. 175) – 1. Personal Property; *EFFECTS* – see personal property under property. 2. All property, including realty.

<sup>78</sup> Reservations in the Letters Patent regarding Mines, Minerals, Crown/Public Lands and Land Use Conditions, Timber rights reserved, nav. water ways, sand and gravel, etc.

<sup>79</sup> Mun Act - 11. 3. 5 Culture, parks, recreation and heritage = owned by municipality/public

<sup>80</sup> "municipal property asset" means an asset of the municipality that is land, equipment or other goods. O. Reg. 599/06, s. 14 (2).

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

<sup>81</sup> Mun Act - 11. 3.

<sup>82</sup> Mun Act - 11. 3. 3 Waste management

<sup>83</sup> "Social Housing Renovation and Retrofit Program (SHRRP), Program Guidelines, June 2009", P. 1

<sup>84</sup> "Social Housing Renovation and Retrofit Program (SHRRP), Program Guidelines, June 2009", P. 1

<sup>85</sup> Mun Act - 11. 3. 5 Culture, parks, recreation and heritage - Heritage Act sections 36 + 37

<sup>86</sup> Funding under the AHP Extension (2009) may be combined in the same project but cannot be combined in the same unit. For example, an existing seniors' social housing project may have some existing units on the site that are in need of repair/renovation under SHRRP. AHP funding could be applied to the construction of new affordable

- (k) the adequate provision of employment opportunities<sup>87</sup>;*
- (l) the protection of the financial and economic well-being of the Province and its municipalities<sup>88</sup>;*
- (m) the co-ordination of planning<sup>89</sup> activities of public bodies;*
- (n) the resolution of planning conflicts involving public<sup>90</sup> and private interests<sup>91</sup>;*
- (o) the protection of public health and safety<sup>92</sup>;*
- (p) the appropriate location of growth and development<sup>93</sup>;*
- (q) the promotion of development that is designed to be sustainable, to support public transit and to be oriented to pedestrians<sup>94</sup>.*

housing units in the same building, subject to ministry approval, which may include a ministerial consent or Transfer Orders under the SHRA, if required.

Federal RRAP-D may be used in combination with SHRRP funding (consistent with the guidelines) for the repair and retrofit of existing social housing stock. SMs and proponents should consult with CMHC's RRAP-D program to confirm eligibility. "Social Housing Renovation and Retrofit Program (SHRRP), Program Guidelines, June 2009", P. 14.

<sup>87</sup> ECONOMIC DEVELOPMENT SERVICES - means, in respect of a municipality, the promotion of the municipality by the municipality for any purpose by the collection and dissemination of information and the acquisition, development and disposal of sites by the municipality for industrial, commercial and institutional uses. – Municipal Act, Section 1

<sup>88</sup> Property in Lands, Mines, etc.

109. All Lands, Mines, Minerals, and Royalties belonging to the several Provinces of Canada, Nova Scotia, and New Brunswick at the Union, and all Sums then due or payable for such Lands, Mines, Minerals, or Royalties, shall belong to the several Provinces of Ontario, Quebec, Nova Scotia, and New Brunswick in which the same are situate or arise, subject to any Trusts existing in respect thereof, and to any Interest other than that of the Province in the same.

<sup>89</sup> PART IV COMMUNITY IMPROVEMENT Community improvement project area 28. (1) In this section, "community improvement" means the planning or replanning...

<sup>90</sup> PUBLIC INTEREST (Black's Law Dictionary, 9<sup>th</sup> 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, 9<sup>th</sup> Edition, 2009, p. 1337) – State or community owned property not restricted to any one individual's use or possession.

<sup>91</sup> INTEREST (Black's Law Dictionary, 9<sup>th</sup> 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.

<sup>92</sup> Mun Act - 11. 3

<sup>93</sup> "municipal property asset" means an asset of the municipality that is land, equipment or other goods. O. Reg. 599/06, s. 14 (2).

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

<sup>94</sup> 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.

Section 3<sup>95</sup> of the Planning Act incorporates the Provincial Interests by means of the Provincial Policy Statement. Subsection 4<sup>96</sup> of section 3 expresses that municipal corporations that receive notice of the PPS shall give notice to the local boards of the corporation that may have an interest involving provincial interests. Subsection 5<sup>97</sup> expresses that all municipal corporations, local board, planning boards, ministries of the Crown, government agencies, including the OMB must adhere to the PPS during the planning process. Subsection 6<sup>98</sup> states that all plans must conform with the PPS and subsection 10<sup>99</sup> mandates that Minister will, every 5 years, review the PPS.

Sections 4 and 5 involve delegation of the Ministers powers, *"other than the authority to approve official plans or the authority to exempt from approval plans as official plans or amendments to official plans, to a committee of council or to an appointed officer identified in the by-law either by name or position occupied and such committee or officer"*<sup>100</sup>.

- 
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.

<sup>95</sup> Policy statements

3. (1) The Minister, or the Minister together with any other minister of the Crown, may from time to time issue policy statements that have been approved by the Lieutenant Governor in Council on matters relating to municipal planning that in the opinion of the Minister are of provincial interest. R.S.O. 1990, c. P.13, s. 3 (1).

<sup>96</sup> Idem (4) Each municipality that receives notice of a policy statement under subsection (3) shall in turn give notice of the statement to each local board of the municipality that it considers has an interest in the statement. R.S.O. 1990, c. P.13, s. 3 (4).

<sup>97</sup> (5) A decision of the council of a municipality, a local board, a planning board, a minister of the Crown and a ministry, board, commission or agency of the government, including the Municipal Board, in respect of the exercise of any authority that affects a planning matter,

(a) shall be consistent with the policy statements issued under subsection (1) that are in effect on the date of the decision; and

(b) shall conform with the provincial plans that are in effect on that date, or shall not conflict with them, as the case may be. 2006, c. 23, s. 5.

<sup>98</sup> Same

(6) Comments, submissions or advice affecting a planning matter that are provided by the council of a municipality, a local board, a planning board, a minister or ministry, board, commission or agency of the government,

(a) shall be consistent with the policy statements issued under subsection (1) that are in effect on the date the comments, submissions or advice are provided; and

(b) shall conform with the provincial plans that are in effect on that date, or shall not conflict with them, as the case may be. 2006, c. 23, s. 5.

<sup>99</sup> Review

(10) The Minister shall, at least every five years from the date that a policy statement is issued under subsection (1), ensure that a review of the policy statement is undertaken for the purpose of determining the need for a revision of the policy statement. 1994, c. 23, s. 6 (3).

<sup>100</sup> **Delegation of Minister's powers**

4. (1) The Minister, on the request of the council of any municipality, may, by order, delegate to the council any of the Minister's authority under this Act, other than the authority to approve or the authority to exempt from approval the official plan or amendments to the official plan of the municipality of which it is the council and, where the Minister has delegated any such authority, the council has, in lieu of the Minister, all the powers and rights of the Minister in respect thereof and the council shall be responsible for all matters pertaining thereto, including, without

Section 6 expresses that the Minister must consult with any ministry and/or municipal corporation regarding any "carrying out or authorizing any undertaking that

---

limiting the generality of the foregoing, the referral of any matter to the Municipal Board. R.S.O. 1990, c. P.13, s. 4 (1); 1996, c. 4, s. 4 (1); 1999, c. 12, Sched. M, s. 21; 2006, c. 23, s. 6.

**Same**

(2) The Minister, on the request of the planning board of any planning area in a territorial district, may, by order, delegate to the planning board any of the Minister's authority under this Act, other than the authority to approve or the authority to exempt from approval an official plan or amendments to an official plan, and where the Minister has delegated any such authority the planning board has, in lieu of the Minister, all the powers and rights of the Minister in respect thereof and the planning board shall be responsible for all matters pertaining thereto, including, without limiting the generality of the foregoing, the referral of any matter to the Municipal Board. R.S.O. 1990, c. P.13, s. 4 (2); 1996, c. 4, s. 4 (2).

**Delegation where no request is made**

(2.1) The Minister may, after the prescribed notice is given, by order delegate to the council of an upper-tier municipality or a single-tier municipality any of the Minister's authority described in subsection (1) if the municipality has an official plan. 2002, c. 17, Sched. B, s. 2.

**Delegation to planning board**

(2.2) The Minister may, after the prescribed notice is given, by order delegate to a planning board any of the Minister's authority described in subsection (2) if the planning board has an official plan. 1996, c. 4, s. 4 (3).

(3) REPEALED: 1994, c. 23, s. 7.

**Conditions**

(4) A delegation made by the Minister under this section may be subject to such conditions as the Minister may by order provide. 1996, c. 4, s. 4 (4).

**Withdrawal of delegation of powers**

(5) The Minister may by order, accompanied by a written explanation therefor, withdraw any delegation made under this section and, without limiting the generality of the foregoing, such withdrawal may be either in respect of one or more applications for approval specified in the order or in respect of any or all applications for approval made subsequent to the withdrawal of the delegation, and immediately following any such withdrawal the council or the planning board, as the case may be, shall forward to the Minister all papers, plans, documents and other material in the possession of the municipal corporation or the planning board that relate to any matter in respect of which the authority was withdrawn and of which a final disposition was not made by the council or the planning board prior to such withdrawal. R.S.O. 1990, c. P.13, s. 4 (5); 1993, c. 26, s. 49 (4); 1996, c. 4, s. 4 (5).

**Further delegation of powers**

5. (1) Where the Minister has delegated any authority to a council under section 4, such council may, in turn, by by-law, and subject to such conditions as may have been imposed by the Minister, delegate any of such authority, other than the authority to approve official plans or the authority to exempt from approval plans as official plans or amendments to official plans, to a committee of council or to an appointed officer identified in the by-law either by name or position occupied and such committee or officer, as the case may be, has, in lieu of the Minister, all the powers and rights of the Minister in respect of such delegated authority and shall be responsible for all matters pertaining thereto including the referral of any matter to the Municipal Board. R.S.O. 1990, c. P.13, s. 5 (1); 1996, c. 4, s. 5 (1).

**Limitation**

(2) Despite subsection (1), a council may not delegate the authority to approve or the authority to exempt from approval amendments to official plans without the prior written approval of the Minister, which approval may be subject to such further conditions as the Minister considers appropriate. R.S.O. 1990, c. P.13, s. 5 (2); 1996, c. 4, s. 5 (2).

**Further delegation of powers**

(3) In addition to the authority of a council to, in turn, delegate any authority under subsection (1), where the Minister has delegated to a council his or her authority for the giving of consents under section 53<sup>100</sup>, such council may, in turn, by by-law, and subject to such conditions as may have been imposed by the Minister, delegate the authority for the giving of consents to a committee of adjustment constituted under section 44.

**Conditions**

(4) A delegation made by a council under subsection (1) or (3) may be subject to such conditions as the council may by by-law provide and as are not in conflict with any conditions provided by order of the Minister under section 4.

**Withdrawal of delegation of powers**

(5) A council may by by-law withdraw any delegation made under subsection (1) or (3), whereupon subsection 4 (5) applies with necessary modifications. R.S.O. 1990, c. P.13, s. 5 (3-5).

the ministry considers will directly affect any municipal corporation and have regard for, the established planning policies of the municipal corporation"<sup>101</sup>.

Section 7<sup>102</sup> involves grants from the province to assist municipal corporations and their boards for the acquisition<sup>103</sup> of property in fulfilling their planning obligations.

Part II, Sections 8 through to 14.7 involve planning boards, their incorporation, the OMB appeals process, etc. 14.7 restricts the Counties from implementing official plans unless the criteria in Section 17 have been met. Part II continues to section 16 which involves Official Plans.

Section 16<sup>104</sup> is to be the goals, objectives and policies of the municipal corporation to obtain its obligations under the Municipal Act involving the assets of the municipal corporation and its local boards. Part III continues that the official plans of the corporation must be expressed to the residents/shareholders of the municipal corporation as they are the ratepayers and will be the entities/shareholders that must finance the plans that are created by the corporations. It is only with the acceptance of the ratepayers/shareholders for the financial obligations through their property taxes that official plans may be submitted to the Minister and then the Minister has the option of accepting or denying the official plan. It is not to allow for municipal corporations to "plan/zone" for private property but for the financing for social housing, infrastructure, services supplied by the municipal corporations, etc.

---

<sup>101</sup> Consultation

**6. (1)** In this section, "ministry" means any ministry or secretariat of the Government of Ontario and includes a board, commission or agency of the Government. R.S.O. 1990, c. P.13, s. 6 (1); 1998, c. 15, Sched. E, s. 27 (3).  
Planning policies

**(2)** A ministry, before carrying out or authorizing any undertaking that the ministry considers will directly affect any municipality, shall consult with, and have regard for, the established planning policies of the municipality. R.S.O. 1990, c. P.13, s. 6 (2).

<sup>102</sup> Grants

**7.** The Minister may, out of the money appropriated therefor by the Legislature, make grants of money to assist in the performing of any duty or function of a planning nature. R.S.O. 1990, c. P.13, s. 7.

<sup>103</sup> municipal property asset" means an asset of the municipality that is land, equipment or other goods. O. Reg. 599/06, s. 14 (2).

<sup>104</sup> **Contents of official plan**

**16. (1)** An official plan shall contain,  
(a) goals, objectives and policies established primarily to manage and direct physical change and the effects on the social, economic and natural environment of the municipality or part of it, or an area that is without municipal organization; and  
(b) such other matters as may be prescribed. 2006, c. 23, s. 8.

**Same**

**(2)** An official plan may contain,  
(a) a description of the measures and procedures proposed to attain the objectives of the plan;  
(b) a description of the measures and procedures for informing and obtaining the views of the public in respect of a proposed amendment to the official plan or proposed revision of the plan or in respect of a proposed zoning by-law; and  
(c) such other matters as may be prescribed. 2006, c. 23, s. 8.

Section 24 of Part III involves "Public Works". It states that when an official plan has been implemented no public works shall be undertaken and that no by-law shall be passed for any purpose that does not conform with the official plan. Subsection 4 of 24 states that if a by-law, under section 34 (zoning), has been passed the by-law shall be deemed to be in conformity with the official plan, except if the by-law is passed during the process of amending the official plan under subsections 2 and 3. This is to ensure "legal non-conforming" property of the municipality is in conformity with the official plan. *"Acquisition and disposition of non-conforming lands: 34. (8)"*.

*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<sup>105</sup> 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).*

---

<sup>105</sup> "Acquisition and disposition of non-conforming lands: 34. (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)."

### *Deemed conformity*

*(4) If a by-law is passed under section 34<sup>106</sup> 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<sup>107</sup> of the Planning Act states if there is an official plan a municipality must acquire land to place the property/asset "within the municipality" or make the property belong to the municipal corporation prior to zoning under section 34.

### *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.*

Section 28 (2)<sup>108</sup> 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)<sup>109</sup> states when a by-law has been passed under subsection 2 the municipal

---

<sup>106</sup> 34. (1) Zoning by-laws may be passed by the councils of local municipalities:  
Restricting use of land

1. For prohibiting the use of land, for or except for such purposes as may be set out in the by-law within the municipality or within any defined area or areas or abutting on any defined highway or part of a highway.

<sup>107</sup> **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).

<sup>108</sup> **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).

<sup>109</sup> **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

corporation 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)<sup>110</sup> 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 (brownfields), in conformity with the community improvement plan. It also expresses that the municipal corporation 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”<sup>111</sup> includes:

*“planning or replanning, design or redesign resubdivision, clearance, development or redevelopment, construction, reconstruction, rehabilitation, energy efficiency, and provides for 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.*

*(“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).”*

“Community improvement plan” means any “planning or replanning”, which is happening when the planning department creates “municipal plans” and/or a plan for the community improvement of a community improvement project area; and “community improvement project area” means a municipal corporation or an area within a municipality, the community improvement (planning or replanning) 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. There is also the point that for

---

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).

<sup>110</sup> **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).

<sup>111</sup> **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;

environmental, social or community economic development there must be acquisition of the land/property, by the municipal corporation, for implementation.

Section 28 (7)<sup>112</sup> states that the municipal corporation may make grants or loans for the purpose of carrying out the municipal corporations improvement plan. These grants or loans can be made to registered owners, assessed owners, tenants of lands and buildings within the corporations 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 that had been previously acquired by the municipal corporation. "Eligible Costs"<sup>113</sup> 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)<sup>114</sup> allows for grants and loans between upper and lower tier municipal corporations. (7.3)<sup>115</sup> limits the amount of grants or loans and brings in section 365.1<sup>116</sup> 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.

---

<sup>112</sup> **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).

<sup>113</sup> **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).

<sup>114</sup> **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).

<sup>115</sup> **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).

<sup>116</sup> **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).

Section 28 (10)<sup>117</sup> 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 municipal corporation for a community improvement in a community improvement area can be sold unless a corporate by-law is implemented and/or amended and that the purchaser, leasees or entity that received the dispossession of property from the corporation enters into an agreement with the municipal corporation covenanting the land use condition and/or zoning.

Section 28 (11)<sup>118</sup> 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 municipal corporation 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<sup>119</sup> 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 corporations 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.

---

<sup>117</sup> **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).

<sup>118</sup> **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).

<sup>119</sup> **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).

This includes sections 15.1<sup>120</sup> and 15.2 (2)<sup>121</sup> 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<sup>122</sup> 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<sup>123</sup> of the Building

---

<sup>120</sup> **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).

<sup>121</sup> **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<sup>121</sup> 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<sup>121</sup>; and (d) indicating the final date for giving notice of appeal from the order. 1997, c. 24, s. 224 (8).

<sup>122</sup> **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).

<sup>123</sup> **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).

Code. Again this section of the Planning Act pertains to community development areas and is not applicable to private property.

In conjunction with section 24, above, section 24 and 33 is supported by section 34 (8) of the Planning Act – Zoning By-laws.

Section 34 (8) expresses:

*“Acquisition and disposition of non-conforming lands: 34. (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<sup>124</sup> of the Planning Act. In the aforementioned sections a municipal corporation cannot place an “H” or holding symbol on private property. Unless it has been acquired and is owned, managed or belongs to the municipal corporation or a corporation/board created by/for the municipal corporation. That being the case, a municipal corporation does not have the authority to designate/zone any private property either under an official plan or without having an official plan.

We are seeing that our corporate municipal elected officials/ board of directors 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 and/or official plans. Section 34 of the Planning Act is “zoning by-laws”, and the implementation of zoning by-laws is done when, either the municipal corporation has ownership of the property, a public facility/government corporation has ownership or agreements have been “knowingly” and willingly entered into between the municipal corporation and the private property owner. Presently, caused by a lack of information, private property owners are being forced into entering into agreements that are beyond the ability of the municipal corporation to demand or administer. “Covenant” or conditions of these agreement are

---

<sup>124</sup> **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).

then registered against the title of the land, which affects the title. This cannot be done under the Registry Act<sup>125</sup>.

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.”<sup>126</sup>, 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<sup>127</sup> if he chooses.

Receiving advice from a municipal corporate staff member or council/director about it being a mandatory requirement, to have permission, is beyond the “authority” of the municipal corporation or any of its staff and is an abrogation of the private property owner's rights, of which he should have been advised, if the council and staff at the municipal corporation are acting as agents of the Crown. It is their responsibility, as agents of the Crown, to advise a person of their “rights”. The statement of:

“You have recognized this authority by submitting and pursuing an application...”<sup>128</sup>

Had this person not applied the government municipality did not have authority to demand application or to implement any regulation, designation/zoning. The government entity made the demand for application on the threat that the person would be charged for not applying. This is doing indirectly what the government cannot do directly, which is illegal.

---

<sup>125</sup> **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).

<sup>126</sup> *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.

<sup>127</sup> PUBLIC INTEREST (Black’s Law Dictionary, 9<sup>th</sup> 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.

<sup>128</sup> Town of Lincoln letter to Theodore John Lizak, dated August 8, 2013.

*“Angers, pro Regina and The Queen Insurance Co., Held by Superior Court, Montreal, Torrance, J., affirmed by Queen’s Bench, Montreal, and confirmed by the Jud. Com. Of the Privy Council (21 L. C. J. 77; 22 L. C. J. 307; 16 C. L. J. 198; 3 L.R. App. Cases 1090).”<sup>129</sup>*

*“It is an evasion of the Act from which the Local Legislature derives its power. The Local Legislature cannot, no more than private individuals, act as it were in fraud of the law, that is, do by indirect means what it cannot effect directly...”<sup>130</sup>*

Through the application process the municipal corporations are illegally expropriating a person’s private property rights. Because the government entity is not saying “No, you do not need to apply” and are telling property owners “you must apply for our permission under the Municipal Act, Planning Act, the Building Code, etc.,” they are actually violating the legislation. Based on this, every application and every permit that has been issued has been issued under “false pretense” under the Criminal Code of Canada. This means any residual authority, any easement created, any agreement/contract of the application/permitting process is void as it was implemented during the commission of unlawful acts.

This leads to what is termed “dedication” and who can “designate” private property. The only person (including corporations) that can designate private property is the owner of the property and that is through dedication to some other entity by grant<sup>131</sup>. This is what the province/AMO is not revealing to the municipal corporations and what it is being demanded of the private property owner who is being forced, by misinterpreted legislation, to dedicate his property through municipal plans<sup>132</sup>. This is beyond the jurisdiction of the province, AMO and/or the municipal corporations as they only have legislative jurisdiction over what belongs<sup>133</sup> to either the province, AMO and/or the municipal corporation. The province and/or the municipal corporations, and other corporations, are implementing designations by demanding dedication by the

---

<sup>129</sup> Constitution of Canada. The B.N.A. Act, 1867; Its Interpretation, etc., p. 207

<sup>130</sup> Constitution of Canada. The B.N.A. Act, 1867; Its Interpretation, etc., p. 209

<sup>131</sup> City of Flagstaff, a Body Politic, Appellant, v. George Babbitt, Jr., Appellee. Sup. Court. Aug. 6, 1968. The Court of Appeals, Stevens, J., held that actions of subdivider in testifying that he did not intend to dedicate land designated in subdivision plat as park to public, in failing to include park in dedicatory working on record plat, in establishing and grading streets and replatting lots in portion of area designated as park, and in executing easement for sewer line to city across park and paying taxes on such property were inconsistent with intent to dedicate park to public but rather were consistent with intent to retain property as private property of subdivider and they rebutted presumption of dedication arising from plat. Judgment affirmed.

<sup>132</sup> “3 Edw. I. – 1275 Statute of Westminster the First. Chap. XXVI. No King’s Officers shall commit extortion. No sheriff, nor other the king’s officer, shall take any reward to do his office, but shall be paid of that which they take of the king; and that so doeth shall yield twice as much, and shall be punished at the king’s pleasure. The Book of Rights: Or, Constitutional Acts and Parliamentary Proceedings Affecting Civil and Religious Liberty in England, from Magna Carta to the Present Time, Edgar Taylor, F.S.A., 1833, p. 57

<sup>133</sup> BELONG (Black’s Law Dictionary, 9<sup>th</sup> Edition, 2009, p. 175) – 1. To be the property of a person or thing. 2. To be connected with as a member.

private property owner and are doing indirectly what they legally cannot do directly, which is not legal.

*“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.”<sup>134</sup>*

If the province could, legally, implement these designations, they would, but they are demanding that the municipal corporations put their council/directors, staff and the rate-payers/shareholders of the municipality in jeopardy to fulfill a mandate that cannot be implemented by the province.

The Ministry of Natural Resources (MNR) claim that the land/property owned by Ontario is 937,000 km squared being 87% <sup>135</sup> of the 1,070,000 square kilometres that make up the land mass of the geographical boundaries of this province. That means that only 13% of the land mass within the geographical boundaries of the province is privately owned. (see Fig. 1). And with the province following the same failed reports <sup>136</sup> as Europe and California on how to govern Ontario, they need every tax dollar they obtain. And how are they fulfilling this; with fines, fees, permits, licenses, private-public partnerships, and exactly the same plans as Europe and California...and we all know this leads to economical instability. The one exception is that the Ontario government was told not to have referendums on money or taxation issues because, as is the case of California <sup>137</sup>, the government would be in the same financial difficulties as California.

---

<sup>134</sup> [G.R. No. 166471, March 22, 2011], TAWANG MULTI-PURPOSE COOPERATIVE, PETITIONER, VS. LA TRINIDAD WATER DISTRICT, RESPONDENT.

<sup>135</sup> STRATEGIC DIRECTIONS FOR MANAGEMENT OF ONTARIO CROWN LAND  
PL 1.01.01, Compiled by – Branch, Lands & Natural Heritage Section, Lands & Waters, Date Issued February 1993.  
2.2 WHAT IS CROWN LAND? Crown Land, for the purpose of this document, is defined as those areas of Ontario over which MNR has stewardship responsibility under the authority of the Public Lands Act. These lands make up 87 percent of the province, over 937,000 km<sup>2</sup>, including 164,000 km<sup>2</sup> under water. The value of this Crown Land asset has been estimated at \$22 billion.  
[http://www.mnr.gov.on.ca/stdprodconsume/groups/lr/@mnr/@crownland/documents/document/mnr\\_e000072.pdf](http://www.mnr.gov.on.ca/stdprodconsume/groups/lr/@mnr/@crownland/documents/document/mnr_e000072.pdf), as of august 21, 2012.

<sup>136</sup> Stagnation in your Swedish town? Blame Florida, Published: 14 Oct 08 11:10 CET Online:  
<http://www.thelocal.se/14946/20081014/>

<sup>137</sup> Investing in People: Creating a Human Capital Society, p. 31

## PLACES TO GROW ACT

Official plan conformity

**12. (1)** The council of a municipality or a municipal planning authority that has jurisdiction in an area to which a growth plan applies shall amend its official plan to conform with the growth plan. 2005, c. 13, s. 12 (1).

Conformity = submitting and surrendering to something. The removal of Municipalities ability, to represent the people of their communities, by enforcing, through legislation, mandatory conformity with the Provincial Plan is not in the best interest of the People of Ontario. This Act, in itself, is the removal of everyone's constitutional fundamental rights and this is not the first time that legislation has been created, by this government that has been documented as unconstitutional<sup>138</sup>.

Many Municipalities are questioning the Official Growth Plan and the Growth Plans for their communities. MPPs' are questioning the validness of the Growth Plans and the sustainability, where specific areas are slated for specific growth and yet the supporting industry is forced to close. The public is denied the ability to purchase locally manufactured goods because of Growth Plans and what is and is not allowed within certain designated areas. These Growth Plans and any legislation/regulations and/or policies the supports these plans are faulted.

The Places to Grow Act is based on the Provincial Policy Statement (PPS), which in-turn is based on misinformation. Having both the PPS and The Places to Grow Act legislated is an overlap of legislation and it would seem a desperate attempt to ensure that any loop-holes that may or may not exist are closed. The Places to Grow Act is also to ensure that the Provincial Government has complete control over their own interests which may include AMO as it would have been incorporated under section "11. The Incorporation of Companies with Provincial Objects", of the BNA.

When there are specific designations, as in agricultural lands, there is a decrease in available capital for the agricultural community. This had/has the same impact on agricultural land as a municipal "plan" and municipal plans are being dictated by policy from the provincial government.

Every and all designations, planning or land use conditions being legislated removes the financial stability of the agricultural and municipal structure. By reducing the available collateral the farming community, through "zoning" and "planning", becomes unstable. This instability causes the farming community to become less sustainable, meaning that the dollar value within the industry is less fluid, creating a short fall for crop loans, which in turn, lessens the ability for the farming community to remain viable.

This in turn creates a "buyers" market and although "planning" has designated agricultural lands as classes of soil types, based on the Planning Act, the Greater Golden Horseshoe Plan, the Places to Grow Act, the Conservation Authorities Act, etc.,

---

<sup>138</sup> Ontario Bar Association letter to MOE John Gerretsen, Re: Comments on proposed Proposal to Amend Ontario Regulation 419/05: Air Pollution – Local Air Quality, EBR Registry Number 010-6587, dated: Oct. 6, 2009.

this removes good agricultural lands and turns it into development lands for lesser dollar value, meaning that developers can purchase prime agricultural property for discounted values for future urban development, instead of the farmer having the ability to use said land for retirement purposes and or succession. The only way to completely protect agricultural land, or any property, is by the private property owner and his/her ability to remain financially viable.

This also impacts municipalities. During the planning/designation period a municipality will lose assessed values. This in turn creates deficit property tax support for the municipalities for infrastructure, schools and business opportunity. When there is a viable, strong agricultural community, there are a number of spin off businesses that, again, create sustainability for the municipalities. Some but not all of these spin off industries are: Banks, Tractor dealerships, car and truck dealerships, restaurants, retail, garages, feed co-ops, accountants, lawyers, teaching staff, municipal staff, librarians, etc. The only way to maintain a strong community is by not designating/zoning properties.

According a study, in 2006 OMAFRA published the Land Evaluation and Area Review for the Greenbelt Study Area. The report goes on to say:

It is also understood that the Province has completed a LEAR analysis for the Greater Toronto Area (GTA) using a similar methodology to that developed for the Greenbelt Study Area. The Study Area included all of Dufferin County and adjacent municipalities. However, due to licensing restrictions and confidentiality issues, the OMAFRA is not able to release this information to municipalities and the general public.”<sup>139</sup>

Without OMAFRA releasing/including the restricted information, a municipality is not fully informed and this presents future problems, in regards to municipalities being left open to statements of “bad faith”, as it is the responsibility of municipal Council to make fully informed decisions. It is also the obligation of municipal staff to ensure that all information, legislation, regulation and policy is fully understood and the restrictions that are place in those documents in regards to exactly what the jurisdiction of the municipality is.

This has a similar ring to what Severn Bridge is going through, in regards to the Green Energy Act. According to the Orillia Packet & Times, the Mayor is every upset:

“...what we have are government agencies and private companies being given access to the study, but the mayor can’t see it. OPA spokesperson Tim Butters told The Packet & Times the soil study is “a commercially confidential submission to the OPA by the developer which cannot be released without their permission.”

---

<sup>139</sup> Identification of Prime Agricultural Areas Using a LEAR Methodology for the Town of Mono, May 2011, p. 2.

The report being discussed was done by Colville Consulting<sup>140</sup>, which in turn also has been involved with a “peer review” for the Town of Lincoln in conjunction with a report present to the Town of Lincoln by Stantec. In this review it states:

### “3.2 Overview of Proponent’s Report

The Planning Report in Support of Proposed IMS Spring Creek Compost Facility submitted by Urban and Environmental Management was the primary document reviewed for the peer review related to land use planning. An overview of the supporting technical studies submitted with the application was also conducted. The Planning Report contained the following key information and conclusions with respect to the proposed composting facility:

- The subject site is designated as ‘Rural Area in the Regional Niagara Policy Plan;
- The proposed composting facility is to be located on lands designated as ‘Good General Agriculture’ in the Town of Lincoln;
- The Official Plan also identifies portions of the subject site as a Deer Range, a High Potential Forest Resources Area, and a Bedrock Resource Area on Schedule 2 of the Official Plan
- The site is zoned as Agricultural (A) in the Town of Lincoln Zoning By-law
- The composting facility is not permitted use in the Regional Plan, Official Plan or Zoning By-law, therefore amendments are required to all three documents;
- The land is defined as Prime Agricultural by the province
- MDS criteria do not apply to the proposed use;
- The province is promoting increased waste diversion to meet provincial objectives, with specific interest in composting of organic waste

The Planning report ultimately concluded that the proposed use was consistent with the PPS, was compatible with surrounding land uses, there were no reasonable alternative locations, it would meet the intent of the Regional and Municipal policies, and it would not negatively impact agricultural, natural heritage or aggregate resource areas.”<sup>141</sup>

In Section 3.3 Town of Lincoln Official Plan policy statement, Section 5.3.3 (b) there is statement that it should “*discourage development in Woodland Improvement Act forest, forests and woodlots and plantations except in consultation with the Ministry of Natural Resources.*” *And that the applicant’s proposed composting facility complies with this policy as it retains the forested area of the side in its entirety and also recommends a buffer for added protection.*”<sup>142</sup>

---

<sup>140</sup> Province looking shady on solar farm front By Nathan Taylor, Orillia Packet & Times, Tuesday, July 31, 2012.

<sup>141</sup> Peer Review for Composting Facility Applications Auguste, 14, 2006, p. 10

<sup>142</sup> Peer Review for Composting Facility Applications Auguste, 14, 2006, p. 20.

The problem with this report is that, it would seem that some background information had not been rechecked, as the Woodland Improvement Act had been repealed, according to the provincial government in 1998<sup>143</sup>. With this Act having been repealed, this places the entire report in question. And with the affiliation between Stantec, the repetitive planning recommendations of Stantec and its affiliation with Samsung<sup>144</sup> (Green Energy Act), it would seem that, although a peer review had been completed all information had not been fully presented and/or evaluated. Stantec, as a planning and consulting company has been involved throughout Ontario with various municipal plans. Stantec is an international company with its head office in Edmonton Alberta and it was involved with planning for California U.S.<sup>145</sup>

In this report, it is also stated that 3 different documents would have to be amended to facilitate a composting site and that this facility would be allowed on agricultural land. If it is this simple to amend 3 official plans/documents and rezone prime agricultural land for a different development, it would seem that all plans are open to arbitrary abuse.

One might wonder why the majority of the municipalities in Ontario all look identical, with interlocking sidewalks on the Main Streets, why there are intersection lane barriers, (California planning), that have to be removed because of damage to municipal equipment, crosswalks that are interlocking brick, street lights that look like antique black street lamps of yesteryear, street signs that are the same style as the street lamps but have blue backgrounds with white lettering? All are identical are the designs/municipal plans. For example, Orangeville could be confused with the majority of municipalities throughout Ontario.

With this being the case, all “official plans” should be scrutinized and all information should be, not only peer reviewed, but considered open to criticism/re-evaluation and not necessarily be accepted at face value.

---

<sup>143</sup> Woodlands Improvement Act, R.S.O. 1990, CHAPTER W.10, Note: This Act was repealed on December 18, 1998. See: 1998, c. 18, Sched. I, s. 65.

<sup>144</sup> FIELD SURVEY SUMMARY AND RECOMMENDED WORKPLAN SAMSUNG RENEWABLE ENERGY INC. SOLAR PV ENERGY PROJECT – PHASE 2 (KINGSTON), Prepared for: Samsung Renewable Energy Inc., 55 Standish Court, Mississauga, ON L5R 4B2, Prepared by: Stantec Consulting Ltd., 1 – 70 Southgate Drive, Guelph, Ontario N1G 4P5

<sup>145</sup> Strategic Mergers Drive Stantec's Plan  
[http://california.construction.com/california\\_construction\\_projects/2011/0606\\_StrategicMergers.asp](http://california.construction.com/california_construction_projects/2011/0606_StrategicMergers.asp)

## THE BRITISH NORTH AMERICA ACT, 1867 (BNA)

Under section 3 of the Planning Act, the Provincial Policy Statement is enacted. Under this document, there is a statement of: "The Provincial Policy Statement provides policy direction on matters of *"provincial interest related to land use planning and development."* Provincial Interests only involve what belongs to the Province as a quasi corporation and does not involve the private right, title or interest established in private property.

The statement "in the province" can be deceiving. Like the Municipalities the province is merely a "corporation". It was created by "letters patent" and it governs its own constitution and creates laws (by-laws) just like any other corporation. The Lieutenant Governor<sup>146</sup> is the quasi "president" of the provincial corporation, whereas the Premier could be considered the CEO of the company. These provisions are in the British North America Act, 1867 (BNA), under "executive power"<sup>147</sup> which is the same as any other corporation.

---

### <sup>146</sup> Lieutenant Governor Act

R.S.O. 1990, CHAPTER L.13

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

No amendments.

#### **Powers vested in Lieutenant Governor**

**1.** In matters within the jurisdiction of the Legislature, all powers, authorities and functions that, in respect of like matters, were vested in or exercisable by the governors or lieutenant governors of the several provinces now forming part of Canada or any of the provinces, under commissions, instructions or otherwise, at or before the passing of the *Constitution Act, 1867*, are, so far as the Legislature has power thus to enact, vested in and exercisable by the Lieutenant Governor or Administrator for the time being of the Province of Ontario, in the name of Her Majesty or otherwise as the case requires, subject always to the Royal Prerogative as heretofore. R.S.O. 1990, c. L.13, s. 1.

#### **Power to remit sentences**

**2.** Section 1 shall be deemed to include the power of commuting and remitting sentences for offences against the laws of Ontario or offences over which the legislative authority of the Province of Ontario extends. R.S.O. 1990, c. L.13, s. 2.

#### **Lieutenant Governor a corporation sole**

**3.** The Lieutenant Governor for the time being is a corporation sole, and all bonds, recognizances and other instruments by law required to be taken to the Lieutenant Governor in his or her public capacity shall be taken to him or her by the name of the office of Lieutenant Governor, and may be sued for and recovered by him or her by the name of the office of Lieutenant Governor, and the same shall not in any case go to or vest in the personal representatives of the Lieutenant Governor during whose government the same were so taken. R.S.O. 1990, c. L.13, s. 3.

#### **Power to appoint deputies for certain purposes**

**4.** The Lieutenant Governor may, with the advice and consent of the Executive Council, from time to time appoint any person or persons, jointly or severally, to be his or her deputy or deputies for Ontario or any part or parts thereof, for the purpose of executing marriage licences, money warrants and commissions under any Act of the Legislature. R.S.O. 1990, c. L.13, s. 4.

---

<sup>147</sup> The British North America Act, 1867 V. *PROVINCIAL CONSTITUTIONS*

*EXECUTIVE POWER Appointment of Lieutenant Governors of Provinces*

58. For each Province there shall be an Officer, styled the Lieutenant Governor, appointed by the Governor General in Council by Instrument under the Great Seal of Canada.

*Tenure of Office of Lieutenant Governor*

59. A Lieutenant Governor shall hold Office during the Pleasure of the Governor General; but any Lieutenant Governor appointed after the Commencement of the First Session of the Parliament of Canada shall not be removable within Five Years from his Appointment, except for Cause assigned, which shall be communicated to him in Writing within One Month after the Order for his Removal is made, and shall be communicated by Message to the

The BNA includes the corporate constitution of the provinces, laying out the executive from the president to the CEO and staff. When something is “in the province” that means that it is something that is owned/belongs to, or is the property of the province/corporation. The same is said for the Municipal corporations. They are created by Letters Patent and then become separate from the province leaving them to create by-laws for what belongs to the municipal corporation. The statement that the municipal corporations are "creatures of the province" means that the province has the

---

*Senate and to the House of Commons within One Week thereafter if the Parliament is then sitting, and if not then within One Week after the Commencement of the next Session of the Parliament.*

*Salaries of Lieutenant Governors*

60. The Salaries of the Lieutenant Governors shall be fixed and provided by the Parliament of Canada.<sup>(30)</sup> (30) *Provided for by the Salaries Act, R.S.C. 1985, c. S-3.*

*Oaths, etc., of Lieutenant Governor*

61. Every Lieutenant Governor shall, before assuming the Duties of his Office, make and subscribe before the Governor General or some Person authorized by him Oaths of Allegiance and Office similar to those taken by the Governor General.

*Application of Provisions referring to Lieutenant Governor*

62. The Provisions of this Act referring to the Lieutenant Governor extend and apply to the Lieutenant Governor for the Time being of each Province, or other the Chief Executive Officer or Administrator for the Time being carrying on the Government of the Province, by whatever Title he is designated.

*Appointment of Executive Officers for Ontario and Quebec*

63. The Executive Council of Ontario and of Quebec shall be composed of such Persons as the Lieutenant Governor from Time to Time thinks fit, and in the first instance of the following Officers, namely, — the Attorney General, the Secretary and Registrar of the Province, the Treasurer of the Province, the Commissioner of Crown Lands, and the Commissioner of Agriculture and Public Works, with in Quebec the Speaker of the Legislative Council and the Solicitor General.<sup>(31)</sup> (31) *Now provided for in Ontario by the Executive Council Act, R.S.O. 1990, c. E.25, and in Quebec by the Executive Power Act, R.S.Q. 1977, c. E-18.*

*Executive Government of Nova Scotia and New Brunswick*

64. The Constitution of the Executive Authority in each of the Provinces of Nova Scotia and New Brunswick shall, subject to the Provisions of this Act, continue as it exists at the Union until altered under the Authority of this Act.<sup>(32)</sup> (32) *A similar provision was included in each of the instruments admitting British Columbia, Prince Edward Island, and Newfoundland. The Executive Authorities for Manitoba, Alberta and Saskatchewan were established by the statutes creating those provinces. See the notes to section 5, supra.*

*Powers to be exercised by Lieutenant Governor of Ontario or Quebec with Advice, or alone*

65. All Powers, Authorities, and Functions which under any Act of the Parliament of Great Britain, or of the Parliament of the United Kingdom of Great Britain and Ireland, or of the Legislature of Upper Canada, Lower Canada, or Canada, were or are before or at the Union vested in or exercisable by the respective Governors or Lieutenant Governors of those Provinces, with the Advice or with the Advice and Consent of the respective Executive Councils thereof, or in conjunction with those Councils, or with any Number of Members thereof, or by those Governors or Lieutenant Governors individually, shall, as far as the same are capable of being exercised after the Union in relation to the Government of Ontario and Quebec respectively, be vested in and shall or may be exercised by the Lieutenant Governor of Ontario and Quebec respectively, with the Advice or with the Advice and Consent of or in conjunction with the respective Executive Councils, or any Members thereof, or by the Lieutenant Governor individually, as the Case requires, subject nevertheless (except with respect to such as exist under Acts of the Parliament of Great Britain, or of the Parliament of the United Kingdom of Great Britain and Ireland,) to be abolished or altered by the respective Legislatures of Ontario and Quebec.<sup>(33)</sup> (33) *See the notes to section 129, infra.*

*Application of Provisions referring to Lieutenant Governor in Council*

66. The Provisions of this Act referring to the Lieutenant Governor in Council shall be construed as referring to the Lieutenant Governor of the Province acting by and with the Advice of the Executive Council thereof.

*Administration in Absence, etc., of Lieutenant Governor*

67. The Governor General in Council may from Time to Time appoint an Administrator to execute the Office and Functions of Lieutenant Governor during his Absence, Illness, or other Inability.

*Seats of Provincial Governments*

68. Unless and until the Executive Government of any Province otherwise directs with respect to that Province, the Seats of Government of the Provinces shall be as follows, namely, — of Ontario, the City of Toronto; of Quebec, the City of Quebec; of Nova Scotia, the City of Halifax; and of New Brunswick, the City of Fredericton.

authority to dissolve the municipal corporations, but does not have the authority to dictate, as the municipal corporations are to listen to their shareholders, being the residents. Regarding the statement of "in the province/municipality" being the "property of the province" a few examples are:

*"Acquisition of lands in accordance with provisions of plan*

*25. (1) ... the council may, ..., acquire and hold land within the municipality for the purpose of developing any feature of the official plan, and any land so acquired or held may be sold, leased or otherwise disposed of when no longer required. R.S.O. 1990, c. P.13, s. 25 (1); 1994, c. 23, s. 17; 1996, c. 4, s. 15."<sup>148</sup>*

*"30. Vesting of the property in the Corporation. — All property acquired before the establishment of the Corporation, shall vest in the Corporation and all income derived and expenditure incurred in this behalf shall be brought into the books of the Corporation."<sup>149</sup>*

*"8. (1) Upon the commencement of this Act—  
(a) all land and other property of every kind, including things in action, vested in or deemed to be vested in the State, specified in the Schedule shall, by virtue of this Act, and without further assurance, be transferred to, and shall vest in, the Corporation,"<sup>150</sup>*

*"That the Act of Parliament of Canada, 31 Vict., c. 60, recognizes the view, and, while it provides for the regulation and protection of the fisheries, it does not interfere with private rights, only authorizing the granting of leases in fresh water rivers, where such rights have not already accrued, and that any lease granted by the Minister of Marine and Fisheries to fish in fresh water rivers which are not the property of the Dominion or in which the soil is not in the Dominion is illegal,"<sup>151</sup>*

Please note the above statement of "in which the soil is not in the Dominion" and what does section 92 (13). *Property and Civil Rights in the Province*. (16). *Generally all Matters of a merely local or private Nature in the Province*. Private property is not "in" or does not belong to the Dominion and private property is not "in" or does not belong to the provincial/municipal corporations. And to truly understand how this works, one should look to section 12 of the BNA.

*All Powers under Acts to be exercised by Governor General with Advice of Privy Council, or alone*

---

<sup>148</sup> Planning Act, R.S.O. 1990, CHAPTER P.13

<sup>149</sup> THE EMPLOYEES' STATE INSURANCE ACT, 1948

<sup>150</sup> Minister of Finance (Incorporation) Act, Laws of Trinidad and Tobago, 1973 p. 6

<sup>151</sup> Constitution of Canada. The B.N.A. Act, 1867; Its Interpretation, etc., p. 165

12. All Powers, Authorities, and Functions which under any Act of the Parliament of Great Britain, or of the Parliament of the United Kingdom of Great Britain and Ireland, or of the Legislature of Upper Canada, Lower Canada, Canada, Nova Scotia, or New Brunswick, are at the Union vested in...<sup>152</sup>

The entire idea of the Union or amalgamation under one superior corporate entity was the provinces' goal. That's even expressed in the preamble of the BNA.

*"WHEREAS the Provinces of Canada, Nova Scotia, and New Brunswick have expressed their Desire to be federally united into One Dominion under the Crown of the United Kingdom of Great Britain and Ireland, with a Constitution similar in Principle to that of the United Kingdom"*<sup>153</sup>

In "Mercer v. Attorney General of Ontario":

*"We now come to the provisions respecting the provincial constitutions. They are specific; the others are general. The effect, therefore, was to create each province a body politic—a quasi corporation,"*<sup>154</sup>

As the provinces are corporations, now we must to look at what exactly is the provincial property.

*Property in Lands, Mines, etc.*

109. All Lands, Mines, Minerals, and Royalties belonging to the several Provinces of Canada, Nova Scotia, and New Brunswick at the Union, and all Sums then due or payable for such Lands, Mines, Minerals, or Royalties, shall belong to the several Provinces of Ontario, Quebec, Nova Scotia, and New Brunswick in which the same are situate or arise, subject to any Trusts existing in respect thereof, and to any Interest other than that of the Province in the same.<sup>155</sup>

---

<sup>152</sup> BNA, 1867 All Powers under Acts to be exercised by Governor General with Advice of Privy Council, or alone 12. All Powers, Authorities, and Functions which under any Act of the Parliament of Great Britain, or of the Parliament of the United Kingdom of Great Britain and Ireland, or of the Legislature of Upper Canada, Lower Canada, Canada, Nova Scotia, or New Brunswick, are at the Union vested in or exercisable by the respective Governors or Lieutenant Governors of those Provinces, with the Advice, or with the Advice and Consent, of the respective Executive Councils thereof, or in conjunction with those Councils, or with any Number of Members thereof, or by those Governors or Lieutenant Governors individually, shall, as far as the same continue in existence and capable of being exercised after the Union in relation to the Government of Canada, be vested in and exercisable by the Governor General, with the Advice or with the Advice and Consent of or in conjunction with the Queen's Privy Council for Canada, or any Members thereof, or by the Governor General individually, as the Case requires, subject nevertheless (except with respect to such as exist under Acts of the Parliament of Great Britain or of the Parliament of the United Kingdom of Great Britain and Ireland) to be abolished or altered by the Parliament of Canada.<sup>(7)</sup> (7) See the note to section 129, infra.

<sup>153</sup> BNA, 1867.

<sup>154</sup> Mercer v. Attorney General for Ontario, 5 S.C.R. 538, at [542]

<sup>155</sup> (57) Manitoba, Alberta and Saskatchewan were placed in the same position as the original provinces by the Constitution Act, 1930, 20-21 Geo. V, c. 26 (U.K.). These matters were dealt with in respect of British Columbia by the British Columbia Terms of Union and also in part by the Constitution Act, 1930.

Under section 109 the Provinces own the revenues that can be created from public/Crown lands being sold or used to create a revenue (i.e. timber licenses on Crown land), the mines and minerals that are reserved in the land patents, and the royalties from things like escheats. Private property is covered under the “*subject to any Trusts existing in respect thereof, and to any Interest other than that of the Province in the same*”. The draft of the BNA was created at the Quebec Conference in 1864. In that document was the instruction and the intent of section 109. It stated:

*"56. All lands, mines, minerals and royalties vested in Her Majesty in the Provinces of Upper Canada, Lower Canada, Nova Scotia, New Brunswick and Prince Edward Island, for the use of such Provinces, shall belong to the Local Government of the territory in which the same are so situate; subject to any trusts that may exist in respect to any of such lands or to any interest of other persons in respect of the same."<sup>156</sup>*

This meaning that the province cannot interfere with any other persons "interests" and/or any "trusts" not of the province. “*The Queen in right of Ontario has no right, title or interest in and to the lands described...*”<sup>157</sup>. The Queen/Crown has removed the crown domain through the letters patent, ergo there is no authority to be transferred to the province/municipal corporations. The definition of "interests" is:

"INTEREST (Black's Law Dictionary, 9<sup>th</sup> 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."

Section 110.<sup>158</sup> all the debts of the provinces was transferred to the Federal Government at the time of union, so that the provinces wouldn't have the liability. But the provinces were allowed to utilize the assets that were derived from those debts. So if there was an outstanding debt that was created because of something constructed for the province, the Federal Government took on the debt, but the province got to use whatever was constructed to create revenue.

---

Newfoundland was also placed in the same position by the Newfoundland Act, 12-13 Geo. V1, c. 22 (U.K.). With respect to Prince Edward Island, see the Schedule to the Prince Edward Island Terms of Union.

<sup>156</sup> Quebec Conference - The Seventy-Two Resolutions - [authenticated October 29, 1864]

<sup>157</sup> Ontario (Attorney General) v. Rowntree Beach Assn., 1994, Conclusion, Section [123]

<sup>158</sup> BNA, 1867. *Assets connected with Provincial Debts* 110. *All Assets connected with such Portions of the Public Debt of each Province as are assumed by that Province shall belong to that Province.*

Section 113<sup>159</sup>, were the entities that, when Quebec and Ontario were united, prior to the BNA, created and received revenues from. They got to keep these entities and it was up to those two provinces to decide what they were going to do with them.

Section 117<sup>160</sup> “*The several Provinces shall retain all their respective Public Property not otherwise disposed of in this Act, subject to the Right of Canada to assume any Lands or Public Property required for Fortifications or for the Defence of the Country.*” is very telling.

“*Since Magna Carta the estate of a subject in lands or buildings has been protected against the prerogative of the Crown.*”<sup>161</sup> This statement was from A.G. v. DeKeyer’s Royal Hotel, in 1920. There were provisions that “private property” could only be used or regulated with fair compensation being paid, even during a time of war. This supports the difference from “provincial/public property” and “private property” and the need for a statement that the General Government could use “provincial property” (owned by the province) at times of war, for the defence of the Province and the Dominion. There was/is a separate statute in relation to private property<sup>162</sup>.

Section 125<sup>163</sup> says that federal property and provincial property are exempt from taxation...again, it stands to reason that if we are paying taxes that we must be owners of private property. In 1883 the Privy Council in Mercer explains.

*“There is only one clause in the Act by which any sources of revenue appear to be distinctly reserved to the Provinces, viz., the 109<sup>th</sup> section: -- “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..., 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 Provincial Legislatures are not, in terms, here mentioned; but the words “shall*

---

<sup>159</sup> *Assets of Ontario and Quebec*

113. *The Assets enumerated in the Fourth Schedule to this Act belonging at the Union to the Province of Canada shall be the Property of Ontario and Quebec conjointly. THE FOURTH SCHEDULE, ASSETS TO BE THE PROPERTY OF ONTARIO AND QUEBEC CONJOINTLY, Upper Canada Building Fund., Lunatic Asylums., Normal School., Court Houses in Aylmer.Montreal.Kamouraska. } Lower Canada Law Society, Upper Canada., Montreal Turnpike Trust., University Permanent Fund., Royal Institution., Consolidated Municipal Loan Fund, Upper Canada., Consolidated Municipal Loan Fund, Lower Canada., Agricultural Society, Upper Canada., Lower Canada Legislative Grant., Quebec Fire Loan., Temiscouata Advance Account., Quebec Turnpike Trust., Education—East., Building and Jury Fund, Lower Canada., Municipalities Fund., Lower Canada Superior Education Income Fund.*

<sup>160</sup> *Provincial Public Property*

117. *The several Provinces shall retain all their respective Public Property not otherwise disposed of in this Act, subject to the Right of Canada to assume any Lands or Public Property required for Fortifications or for the Defence of the Country.*

<sup>161</sup> A.G. v. DeKeyer’s Royal Hotel, 1920, p. 28

<sup>162</sup> Defence Act, 1842.

<sup>163</sup> *Exemption of Public Lands, etc. 125. No Lands or Property belonging to Canada or any Province shall be liable to Taxation.*

*belong to the several Provinces,” are obviously equivalent to those used in Section 126, “are by this Act reserved to the respective Governments or Legislatures of the Provinces.” That they do not apply to all lands held as private property at the time of Union seems clear from the corresponding language of Section 125, “No lands or property belonging to Canada, or any Province, shall be liable to taxation:” where public property only must be intended. They evidently means lands, &c., which were, at the time of the Union, in some sense, and to extent, publici juris; and, in this respect, they receive illustration from another section, the 117<sup>th</sup> (which their Lordships do not regard as otherwise very material), “The several Provinces shall retain all their respective public property, not otherwise disposed of by this Act, subject to the right of Canada to assume any lands or public property required for fortifications, or for the defence of the country...The extent of the Provincial power of legislation over “property and civil rights in the Province” cannot be ascertained without at the same time ascertaining the power and rights of the Dominion under Sections 91 and 102, and therefore cannot throw much light upon the extent of the exceptions and reservations now in question...But it was insisted, that a line was drawn at the date of the Union, and that the words were not sufficient to reserve any lands afterwards escheated, which at the time of the Union were in private hands, and did not then belong to the Crown.*

*If the word “lands” had stood alone, it might have been difficult to resist the force of this argument. It would have been difficult to say the right of the lord paramount to future escheats was “land belonging to him,” at a time when the fee simple<sup>164</sup> was still in the freeholder<sup>165</sup>. If capable of being described as an interest in land, it was certainly not a present proprietary right<sup>166</sup> to the land itself. The word “lands,” however, does not here stand alone...It is true (as observed in some of the opinions of the majority of the Judges in the Supreme Court of Canada) that this word, royalties, in mining grants or leases (whether granted by the Crown or by a subject),...Another Nova Scotia Act of 1849, surrendering to the Provincial Legislature the territorial and casual revenues of the Crown arising within the Province, was also referred to by Mr. Justice Gwynne. But the terms of that Act were very similar to those now under consideration; and if “royalties,” in the context which we have here to consider, do not necessarily and solely mean reddenda in mining grants or leases, neither may they in that statute...The general subject of the whole section is of a high political nature; it is the attribution of Royal*

---

<sup>164</sup> “Fee Simple the largest interest in land known to our law, for it is the entire property therein.” Dictionary of Jurisprudence, J.J.S. Wharton, Esq., 1847-48, pg. 263

<sup>165</sup> 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 hi, according to certain rules elsewhere explained. 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 posses 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 Jurisprudence, J.J.S. Wharton, Esq., 1847-48, pg. 268

<sup>166</sup> He who has a “property” in anything. of Jurisprudence, J.J.S. Wharton, Esq., 1847-48, pg. 550

*territorial rights, for purposes of revenue and government, to the Provinces in which they are situate, or arise.”<sup>167</sup>*

Section 143<sup>168</sup>, the property referred to is “*Records, Books, and Documents of the Province of Canada as he thinks fit shall be appropriated and delivered either to Ontario or to Quebec*”, so these two provinces would know what they own and it is only the documents and even that is questionable as wills, deeds, etc., are laws unto themselves and are created for the people by the people...so it isn't really the documents and it is not necessarily what those documents pertain to.

Point in fact from the Mercer case Provincial Property is as follows:

*“Now, what lands, mines, minerals and royalties can with propriety, having regard to the manner in which those words have been used in other legislative language above quoted, be said to have belonged to the several provinces of Canada, Nova Scotia and New Brunswick at the Union? None at all, it is plain, in any other sense than that the revenues arising from such properties belonging to the Crown had been made part of the consolidated funds of the old provinces now constituting the Dominion of Canada, for the public uses of these provinces. “Lands” which had been already granted by the Crown and were at the time of the Union vested in the grantees thereof, or in their heirs or assigns, cannot with any degree of propriety be said to have been lands “belonging to the several provinces of, &c., &c., at the Union.”... and within the limits of which province the property now in question is situate, declared by 12 Vic., c. 31, that the term “public lands” in the province, which is but an equivalent expression to “lands belonging to the provinces at the Union” did not comprehend lands accruing to the Crown by escheat or forfeiture, and that they did comprehend only the ungranted lands of the Crown in the province, in which sense they have ever since been understood. These waste ungranted lands of the Crown, the revenues derived from which constituted part of the consolidated funds of the provinces before the Union, were, as we know, appropriated to the public uses of*

*[Page 707]*

*the provinces; but the lands so appropriated did not constitute all the ungranted lands of the Crown in the provinces. There were other lands of the Crown, the monies arising from the sale or other disposition of which did not form part of such consolidated funds; these lands were set apart and appropriated for the actual residence thereon and occupation thereof by certain Indian tribes by whom they were surrendered to and became vested in the Crown, and others were surrendered by the Indians to and vested in the Crown for the purpose of being*

---

<sup>167</sup> Mercer v. A. G. Ont. 1883, Privy Council

<sup>168</sup> Division of Records

143. The Governor General in Council may from Time to Time order that such and so many of the Records, Books, and Documents of the Province of Canada as he thinks fit shall be appropriated and delivered either to Ontario or to Quebec, and the same shall thenceforth be the Property of that Province; and any Copy thereof or Extract therefrom, duly certified by the Officer having charge of the Original thereof, shall be admitted as Evidence.<sup>(74)</sup>  
(74) Probably spent. Two orders were made under this section on January 24, 1868.

*granted by the Crown and that the monies arising therefrom should be applied for the benefit of the Indians. These lands are by item 24 of sec. 91, placed under the control of the Dominion Parliament. The custom in the grants by the Crown of these lands was the same as in the grants of all other Crown lands, namely, to reserve all mines and minerals, but the reservation thereof would accrue, as was provided with respect to the monies arising from the sale of the lands, to the benefit of the Indians for whose benefit the lands were set apart; such mines and minerals, or the royalties accruing from the disposition thereof, could not have been appropriated to the public uses of the provinces, 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 within the several provinces of Canada, Nova Scotia and New Brunswick, the revenues derived from which before and at the Union effected by the British North America Act had been surrendered by the Crown and made part of the consolidated funds of the provinces; and the words "mines, minerals and royalties" being in the same 109th sec. added to the word "lands," this latter word must there be construed in a limited sense, that is to say, as exclusive of the "mines and minerals."<sup>169</sup>*

Under section 92 (2) of the British North America Act, 1867 (BNA), the province has the authority to tax directly, and in having that authority it transfers that authority to the municipal corporation and it is collecting that tax as a revenue source for both the province and the municipal corporations. For example, from page 125 of *The British North America Act, 1867: Its Interpretation*, Joseph Doutre, Q.C.

*In *Severn v. The Queen* (2 Can. S. C. 77), Strong, J., held:-- "That, the Legislature of the Province of Ontario has no authority to raise a revenue from brewers by requiring them to take out licenses to carry on their business and dispose of their beer within the Province. (Overruling *Regina v. Taylor*, 36 U.C., Q.B., p. 201) The Chief Justice Richards said: That, under the B.N.A. Act of 1867, the power to regulate Trade and Commerce rests exclusively with the Dominion Parliament, as also the right to raise money by the mode of indirect taxation, except so far as the same may be expressly given to the Provincial Legislatures. That, making it necessary to take out and pay for a license to sell, by wholesale or retail, spirituous, fermented or other manufactured liquors, is raising money by the indirect mode of taxation. That, all authority given to the Provincial Legislatures to exercise the power of raising money by the indirect mode of taxation is contained in Sec. 92 of the B.N.A. Act, which gives power to legislate on the subject of: s.s. 8 Municipal institutions in the Province; s.s. 9. Shop, saloon, tavern, auctioneer and other licenses in order to the raising of a revenue, for provincial, local or municipal purposes. That it was not intended by the words "other licenses" to enlarge the powers referred to, beyond shop, saloon, and tavern licenses, in the direction of licenses to effect the general purposes of trade and commerce and the levying of indirect taxes, but rather to limit them to the licenses which might be required for objects which were purely municipal or local*

---

<sup>169</sup> Gwynne, J., at 706, *Supreme Court of Canada, Mercer v. Attorney General for Ontario*, 5 S.C.R. 538, Date: 1881-11-14

*in their character... I consider the power, now claimed, to interfere with the paramount authority of the Dominion Parliament in matters of trade and commerce and indirect taxation; and so pregnant with evil, and so contrary to what appears to me to be the manifest intention of the framers of the B.N.A. Act, that I cannot come to the conclusion that it is conferred by the language cited as giving that power. By the interpretation I give to the words "and other licenses," limiting them to the other licenses which are of a local and municipal character, and giving full force to the words, shop, saloon, tavern and auctioneer licenses, I think I carry out the intention of the B.N.A. Act and make all the powers harmonize."*

In other words, the province and the municipal corporations are only to license, and it is not meant to create massive regulation it is merely to license, shops, taverns, saloons and auctioneers. It would seem that they do not have the authority to expand this to permits to do things on private property such as permits from Conservation Authorities, Niagara Escarpment Committees, etc. The licenses for "shops, taverns, saloons and auctioneers" is a form of revenue, but that isn't to restrict these entities to the point that they cannot function as businesses.

92 (13) of the B.N.A. grants the province authority over its own property. It grants the province the ability to protect its property in private civil matters, to enter into civil contracts, and/or for the civil lists (servants). 92. (16) is all things merely local and private in nature in the province. There is speculation that the aforementioned sections are the retention of the provincial government's ability to implement what is referred to as "good government"<sup>170</sup>. The ability for the province to implement "good government" was removed under the B.N.A. ergo the province has no authority to implement criteria pertaining to authority under the disguise of "good government." The province, not having authority<sup>171</sup> over private property cannot transfer authority to any other entities, be that corporations, counties, municipal corporations, etc., as the Crown alienated its authority and something that has been alienated cannot be transferred twice, to two different parties<sup>172</sup>.

---

<sup>170</sup> "There is a great difference, therefore, between the present and past position of these Provinces. Formerly they were Colonies of the Empire, and possessed Governors or Lieutenant Governors, who were the immediate representatives of the Crown in their Provinces. Now their chief Executive officers are members of the Colonial Administration staff, and are but Lieutenants of the Governor-General of Canada; and the Provinces are no longer Colonies, but Provinces of a Colony. Under the former Constitution they had, subject to Imperial authority, the right to make laws for the peace, order and good government of their Provinces; now their Legislative power is limited to a prescribed set of subjects; and though they are supreme within these Constitutional limits, it seems that they cannot go beyond them. Whether wisely or not, they surrendered a large portion of their rights to the Federal Government at Ottawa to be there determined upon. Any attempted assumption of authority beyond these subjects, if not vetoed by the Governor-General, is liable to be declared unconstitutional by the Provincial or by the Dominion Courts." A Manual of Government in Canada; or, the Principles and Institutions of our Federal and Provincial Constitutions, D. A. O'Sullivan, Esq., M.A., of Osgoode Hall, Barrister-at-law, 1879, p. 120-121

<sup>171</sup> It determines, in the most unequivocal manner, that the grant of a state is a contract ... and that it implies a contract not to re-assume the rights granted. *A fortiori*, the doctrine applies to a charter or grant from the king. Trustees of Dartmouth College v. Woodward, 4 Wheat. 518 1819. FORTIOA - (Black's Law Dictionary, 9<sup>th</sup> Edition, 2009, p. 725) – 1. Force. Refers to force used by an accessory to allow the principal to commit a crime. 2. Power, dominion, or jurisdiction. (same as 2. In the Dictionary of Jurisprudence, J.J.S. Wharton, Esq., 1847-48, pg. 264).

<sup>172</sup> To this grant, or this franchise, the parties are, the king, and the persons for whose benefit it is created, or trustees for them. The assent of both is necessary. The subjects of the grant are not only privileges and immunities,

“Civil Rights” of 92 (13).

Under Section 92 (13) it says:

*EXCLUSIVE POWERS OF PROVINCIAL LEGISLATURES*

*Subjects of exclusive Provincial Legislation*

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

13. *Property and Civil Rights in the Province.*<sup>173</sup>

And as Judge Gwynne states in Mercer:

*“...its design as to “properties,” as to every thing else which is appropriated to the use of the provinces and therefore placed under the legislative control of the provincial legislatures, is to specify those properties which being still, as before, vested in the Crown shall be under the exclusive control of the provincial legislatures.”*<sup>174</sup>

---

but property, or, which is the same thing, a capacity to acquire and to hold property in perpetuity. Certain obligations are created, binding both on the grantor and the grantees. On the part of the former, it amounts to an extinguishment of the king's prerogative to bestow the same identical franchise on another corporate body, because it would prejudice his prior grant. It implies, therefore, a contract not to re-assert the right to grant the franchise to another, or to impair it.... And a grant of franchises is not, in point of principle, distinguishable from a grant of any other property. Trustees of Dartmouth College v. Woodward, 4 Wheat. 518 1819.

<sup>173</sup> Gwynne, J., at 702, Supreme Court of Canada, Mercer v. Attorney General for Ontario, 5 S.C.R. 538, Date: 1881-11-14.

<sup>174</sup> Gwynne, J., at 702, Supreme Court of Canada, Mercer v. Attorney General for Ontario, 5 S.C.R. 538, Date: 1881-11-14

## CONCLUSION

From the beginning of this report we have shown how the Municipal Act, the Planning Act, and the Places to Grow Act, BNA, 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 Council/Directors, Planners, and By-law Inspectors is that of an individual or "natural person" and 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 or designate private land/property.

There is no mention in the Municipal Act that Municipal corporations have the ability to regulate private property, other than those entities that Municipal corporations have entered into agreements with and/or have created corporations under the Municipal Act, and 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, etc. The Planning Act restricts any implementation of designation and control onto properties that have been acquired by the Municipal corporations.

We have also referred to the BNA and the legislative capacity of the provincial government. With the statement from the AMO Annual Report, there should be great concern, within the municipal corporations, that perhaps AMO has lost sight of what it was created for, including the original mandate and obligations to the municipal corporations. The municipal corporations should be demanding over-sight and accountability in regards to AMO executive and board, particularly if the agreement reached between the Federal government and AMO was not thoroughly discussed and "official plans" were part and parcel of the agreement. And how is it that the provincial

plans are being implemented through an agreement involving the Federal Government and the Municipal corporations. This is beyond the purview of the province to interfere with this agreement or to dictate the “how to implement” and which criteria must be in the official plans that are part of the agreement.

Throughout this document we are hopeful, that with the information provided, that Municipal council/directors will take a step back and ask questions of their staff, advisors, consultants and their residents. It would seem that the pertinent information for making informed decisions, which is needed, is not being provided during the advisory process to either the municipal corporations elected officials, their staff or the advisors.

## GLOSSARY

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

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

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

**BELONG** (Black's Law Dictionary, 9<sup>th</sup> 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, 9<sup>th</sup> 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 statute, 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, 9<sup>th</sup> 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.

**ECONOMIC DEVELOPMENT SERVICES** - means, in respect of a municipality, the promotion of the municipality by the municipality for any purpose by the collection and dissemination of information and the acquisition, development and disposal of sites by the municipality for industrial, commercial and institutional uses. – Municipal Act, Section 1

**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, 9<sup>th</sup> 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 Socage 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, 9<sup>th</sup> 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 Jurispudence, J.J.S. Wharton, Esq., 1847-48, pg. 268.

INSTRUMENT (Black's Law Dictionary, 9<sup>th</sup> 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, 9<sup>th</sup> 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, 9<sup>th</sup> 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 messuages (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 craeft, 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, 9<sup>th</sup> 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, 9<sup>th</sup> 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., 11<sup>th</sup> ed. 1866) 2. The Certificate or document evidencing such permission.

MANDAMUS (Black’s Law Dictionary, 9<sup>th</sup> 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.

MUNICIPAL PROPERTY ASSET - means an asset of the municipality that is land, equipment or other goods. O. Reg. 599/06, s. 14 (2).

NON-STOCK CORPORATION (Black’s Law Dictionary, 9<sup>th</sup> 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, 9<sup>th</sup> Edition, 2009, p. 1313) – A basic rule, law, or doctrine

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

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

PROPERTY (Black’s Law Dictionary, 9<sup>th</sup> 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, 9<sup>th</sup> 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, 9<sup>th</sup> 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, 9<sup>th</sup> 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, 9<sup>th</sup> 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, 9<sup>th</sup> 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, 9<sup>th</sup> 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, 9<sup>th</sup> 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 Jurisprudence, J.J.S. Wharton, Esq., 1847-48, pg. 696

ZONE, ZONING, ZONES - *verb tr.v.* zoned, zon-ing, zones. 1. To divide into zones. 2. To designate or mark off into zones. 3. To surround or encircle with or as if with a belt or girdle. <http://www.thefreedictionary.com/zone>  
*verb [with object]* 1. designate (a specific area) for use or development as a particular zone in planning: *the land is zoned for housing* .  
<http://oxforddictionaries.com/definition/english/zone>

## 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.

#### Breach of trust by public officer

122. Every official who, in connection with the duties of his office, commits fraud or a breach of trust is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years, whether or not the fraud or breach of trust would be an offence if it were committed in relation to a private person.

#### 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.

Theft by person required to account

330. (1) Every one commits theft who, having received anything from any person on terms that require him to account for or pay it or the proceeds of it or a part of the proceeds to that person or another person, fraudulently fails to account for or pay it or the proceeds of it or the part of the proceeds of it accordingly.

Effect of entry in account

(2) Where subsection (1) otherwise applies, but one of the terms is that the thing received or the proceeds or part of the proceeds of it shall be an item in a debtor and creditor account between the person who receives the thing and the person to whom he is to account for or to pay it, and that the latter shall rely only on the liability of the other as his debtor in respect thereof, a proper entry in that account of the thing received or the proceeds or part of the proceeds of it, as the case may be, is a sufficient accounting therefor, and no fraudulent conversion of the thing or the proceeds or part of the proceeds of it thereby accounted for shall be deemed to have taken place.

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.

#### Extortion

346. (1) Every one commits extortion who, without reasonable justification or excuse and with intent to obtain anything, by threats, accusations, menaces or violence induces or attempts to induce any person, whether or not he is the person threatened, accused or menaced or to whom violence is shown, to do anything or cause anything to be done.

#### 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.

#### Intimidation

423. (1) Every one is guilty of an indictable offence and liable to imprisonment for a term of not more than five years or is guilty of an offence punishable on summary conviction who, wrongfully and without lawful authority, for the purpose of compelling another person to abstain from doing anything that he or she has a lawful right to do, or to do anything that he or she has a lawful right to abstain from doing,

(a) uses violence or threats of violence to that person or his or her spouse or common-law partner or children, or injures his or her property;

(b) intimidates or attempts to intimidate that person or a relative of that person by threats that, in Canada or elsewhere, violence or other injury will be done to or punishment inflicted on him or her or a relative of his or hers, or that the property of any of them will be damaged;

(c) persistently follows that person;

(d) hides any tools, clothes or other property owned or used by that person, or deprives him or her of them or hinders him or her in the use of them;

(e) with one or more other persons, follows that person, in a disorderly manner, on a highway;

(f) besets or watches the place where that person resides, works, carries on business or happens to be; or

(g) blocks or obstructs a highway.

#### 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.

## 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](http://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:

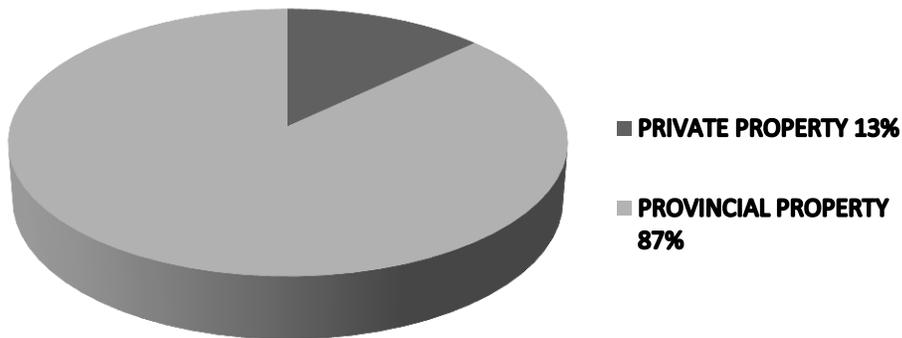
Kathleen O'Day Wynne

*Minister of Municipal Affairs and Housing*

Date made: October 23, 2012.

Fig. 1

STRATEGIC DIRECTIONS FOR MANAGEMENT OF ONTARIO CROWN LAND  
PL 1.01.01, Compiled by – Branch, Lands & Natural Heritage Section, Lands & Waters,  
Date Issued February 1993. 2.2 WHAT IS CROWN LAND? Crown Land, for the  
purpose of this document, is defined as those areas of Ontario over which MNR has  
stewardship responsibility under the authority of the Public Lands Act. These lands  
make up 87 percent of the province, over 937,000 km<sup>2</sup>, including 164,000 km<sup>2</sup> under  
water. The value of this Crown Land asset has been estimated at \$22 billion.  
[http://www.mnr.gov.on.ca/stdprodconsume/groups/lr/@mnr/@crownland/documents/document/mnr\\_e000072.pdf](http://www.mnr.gov.on.ca/stdprodconsume/groups/lr/@mnr/@crownland/documents/document/mnr_e000072.pdf), as of August 21, 2012.



Bios:

Tom Black – President, Ontario Landowners Association  
Algonquin College – Electronic Technology  
Current – Full Time Farmer  
Email – [thelandowner@bellnet.ca](mailto:thelandowner@bellnet.ca)  
Phone – 1-877-258-6108 or 1-613-831-2642

Jeff Bogearts – Vice President, Ontario Landowners Association  
Ontario Police College  
Toronto Police College  
CSC College – Computer Studies  
Current – Vice President of Business Development  
20-12 Electronic Recycling at tter.ca  
Email – [jeff@tter.ca](mailto:jeff@tter.ca)  
Phone – 1-613-284-2424

Elizabeth Marshall – Director of Research, Ontario Landowners Association  
<http://ontariolandowners.ca/>  
Director – Canadian Justice Review  
<http://www.canadianjusticereviewboard.ca/NEWSROOM.HTM>  
Associate Research Fellow – Meighen Institute for Public  
Affairs <http://www.meigheninstitute.org/index.php/team>

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:

MPAC: Its Creation and Its Conflicts, May, 2011©  
Response to the Ontario Bar Association: “Back Off Government: What Municipal Lawyers Need to Know about Crown Patents”, July, 2011 ©  
Why Complete Title Searches and Supporting Documents are Imperative, January 2012 ©  
TERANET/POLARIS: The Problems, the History and the Present, January 2012 ©  
Conservation Authorities: Legislation Out of Control, March 16, 2012 ©  
Mackie v. Niagara Escarpment Commission: Where Justice has Gone Wrong, June 2012 ©  
Tree Cutting By-Laws: What Municipal Councils Need to Know, October 2012 ©  
Property Standard By-Laws: What Municipal Councils Need to Know, November 2012©  
Official Plans: What Municipal Councils Need to Know, December 2012©  
The OSPCA Act: Hidden Denied Oversight. January 2013 ©  
The Municipal Councillor’s Guide: Making Ontario a Better Place to Grow, Information Seminar, 2013 ©