The Ontario Landowners Association
6588 Fallowfield Rd.,
Stittsville, ON
K2S 1B8
1-613-831-2642

Dear Sir/Madam:

Sir/Madam, this letter is to assist you in your efforts to ensure that by-laws you are implementing are not in conflict with a Superior Act of Parliament, a Crown Contract and/or Private Property Owner Rights. When implementing by-laws that are in conflict or frustrate these documents you and your staff can be found liable to tort action. This includes all members of staff, particularly, by-law inspectors, Clerks, CAOs, and the Council, as it is the function of the aforementioned to know and understand the implication of all Acts and any conflicts/frustrations that may arise.

The accompanying report explains the liability placed on Council and Staff through different pieces of legislation and tort action. It explains the Crown Grants/Letters Patent, that they are contracts and Acts of Parliament. Included is an explanation of what "property" is and how the British North America Act, the Charter of Rights, and applicable courts cases support "private property rights". During the transfer of authority from the Province to the Municipalities granting the Municipalities the authority to create by-laws, it would seem that the Province neglected to inform the Councils and Staff of these documents and/or what specifically the Municipalities had the authority to regulate.

Please accept this document in the nature of good will that it is intended. Upon completion of reading this report it is hoped that you will ensure that you do not violate these contracts or create conflict/frustrations of these Acts of Imperial Parliament. The information contained in this letter is for the "protection" of the Municipalities and the Counties, including the residents and we hope that you will consider this information helpful.

Regards

Tom Black, President
Ontario Landowners Association

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.

www.ontariolandowners.ca

OLA Position Paper:
Municipal By-laws ©
June, 2012

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

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Ontario Landowners Association
Municipal By-laws © June, 2011

Under Section 92, subsection 8 of the British North America Act (BNA), the provinces have the authority to grant permission to the Municipalities to create by-laws. When Municipalities 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, 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).[1]

We would also like to draw your attention to Section 9, of the Municipal Act,
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.[2]

As a "person"[3] has no right, title or interest in any private land/property/estate, in/on or to private land/property/estate, neither have the Municipalities, or the Counties, Provinces, etc., this includes personal property and real estate (land and buildings). As noted in the 1994 case of the *Attorney General of Ontario v. Rowntree Beach Association*, *"The Queen in right of Ontario has no right, title or interest in and to the lands described… "*[4] Any claim that the Municipalities, Counties, Provinces, etc., feel that they have can be deemed as Trespass of Chattel:

"Trespass of Chattel occurs when the tortfeasor intentionally deprives or interferes with the chattel owner's possession or exclusive use of personal property. The tortfeasor's possession or interference must be unauthorized, which means that the owner cannot have consented.

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[1] Municipal Act http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_01m25_e.htm#BK541 , as of June 30, 2011
[2] Ibid.
[3] Corporation: A legal entity created under the authority of a statue, which permits a groups of people, as shareholders, to apply to the government for an independent organization to be created, which then pursues set objectives, and is empowered with legal rights usually only reserved for individuals, such as to sue and be sued, own property, hire employees or loan and borrow money. June 28, 2011 Duhaime On-Line Legal Dictionary. http://www.duhaime.org/LegalDictionary.aspx
[4] Ontario (Attorney General) v. Rowntree Beach Assn., 1994, Conclusion, Section [123]

Dispossession: wrongfully taking away a person's property by force, trick of misuse of the law"[5]

"Intentional torts are any intentional acts that are reasonably foreseeable to cause harm to an individual, and that do so. Intentional torts have several subcategories, including torts against the person, including assault, battery, false imprisonment, intentional infliction of emotional distress, and fraud. Property torts involve any intentional interference with the property rights of the claimant(plaintiff). Those commonly recognized include trespass to land, trespass to chattels(personal property), and conversion."[6]

"Trenton (Town) v. B. W. Powers and Sons Ltd., [1969] S.C.R. 584
A judgment at trial granted a declaration that the respondent company was the owner of certain lands and ordered the appellant municipality to pay damages for trespass…The respondent's defence was that there was never any dedication of either piece of property by an individual or corporation who had title to do so."[7]

The private property owner is protected by his/her patented rights as the Letters Patent are a Superior Act of Parliament and the Municipalities can be in violation of the Superior Act as well as a Crown Contract. To ensure that Municipal Representatives, including staff, are informed as to what is entailed in "property" we are supplying the definition used in Manrell v. Canada, 2003 Section 24-25.

"In Manrell v. Canada 2003*, the Federal Court of Appeal adopted these words:*
"Property is sometimes referred to as a bundle of rights. This simple metaphor provides one helpful way to explore the core concept. It reveals that property is not a thing, but a right, or better, a collection of rights (over things) enforceable against others. Explained another way, the term property signifies a set of relationships among people that concern claims to tangible and intangible items.
"It is implicit in this notion of property that property must have or entail some exclusive right to make a claim against someone else."[8]

If a neighbor of the privately owned property feels that he/she has been "put upon", it is for them to seek their own tort action, it is not for a municipality to abrogate from one neighbour's rights in deference of another neighbour. Please see Section 15 of the Charter:

"*Equality Rights*
Equality before and under law and equal protection and benefit of law

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[5] Tort and Personal Injury Law by William R. Buckley and Cathy J. Okrent, Chapter 6, p. 1888
[6] Wikipedia the Free Encyclopedia, as of June 30, 2011 http://en.wikipedia.org/wiki/Tort
[7] Trenton (Town) v. B. W. Powers and Sons Ltd., [1969] S.C.R. 584 1:para 1
[8] Manrell v. Canada 2003, the Federal Court of Appeal, Sections [24-25]

15. *(1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination …"*[9]

"In political as in civil law, in the absence of any provision specially applicable to the subject, recourse must be had to the common law, to ascertain the relations between the government and the governed."[10]

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

This is out side of the ability of the Municipality. It is also not for a Municipality or any other entity to create legislation, by-laws, regulations, infringements, conditions, etc., without the property owner's consent, as this is a violation of the property owner's absolute rights, as expressed in Rowland v. Edmonton.

"Supreme Court of Canada, Rowland v. Edmonton (City), (1915), 50 S.C.R. 520 Date: 1915-02-02

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

There is no consent proved and the law cannot be construed as depriving him of his right in connection therewith."[11]

"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,"[12]

"…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."[13]

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[9] The Constitution Act, 1982.
[10] Hon. Mr. Loranger, QC. at 605, Supreme Court of Canada, Mercer v. Attorney General for Ontario, 5 S.C.R. 538, Date: 1881-11-14
[11] Supreme Court of Canada, Rowland v. Edmonton (City), (1915), 50 S.C.R. 520 End Page: 532-33
[12] Gwynne, J., at 706, Supreme Court of Canada, Mercer v. Attorney General for Ontario, 5 S.C.R. 538, Date: 1881-11-14
[13] Gwynne, J., at 702, Supreme Court of Canada, Mercer v. Attorney General for Ontario, 5 S.C.R. 538, Date: 1881-11-14

This is supported by Blackstone, in regards to Eminent Domain.:

"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…"[14]

In regards to the "Legislated Authority" for the Municipalities/Counties 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 the right to make by-laws. It would seem, their authority to create Letters Patent to incorporate a new municipality and the authority to create contracts with the Municipalities (92 (16) BNA), is the limited authority the Province has in regards to the Municipalities. That being said, the province has left the Municipalities/Counties to create by-laws, knowing that these types of by-laws cannot be up-held in the courts, leaving the Municipalities/Counties (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.

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.[15]

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

(local and private nature are the "private nature" to the province, this does not include any private interests not of the province, see section 109 BNA.)

"Whatever may have originally been the importance more or less great of their general relations, the idea that prevailed was to have the interests common to all the provinces managed by the general government and to

[14] Blackstone Commentaries, 2:138-9
[15] Ibid.
[16] British North America Act, 1867

leave the provinces in possession of their particular government for the internal management of their private interests."[17]

In conjunction with Section 14 of the Municipal Act and the implications of creating by-laws, etc., one must understand the definition of Crown Grants/Letters Patent. To explain further in regards to the Crown Grants, we refer you to the "Guide to the Federal Real Property Act":

Guide to the "Federal Real Property Act"
"Crown grant" is defined as:
a grant by letters patent under the Great Seal as referred to in paragraph 5(1)(a) of this Act;
an instrument of grant under paragraph 5(1)(b);
a provincial conveyancing instrument under subsection 5(2);
a conveyancing instrument used in a foreign jurisdiction under subsection 5(3);
a lease under subsection 5(4);
a plan used to grant real property under section 7;
a notification under the Territorial Lands Act*; and*
any other document by which federal real property may be granted. The definition extended the previous definition of "grant" under the Public Lands Grants Act*. The previous definition limited Crown grants to those conveying a fee simple or equivalent estate in real property.*
" "grant" means letters patent under the Great Seal, a notification and any other instrument by which public lands may be granted in fee simple or for an equivalent estate."
"Real property" is defined as land, mines, minerals, buildings, and fixtures on, above or below the surface, and any interest therein, both in Canada and abroad. The definition includes both legal interests in land, such as estates, and physical interests in land, such as mines and minerals."
"The definition extended the previous definition of "grant" under the Public Lands Grants Act*. The previous definition limited Crown grants to those conveying a fee simple or equivalent estate in real property." Letters patent have been defined as "**writing of the sovereign, sealed with the Great Seal, whereby a person or company is entitled to do acts or enjoy privileges which could not be done or enjoyed without such authority**."*[18]

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

"That the Acts of the Legislature of Nova Scotia were not retrospective, and must be so construed as not to disturb or take away the precedence given

[17] Hon. Mr. Loranger, QC. at 618, Supreme Court of Canada, Mercer v. Attorney General for Ontario, 5 S.C.R. 538, Date: 1881-11-14
[18] Guide to the Federal Real Property Act, 1992. as of June 28, 2011 Section 2: 3 Intrepretations and Definitions , http://www.tbs-sct.gc.ca/pubs_pol/dcgpubs/TB_G3/reg-1-eng.asp#1

by the Patent issued to the respondent;…That the British North America Act, 1867, does not, either expressly, or by inference, divest Her Majesty of this branch of her prerogative, and confer it upon the Provincial Legislatures, or the Lieutenant Governor of the Provinces."

Taking into consideration the Province's interpretation of having legislative authority over the "property and civil rights" we feel that, in the best interest of the Municipalities, you should also be made aware of what is encompassed in that "purported authority". We would direct you to Section 92 of the BNA, sub-section 13. To fully understand the interpretation of the BNA one must seek out a number of court cases and papers. Suffice it to say that the Province only had legislative authority over any interests that were transferred from the Dominion, in Section 109 of the BNA. This does not include "Private Land/Property/Estates".

Based on section 109 of the BNA, which is constitutional law, and is part of our Constitution and Charter, Section 109 limits the provincial power to implement legislation, regulation, policy, etc., only on "public" or "Crown Land" and "public/Crown interests".

"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 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"[19]

Ministry legal councel have asserted that under Secion 92 of the BNA they have the "authority"[20] over "property and civil rights", whereas Section 109 states that there can be no control over *"any Trusts existing in respect thereof, and to any Interest other than that of the Province in the same."*[21]

Reference is made to the "civil rights" section of Section 92, sub-section 13, the "civil rights" referred to, were strictly so that the Province had authority over the property that was transferred to them and that it would have the authority to seek redress to protect their claim of ownership of Crown land/interest and Public land/interest. It was also implemented so that the Province had the authority to create contracts and to issue their own Letters Patent.

> *"But from the creation of the province it is clear that any interests disposed of by the Dominion would automatically come under its exclusive jurisdiction through the force of sec. 92 of the Confederation Act."* [22]

Property Rights:

"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

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[19] Gwynne, J., at 706, Supreme Court of Canada, Mercer v. Attorney General for Ontario, 5 S.C.R. 538, Date: 1881-11-14

[20] Her Majesty the Queen v. Robert Charles Mackie, July 2010, Section 5

[21] British North America Act, 1867.

[22] A.G. for Alberta v. Huggard Assets Ltd., [1951] S.C.R. 427 p. 441

any degree of propriety be said to have been lands “belonging to the several provinces of, &c., &c., at the Union,”[23]

“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”[24]

Civil Rights:

GWYNNE, J.:

“By this bill it was recited among other things as follows:—

> Whereas your Majesty has been most graciously pleased to declare to your faithful Canadian Commons, in provincial parliament assembled, your Majesty’s gracious desire to owe to the spontaneous liberality of your Canadian people, such grant by way of civil list as shall be sufficient to give stability and security to the great civil institutions of the province, and to provide for the adequate remuneration of able and efficient officers, in the executive, judicial and other departments of your Majesty’s public provincial service, the granting of which civil list constitutionally belongs only to your Majesty’s faithful Canadian people in their provincial parliament.
> The bill provided for the establishment of a consolidated revenue fund for the province of *Canada,* in the same terms as had been provided by the 50th sec. of 3 & 4 *Vic.,* c. 35. It then charged upon that consolidated fund permanently a sum not exceeding £34,638 15s. 4d. cy, in lieu of the «£45,000, by the 52nd sec. of 3 & 4 *Vic.,* provided, and during the life of her Majesty and for 5 years after the demise of her Majesty, a sum, not exceeding £39,245 16s. cy, in lieu of the
> *[Page 691]*
> £30,000, by the same 54th section provided; and after making provision for alteration in the salaries to be attached to certain offices, it enacted that:— During the time for which the said several sums mentioned in the said schedules, are severally payable, the same shall be accepted and taken by her Majesty, by way of civil list instead of all territorial and other revenues now at the disposal of the Crown, arising in this province, and that three fifths of the *net produce* of the said territorial and other revenues, now at the disposal of the Crown, within this Province, shall be paid over to the account of the said consolidated revenue fund; and also that during the life of her Majesty, and for five years after the demise of her Majesty, the remaining two fifths of the *net* produce of the said territorial and other revenues now at the disposal of the Crown within this province, shall also

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[23] Gwynne, J., at 706, Supreme Court of Canada, Mercer v. Attorney General for Ontario, 5 S.C.R. 538, Date: 1881-11-14
[24] , J., at 707, Supreme Court of Canada, Mercer v. Attorney General for Ontario, 5 S.C.R. 538, Date: 1881-11-14

be paid over in like manner to account of the said consolidated revenue fund."[25]

"The lands in question on which the timber to be cut grows, belong to the said province of British Columbia by virtue of section 109 of the B.N.A. Act, 1867, which reads as follows:—
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."[26]

"This certainly never was intended to deprive the owners of property, whether private citizens or provinces, of their inherent rights as such, much less to destroy a contract made before the Act in question."[27]

Ontario (Attorney General) v. Rowntree Beach Assn., 1994
"Her Majesty the Queen in right of Ontario has no right, title or interest in and to the lands described.."[28]

"Supreme Court of Canada
A.G. for Alberta v. Huggard Assets Ltd., [1951] S.C.R. 427
KERWIN J.:— [Page 436] "In Cooper v. Stuart 4, the Judicial Committee had to deal with a clause in a Crown grant in New South Wales "reserving to His Majesty, his heirs and successors … any quantity of land not exceeding ten acres in any part of the said grant as may be required for public purposes." Although the precise point was not argued, their Lordships had no difficulty in deciding that the reservation was valid." [29]

RAND J.: - "…regulations made by order-in-council. What was
[Page 442]
the nature of these regulations? They were intended, clearly, to be administrative and so far legislative in character; but in relation to grants, I am unable to discover any power to introduce by them new incidents of land ownership by reservation or otherwise in the ordinary instrument of conveyance.

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[25] Gwynne, J., at 690-91, Supreme Court of Canada, Mercer v. Attorney General for Ontario, 5 S.C.R. 538, Date: 1881-11-14
[26] Attorney-General for British Columbia and the Minister of Lands v. Brooks-Bidlake and Whitall, Ltd., 63 SCR 466 p. 467
[27] Attorney-General for British Columbia and the Minister of Lands v. Brooks-Bidlake and Whitall, Ltd., 63 SCR 466 p. 473
[28] Ontario (Attorney General) v. Rowntree Beach Assn., 1994. Conclusion, Section [123]
[29] A.G. for Alberta v. Huggard Assets Ltd., [1951] S.C.R. 427

[Page 444] I do not understand the statement of claim to allege an intention on the part of the province to seek by order-in-council to subject the lands to a condition…"[30]

"Public "user rights" over private property only become legal rights upon a successful application to the court initiated by the Attorney General."[31]

"If you don't own it, you cannot plan for it."[32]

All of these court cases, mentioned, happened after the BNA was constructed and the absolute right of the private property owner/estate was supported and yet, there was no specific declaration of "private property rights" included in the BNA. Ergo, the framers of the BNA were fully aware of the Letters Patent and the "right, title and interest" conveyed to the patentee, his heirs and assigns forever. Once the Crown has alienated the Crown domain, there is no further and/or future jurisdiction or authority that can be allotted to the province to administer. As the province receives its authority from the Crown, and as the Crown has alienated its authority it has nothing to transfer to the province, in regards to private property, thus the only "property' that the province has authority to regulate/legislate for must be either public or Crown property. The statement of "property and civil rights in the province" and "all things merely local and private in nature in the province", are restricted to any public[33] and/or Crown lands/property[34].

This also leads to that if the province has no authority/jurisdiction they cannot transfer authority they do not have to any other entity to demand permits/licenses[35], including third party corporations as in municipalities, the Conservation Authorities, the Niagara Escarpment Commission, etc. This also restricts the ability of implementing the Planning Act and all other legislation that may be interpreted as pertaining to private property, it places restrictions on the Provincial Policy Statement and any environmental legislation, including the Endangered Species Act. Basically, "*If you don't own it, you cannot plan for it*."[36],

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[30] A.G. for Alberta v. Huggard Assets Ltd., [1951] S.C.R. 427

[31] 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. 2: 17.

[32] Court rulings don't support claim of open beaches. Midland Free Press, May 19, 2000. Last statement.

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

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

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

[36] *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.

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[37].

"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."[38]

We would also direct you to the Public Lands Act for Ontario:

"Land use conditions

18. *(1) Letters patent for land sold or leased under this Act may contain a condition that the land is to be used in a particular manner or a condition that the land is not to be used in a particular manner and every such condition shall be deemed to be annexed to the land. R.S.O. 1990, c. P.43, s. 18 (1)."*[39]

In June of 2011 the Ontario Bar Associaton released a paper, in regards to the Crown Grants/Letters Patent with a final statement of:

"They were (and continue to be) intertwined with a larger legal framework of constitutional law, statutes, statutory interpretation principles, common law, history and real property law. The meaning accorded to the rights and obligations granted to a landowner in any Crown patent is tied to and affected by a host of statutes and other forms of government action. As a result, the rights and privileges set out in any particular patent must be considered together with the applicable statutory regime in order to understand the property owner's actual rights." [40]

92 subsection 13 of the BNA grants the province authority over its own property and the ability for the province to protect its property in private civil matters or to enter into civil contracts and/or for the civil lists. The province, not having authority over private property cannot transfer authority to any other entities, be that corporations, counties, municipalities, etc., as the Crown alienated its domain/authority ergo it cannot transfer something twice to two different parties.

In regards to the continuing statements referring to "property and civil rights in the province" and the specific authority to enact legislation I would direct attention to;

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

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

[39] Public Lands Act. http://www. http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90p43_e.htm. As of June 30, 2011

[40] Ontario Bar Association, Municipal Law Section Zella Phillips, Associate Solicitor, Town of Newmarket: Back Off Government: What Municipal Lawyers Need to Know about Crown Patents , Volume 20, No. 2, p. 9, June 2011

An Act respecting Gold Mines, 1864, Section 1 . 7 and 8 which state:

"CROWN LANDS." Seventhly. The words "Crown Lands," shall be held to mean and include all Crown Lands, Ordnance Lands (transferred to the Province), School Lands, Clergy Lands, or lands of the Jesuits' Estates, CROWN DOMAIN or Seigniory of Lauzon, WHICH HAVE NOT BEEN ALIENATED BY THE CROWN;

"PRIVATE LANDS." Eighthly. The words "Private Lands," shall be held to include ALL LANDS WHICH HAVE BEEN ALIENATED BY THE CROWN;"

Staying with the Constitution and the BNA, there is the Constitution Act of 1930. This is the amendment to the BNA which brought the Western provinces into the same agreement with the Federal Government as the original provinces at the time of Union:

"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.).

Transfer of Public Lands Generally

2. The Province will carry out in accordance with the terms thereof every contract to purchase or lease any Crown lands, mines or minerals and every other arrangement whereby any person has become entitled to any interest therein as against the Crown, and further agrees not to affect or alter any term of any such contract to purchase, lease or other arrangement by legislation or otherwise. except either with the consent of all the parties thereto other than Canada or in so far as any legislation may apply generally to all similar agreements relating to lands, mines or minerals in the Province or to interest therein, irrespective of who may be the parties thereto."

It clearly states that it is only at the negotiation of the contractual obligations involving the reservations that can be legislated or the administration of legislation involving new grants/patents.

In regards to "Crown Domain" and to "alienate", the definition of "domain" and "alienate" from Black's Law Dictionary is:

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

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

ALIENTATION (p. 84) – 1. Withdrawal from former attachment; estrangement.

2. Conveyance or transfer of property to another <alienation of one's estate>.

The Crown, in alienating the Crown Domain, is alienating all right, title, and interest in the estate/land/property. *"The Queen in right of Ontario has no right, title or interest in and to the lands described… "*[41]. Clear definitions are needed.

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

2. An estate or interest in real property.

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

RIGHT (Black's Law Dictionary, 9th Edition, 2009, p. 1436) – 1. That which is proper under law, morality, or ethics

2. Something that is due to a person by just claim, legal guarantee, or moral principle.

3. A law <the right to dispose of one's estate>.

4. A legally enforceable claim that another will do or will not do a given act; a recognized and protected interest the violation of which is a wrong

5. The interest, claim, or ownership that one has in tangible or intangible property.

TITLE (Black's Law Dictionary, 9th Edition, 2009, p. 1622) – 1. The union of all elements (as ownership, possession, and custody) constituting the legal right to control and dispose of property; the legal link between a person who owns property and the property itself.

2. Legal evidence of a person's ownership rights in property; an instrument (such as a deed) that constitutes such evidence.

[41] Ontario (Attorney General) v. Rowntree Beach Assn., 1994, Conclusion, Section [123]

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

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

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

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

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

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

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

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

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

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

BELONGINGS (Black's Law Dictionary, 9th Edition, 2009, p. 175) – 1. Personal

Property; *EFFECTS* – see personal property under property. 2. All property, including realty.

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

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

FREEDOM OF CONTRACT (Black's Law Dictionary, 9th Edition, 2009, p. 735 (1879)) –

the doctrine that people have a right to bind themselves legally; a judicial concept that contracts are based on mutual agreement and free choice, and thus should not be hampered by external control such as government interference.

INSTRUMENT (Black's Law Dictionary, 9th Edition, 2009, p. 869) – 1. A written legal document that defines rights, duties, entitlements, or liabilities, such as a contract, will, promissory note, or share certificate. – Also termed legal instrument

("An instrument seems to embrace contracts, deeds, statutes, wills, Orders in Council, orders, warrants, schemes, letters patent, rules, regulations, bye-laws, whether in writing or in print, or party in both; in fact, any written or printed document that may have to be interpreted by the courts." Edward Beal, Cardinal Rules of Legal Interpretation 55 (A.E. Randal ed. 3d. ed. 1924)

LICENSE (Black's Law Dictionary, 9th Edition, 2009, p. 1002) – 1. A permission, usu.,

revocable, to commit some act that would otherwise be unlawful; esp., an agreement (not amounting to a lease or profit a prendre) that it is lawful for the licensee to enter the licensor's land to do some act that would otherwise be illegal, such as hunting game.

"A license is an authority to do a particular act, or series of acts, upon another's land, without possessing any estate therein. It is founded in personal confidence, and is not assignable, not within the statute of Frauds." 2 James Kent, Commentaries on American law ' 452-53 (George Comstock ed., 11th ed. 1866)

2. The Certificate or document evidencing such permission.

In conclusion it is hoped, with the preceding information, that you will revoke, repeal and/or quash any by-laws of the nature that may infringe on "private property/land/estates" and that you will restrain your staff from seeking to implement any past, present or future by-laws of the nature that may infringe on "private property/land/estates", as this will leave the Municipalities/Counties in a

very precarious situation. It is within the “rights” of the members of a community to launch a mass tort and it is their right to name individuals in those torts.