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The Municipal Councillor's Guide: Making Ontario a Better Place to Grow Information Seminar, 2013 ©

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"What cannot be legally done directly cannot be done indirectly. This rule is basic and, to a reasonable mind, does not need explanation. Indeed, if acts that cannot be legally done directly can be done indirectly, then all laws would be illusory."[1]?

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

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ACKNOWLEDGEMENT

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The Municipal Councillor's Guide:
Making Ontario a Better Place to Grow.

Throughout this document we are hopeful that the attendees, of this seminar, will consider the information provided is with the best of intentions for both Municipal Councils and the residents in their communities. It is also hopeful that Municipal Councils will take a step back and ask questions of their staff, advisors, consultants and the electorate. It would seem that the pertinent information, which is needed, for making informed decisions is not being provided during the advisory process to either the municipality elected officials, their staff or the advisors.

A BRIEF HISTORY

In 1849 the first defined Municipal Act (Municipal Manual) for Upper Canada was created establishing certain "rules" for incorporated Municipalities in the Colony/Province. It is referred to as the Baldwin Act and was ready for complete enactment in 1855. This Act laid out what Municipalities could and could not do.

> "…Whereas it will be of great public benefit and advantage that provision should be made, by one general law, for the erection of Municipal Corporations and the establishment of Regulations of Police in and for the several Counties, Cities, Towns Townships and Villages in Upper Canada:…[XXXVI. And be it enacted, That the several words, phrases and sentences of "The Upper Canada Municipal Corporations Act" of one thousand eight hundred and forty-nine, as such Act was corrected and amended by "The Upper Canada Municipal Corporations" Law Amendment Act of …
> XXXL. And be it enacted, That the Municipality of each of the Townships in Upper Canada, shall have power and authority to make a By-law or By-laws for each, all or any of the following purposes, that is to say:
>
> *Firstly.* For the purchase and acquirement of all such real and personal property within the Township as may be required for the use of the inhabitants thereof as a Corporation, and for the sale and disposal of the same, when no longer required.
>
> *Secondly.* For the erection, security, preservation, improvement or repair of a Town Hall, and of all other houses and buildings required by or being upon any land acquired by or belonging to such Township as a Corporation.
>
> *Thirdly.* For the purchase and acquirement of such real property as may be required for Common School purposes, for building Common School Houses, and for the sale and disposal of the same when no longer required, and providing for the establishment and support for Common Schools according to Law.
>
> *Fourthly.* For the erection and establishment of one or more Public Pounds in such township, and settling the Fees to be taken by Pound-Keepers.
>
> *Twelfthly.* For the protection and preservation of any timber, stone, sand or gravel, growing or being upon any allowance or any appropriation for any public road or roads within such Township, and for the sale of any timber growing or being upon any road allowance, if throught proper, by the Council. "

It placed restrictions on implementing "by-laws" to Municipal properties only, it set up the rules of Municipal Elections, the oaths and staffing of the Municipalities and it continued through, in history, to set out what the Ontario Municipal Board (OMB) was actually created for.

The OMB was not created to be a panel of arbitration or any form of "tribunal". It was created to take over the administration of a municipality that was failing financially and to bring it back into good standing, prior to the municipality going bankrupt. It was to assist a municipality supporting fiscal prudence and security. That is what it was created for, not what it is being used for today.

Prior to the "Baldwin Act" Townships and Counties were created by Letters Patent and these townships could be owned by one individual or pre-surveyed for several parcels of land to be granted, depending on the time of history and the place that the Letters Patent were created. From these Townships, if groupings of residents started to amalgamate into a specific area, they could petition the "Township" and/or County to create village, hamlet, town, and even a city, depending on how many were gathering in any given area. Generally it took 100 households and/or freehold properties to create a "village/town plot" within a Township/County. [2]

There were also lands set aside for schools, churches, etc., and in some Letters Patent there would be a certain amount of "land allotted for the maintenance of the" Churches[3]. These lands could be used for the building of Churches or the specific Church that the land was allotted for, could sell the land receiving the money for the support of the Church. These lands remained, until sold, property of the Colony/Province and the Colony/Province could regulate these properties because they still remained part of the "public" lands[4] until sold.

[2] 9. When the census returns of an unincorporated Village, with its immediate neighborhood, taken under the direction of the Council or Councils of the County or Counties in which the Village and its neighborhood are situate, shew that the same contain over 750 inhabitants, and when the residences of such inhabitants are sufficiently neat to form an incorporated Village, then, on petition by not less than 100 resident freeholders and householders of the Village and neighbourhood, of whom not fewer than one-half shall be freeholders, the Council or Councils of the County or Counties in which the Village and neighbourhood are situate shall, by by-law, erect the Village and neighbourhood into an incorporated Village, apart from the Township or Townships in which the same are situate, by a name, and with boundaries to be respectively declared in the by-law, and shall name in the by-law the place for holding the first election, and the Returning Officer who is to hold the same. Consolidated Statutes of Ontario, 1886.

[3] Constitution 1792, section, XXXVI.

[4] "38. The term "Public Lands" shall be held to apply to lands heretofore designated or known as Crown Lands, School Lands, Clergy Lands, Ordnance Lands, (transferred to the Province), which designations, for the purposes of administration, shall still continue." Sale and Management of Public Lands, 1860.

The first real "planning" was formulated by Lord Durham. He felt that the planning of this new land was sadly lacking and future lands that were to be granted and/or "towns" should be surveyed so that road allowances could be created on ungranted lands. This is why certain roads have always belonged to government and the Crown, whereas other roads belong to private property owners[5]. It was only if the private property owner dedicated and the municipality accepted the dedication that they became the owners of the road. Every municipality in Ontario should obtain a copy of "The Corporation of the Municipality of Meaford (Municipality) v. Grist, 2013 ONCA 124 (CanLII)." This case explains the process of dedication and municipal acceptance.

Municipal Acts have always been for restricting what Municipal Councils were and are allowed to do as representatives of the "residents" within their geographical boundaries, but these Councils were never to violate the "private property owner's" rights. They could not plan for private property and that was clearly stated in the Supreme Court in 1969[6] as well as the Superior Court of Ontario 1994[7]. It also was expressed that newer legislation did not affect the ownership of property and that newer legislation did not pertain to private property as late as 2001[8]. Fast forward to today and why we all have met.

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

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

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

[8] Saker v. Middlesex Centre (Chief Building Official), 2001 CanLII 28088 (ON S.C.)

THE MUNICIPAL COUNCILLOR'S GUIDE: MAKING ONTARIO A BETTER PLACE TO GROW.

How many times has council been told to "talk to municipal staff" [9]. More than Council should and it is indicative to the problems of administering a municipality. What exactly is the Role of Council?

On one hand you are told to talk to staff to gather information, but what if "staff" isn't fully informed or the information they have received isn't complete. Your role under the Municipal act and this Guide is:

Municipal Act, 2001
"Purposes
2. Municipalities are created by the Province of Ontario to be responsible and accountable governments with respect to matters within their jurisdiction and each municipality is given powers and duties under this Act and many other Acts for the purpose of providing good government with respect to those matters. 2006, c. 32, Sched. A, s. 2."

1) Represent the residents of your community to the best of your ability and to protect the well-being and interests of your residents, including fiscal prudence.
2) Evaluate and develop policies, procedures, programs, practices and control of implementation of the aforementioned by staff for the benefit of your residents.
3) Ensure accountability and transparency regarding council and staff during the operation and implementation of all policy, programs, by-laws, protocols, etc.
4) "to carry out the duties of council under this or any other act." This statement refers to Section 4, 5, 8, 9, 15, 19, 23, 102, 107, 187, 216, 224, 225, 250, 256, 257, 258, 259, 286, 307, 310, 383, 384, 401, 412, 431, 433, 440, 446, 447.4, 447.8, 451 in the Municipal Act.
5) The Guide, page 89, supplies you with a list of things you are to have, to know, to understand. This list is lacking and the Guide directs you again to "staff". In addition to what is expressed on page 89, in Section 3 of the Guide and other documents, it explains that you need to know and understand:
    - all of the legislation that applies to your municipality, including the Constitution, Charter of Rights, and the British North America Act, 1867, the Letters Patent, and Letters Patent for creation of the Municipality, applicable Native Treaties, etc.
    - all regulation that pertains to your municipality,
    - all past by-laws,
    - past and present finances,
    - policies, programs, property, municipal corporations and corporations created by the Municipality, boards, etc.,
    - case law that pertains to municipalities
    - and that you must understand the limitations to your authority.

[9] The Municipal Councillor's Guide. Ministry of Municipal Affairs and Housing, 2010, p. V.

Very little is spent on the informing municipal council that council only has the same:

"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.*

Powers exercised by council

5. (1) *The powers of a municipality shall be exercised by its council. 2001, c. 25, s. 5 (1).*

Council a continuing body

(2) *Anything begun by one council may be continued and completed by a succeeding council. 2001, c. 25, s. 5 (2).*

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)."*

and that even with section 8 of the Municipal Act: *"The powers of a municipality under this or any other Act shall be interpreted broadly so as to confer broad authority on the municipality to enable* ***the municipality to govern its[10] affairs*** *as it considers appropriate and to enhance the municipality's ability to respond to municipal issues. 2006, c. 32, Sched. A, s. 8."* The term "its" is a possessive term, meaning that the authority is only over what belongs to the municipal corporation. See section 10/11, subsection2, section 4 of subsection 2.

Sections 10[11] and 11grants the municipalities 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:

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[10] ITS (DK Dictionary p. 223) 2. Coll the important thing; a) its, belonging to it.
BELONG (Black's Law Dictionary, 9th Edition, 2009, p. 175) – 1. To be the property of a person or thing.

[11] 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.

- services,
- local boards and their operations that are accountable including their financial management,
- the public assets (*10/11. 2. 4. Public assets*[12] *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[13] 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[14] on municipal property),
- fences and signs owned by the municipalities and business licenses that are allowed under section 92.9[15] of the BNA.

Subsection 4[16] of 10 restricts the municipalities 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[17], the service is being provided

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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.

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

[13] 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

[14] 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.
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).

[15] 92. 9. Shop, Saloon, Tavern, Auctioneer, and other Licences in order to the raising of a Revenue for Provincial, Local, or Municipal Purposes.

[16] 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.

[17] 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.

under contract (by-law) to the municipal corporation or one of its "local boards", as defined under section 10 (6)[18].

Section 11[19] is the Spheres of Jurisdiction. This entails the authority of both lower and upper tier municipalities to create by-laws for what belongs to either, as expressed in the "table" of jurisdiction, grant the upper or lower tier the superior by-law creating authority. This would mean that if the jurisdiction of the by-law was granted exclusively to the upper tier the lower tier would have to accept that by-law, whereas the opposite if it is strictly granted to the lower tier. If there is no exclusive power to either than both have the authority. Again, it must be stressed that this is only for what belongs to the municipal corporation under the Municipal Act or any other Act.

Subsection 3[20] of 11 allows the municipalities to create by-laws for public highways, including traffic and parking on said highways, the public transportation systems/corporations of the municipalities/regions, public waste management systems, public utilities, cultural endeavours supplied by the municipality, access to recreational

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[18] 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).

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

[20] 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.

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 willingly and knowingly entered into agreements with the municipality[21], 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[22] of the municipal assets, municipal drains under the *Drainage Act,* and business licenses that are allowed under section 92.9[23] of the BNA.

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[21] 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).

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). Ontario Heritage Act, R.S.O. 1990, CHAPTER O.18

[22] 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)[22] 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).
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).

[23] 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

Section 11 (4)[24] are the rules of jurisdiction between upper and lower tier municipalities. 11. (4). 4, 5, and 6[25], restricts the municipalities with the division of powers between upper and lower municipalities under this or any other Act. 11.4.7[26] restrict municipalities from placing municipal signs within 400 meters of any highway. This includes advertising signs owned by the lower tiered municipality and its ability to place a sign within the 400 meter distance of an upper tier highway.

Under section 11 subsection 6 and 7[27] the municipalities 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 municipalities. And under subsection 8[28] both upper and lower tier municipalities are limited to creating by-

[24] 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.

[25] 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.

[26] 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.

[27] 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)[27] 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.

[28] 11. Services or things provided by others
(8) The power of a municipality to pass a by-law under subsection (3) 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.

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

Under section 10[30] of the Municipal Act a board and/or single tier municipality may provide services that the municipality considers necessary to the local community. A local board is defined under subsection 6 as:

"Definition

(6) In this section,

"local board" means a local board other than,

(a) a society as defined in subsection 3 (1) of the Child and Family Services Act[31],

(b) a board of health as defined in subsection 1 (1) of the Health Protection and Promotion Act[32],

(c) a committee of management established under the Long-Term Care Homes Act, 2007[33],

(d) a police services board established under the Police Services Act[34],

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5. Culture, parks, recreation and heritage.
6. Parking, except on highways. 2006, c. 32, Sched. A, s. 8.

[29] Exception 11. (9) Nothing in subsection (6), (7) or (8) prevents a municipality passing a by-law with respect to services or things provided by any person to the extent necessary,
(a) to ensure the physical operation of a system of the municipality or of a municipal service board of the municipality is not impaired; or
(b) to ensure the municipality, a municipal service board of the municipality or a system of the municipality or municipal service board meet any provincial standards or regulations that apply to them. 2006, c. 32, Sched. A, s. 8.
Definition (10) In this section,
"local board" means a local board as defined in section 10[29]. 2006, c. 32, Sched. A, s. 8.

[30] 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.

[31] 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.

[32] 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").

[33] 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).

[34] 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

(e) a board as defined in section 1 of the Public Libraries Act[35], or
(f) a corporation established in accordance with section 203[36]. 2006, c. 32,"

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, it would seem 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[37], leaving the Municipalities/Counties (staff, Council) open to

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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).

[35] 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")

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

[37] Georgian Bluffs (Township) v. Moyer, 2012 ONCA 700, DOCKET: C53734

"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. Municipal council is restricted to by-laws that do not conflict with any superior documents, under section 14.

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[38], 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.

An "instrument of the Crown" is Crown Grants/Letters Patent, and any by-laws that are created that violate these documents are open to challenge in the courts. There is also the misunderstanding of other legislation that pertains to municipalities.

The Municipal Councillor's Guide. Ministry of Municipal Affairs and Housing, 2010, p. 89.

"A Councillor's Checklist

The following is a list of documents and materials which you may want to have close at hand to help you in your work as a municipal councillor. This is a guide and is not intended to be exhaustive. You may wish to add items. Some of the documents on this list may not be applicable to your municipality; if any are applicable but are not available, you may want to have some prepared by your municipal staff.

Do you have?

A copy of the Municipal Act, 2001
A copy of the Planning Act
A copy of the Municipal Conflict of Interest Act
A copy of your municipality's procedural bylaw
A policy manual and/or list of important municipal bylaws
A copy of your municipality's strategic plan
A copy of your municipality's official plan
A copy of your upper tier official plan (if applicable)

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

A copy of your municipality's zoning bylaws
A copy of the Provincial Policy Statement
A copy of any provincial plan (e.g., Greenbelt Plan, Growth Plan) that may be in effect in your area
A chart or list of who does what in your area – lower tier, upper tier and consolidated municipal service manager responsibilities
A list of local boards and authorities in your area and the representatives
A list of council committees and the representatives
A copy of the current Ontario Municipal Directory (published by AMCTO)
A list of local representatives on municipal associations
A list of your property classes and tax rates
A list of your tax relief and rebate programs
A copy of the most recent financial statement of your municipality
A copy of your previous and current year municipal budgets and schedule of budget reporting to council (monthly, quarterly)
A copy of your municipality's most recent Municipal Performance Measurement Program (MPMP) report
The procedures for putting an item on the council agenda
NOTE: Most statutes and associated regulations can be found on the e-laws website at Ontario.ca/e-laws"

We thought it only prudent for you to have some, but not inclusive of all pieces of legislation that pertain to municipal operation. This list does not include all regulations or policies and does not include Federal legislation/policy/regulation. They consist of:

1) The Criminal Code of Canada
2) Constitution Act 1867 – 1982
3) Royal Proclamation 1763
4) Constitution 1792
5) Accessibility for Ontarians with Disabilities Act, 2005, S.O. 2005
6) Administration of Justice Act, R.S.O. 1990, Chapter A.6
7) Aggregate Resources Act, R.S.O. 1990, CHAPTER A.8
8) AgriCorp Act, 1996, S.O. 1996, CHAPTER 17
9) Agricultural and Horticultural Organizations Act, R.S.O. 1990
10) Alcohol and Gaming Regulation and Public Protection Act, 1996
11) An Act respecting Certain Rights and Liberties of the People
12) Architects Act, R.R.O. 1990
13) Animal Health Act, 2009, S.O. 2009, chapter 31
14) Assessment Act, R.S.O. 1990, CHAPTER A.31
15) Beds of Navigable Waters Act, R.S.O. 1990, CHAPTER B.4
16) Boundaries Act, R.S.O. 1990, CHAPTER B.10
17) Building Code Act, 1992, S.O. 1992, Chapter 23
18) Conservation Authorities Act, R.S.O. 1990, CHAPTER C.27
19) Conservation Land Act, R.S.O. 1990, CHAPTER C.28
20) Conveyancing and Law of Property Act, R.S.O. 1990, CHAPTER C.34
21) Drainage Act, R.S.O. 1990, CHAPTER D.17
22) Clean Water Act, 2006, S.O. 2006, CHAPTER 22

23) Ontario Society for the Prevention of Cruelty to Animals Act, R.S.O. 1990
24) Education Act, R.S.O. 1990, CHAPTER E.2
25) Election Act, R.S.O. 1990, CHAPTER E.6
26) Endangered Species Act, 2007, S.O. 2007, CHAPTER 6
27) Environmental Assessment Act, R.S.O. 1990, CHAPTER E.18
28) Environmental Bill of Rights Act, R.S.O. 1990, CHAPTER E.18
29) Environmental Protection Act, R.S.O. 1990, CHAPTER E.19
30) Expropriation Act, R.S.O. 1990 CHAPTER E.26
31) Farm Products Marketing Act, R.S.O. 1990, CHAPTER F.9
32) Fish and Wildlife Conservation Act, 1997
33) Food Safety and Quality Act, 2001, S.O. 2001, CHAPTER 20
34) Forestry Act, R.S.O. 1990, CHAPTER F.26
35) Statute of Frauds, R.S.O. 1990, Chapter S.19
36) Green Energy Act, 2009, S.O. 2009, chapter 12
37) Ontario Heritage Act, R.S.O. 1990, CHAPTER O.18
38) Human Rights Code, R.S.O. 1990, CHAPTER H.19
39) Interprovincial Policing Act, 2009, S.O. 2009, chapter 30
40) Land Registration Reform Act, R.S.O. 1990, CHAPTER L.4
41) Land Titles Act, R.S.O. 1990, CHAPTER L.5
42) Land Transfer Tax Act, R.S.O. 1990, CHAPTER L.6
43) Legislation Act, 2006, S.O. 2006, CHAPTER 21
44) Limitations Act, 2002, S.O. 2002, chapter 24
45) Line Fences Act, R.S.O. 1990, CHAPTER L.17
46) Municipal Property Assessment Corporation Act, 1997, S.O. 1997
47) Municipal Affairs Act, R.S.O. 1990, CHAPTER M.46
48) Municipal Corporations Quieting Orders Act, R.S.O. 1990, Chapter M.51
49) Municipal Elections Act, 1996, S.O. 1996, CHAPTER 32
50) Municipal Extra-Territorial Tax Act, R.S.O. 1990, Chapter M.54
51) Municipal Franchises Act, R.S.O. 1990, Chapter M.55
52) Municipal Freedom of Information and Protection of Privacy Act, R.S.O. 1990
53) Municipal Tax Assistance Act, R.S.O. 1990, Chapter M.59
54) Municipal Water and Sewage Transfer Act, 1997, S.O. 1997, CHAPTER 6
55) Occupiers' Liability Act, R.S.O. 1990, Chapter O.2
56) Ombudsman Act, R.S.O. 1990, CHAPTER O.6
57) Ontario Infrastructure Projects Corporation Act, 2006, S.O. 2006, CHAPTER 9
58) Personal Property Security Act, R.S.O. 1990, CHAPTER P.10
59) Places to Grow Act, 2005, S.O. 2005, CHAPTER 13
60) Planning Act, R.S.O. 1990, CHAPTER P.13
61) Police Services Act, R.S.O. 1990, CHAPTER P.15
62) Property and Civil Rights Act, R.S.O. 1990, CHAPTER P.29
63) Provincial Offences Act, R.S.O. 1990, CHAPTER P.33
64) Public Lands Act and all predecessors
65) Real Property Limitations Act, R.S.O. 1990, CHAPTER L.15
66) Registry Act, R.S.O. 1990, CHAPTER R.20
67) Statutory Powers Procedure Act, R.S.O. 1990, CHAPTER S.22

68) Taxpayer Protection Act, 1999, S.O. 1999, CHAPTER 7
69) Trespass to Property Act, R.S.O. 1990, CHAPTER T.21
70) University Expropriation Powers Act, R.S.O. 1990, CHAPTER U.3
71) Veterinarians Act, R.S.O. 1990, Chapter V.3
72) Waste Management Act, 1992, S.O. 1992, CHAPTER 1
73) Ontario Water Resources Act, R.S.O. 1990, CHAPTER O.40

As noted there are a number of these acts that can be deemed unconstitutional and implementation of the unconstitutional acts, by municipalities, could be considered as being implemented in "bad faith" which leaves our municipally elected officials open to torts, under section 448.2 of the Municipal Act. This violates the trust of the municipalities regarding the provincial MPPs and municipalities have the right to question any and all legislation that violates the municipal corporations as well as the residents.

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[39] 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.

For example, Tree Cutting By-laws[40]. Tree Cutting By-laws cannot be implemented on private property unless the private property owner has willingly and knowingly entered into an agreement with the municipality. The Municipality does not have the authority to demand "permission" by the private property owner from the Municipality and the Municipality must also pay attention to and this is not limited to: the

[39] *McGILL LAW JOURNAL*
Property, Planning and the *Charter,* Robert G. Doumani, Jane Matthews Glenn
The authors examine the impact of the *Canadian Charter of Rights and Freedoms* upon the powers of municipalities to control the use of land. Despite the absence of specific entrenchment of property rights in the *Charter,* the authors contend that these rights are nevertheless significantly protected in *pre-Charter* constitutional and administrative law. Entrenchment of a protection-of property clause in the *Charter* would make little difference to the effective protection of property rights, particularly in light of the moderating effect of s. 1 of the *Charter,* the possibility of s. 33 overrides *of Charter* rights, and the pre-existing protection of property rights in other human rights instruments recognized in Canadian law. They argue, further, that existing provisions of the *Charter* do serve to enhance indirectly the protection of property rights insofar as property concerns may relate to life, liberty and security of the person (s. 7) and equality (s. 15). P. 1036

[40] See Tree Cutting By-Laws: What Municipal Councils Need To Know © By the OLA

Constitution (British North America Act, 1867 [BNA]) sections 92.5 and 109, The Free Grants and Homestead Act, 1868[41], the Forestry Act sections 11 and 12, the Conservation Land Act, the Public Lands Act sections 57 and 58, the Property and Civil Rights Act, etc. Without investigating these other documents, including sections 62,135,141,394 (e) and 461 of the Municipal Act, the Municipalities may be creating by-laws that violate these superior documents.

The violation also includes interfering with the Crown Grants/ Letters Patent considered Crown Instruments, which again are a superior document to Municipal By-laws, as these documents repeal certain sections of various constitutions and are considered part and parcel of the creation of Canada and Ontario.

There needs to be explanation as to what is meant by "in" a municipality as well as what is "in" the province. When something is "in the municipality" or "in the province" that means that it is something that is owned/belongs to, or is the property of that specific corporation. For example, and there are a few of them:

"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."[42]

"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;" [43]

"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 <u>in the Dominion</u> is illegal;"[44]

[41] Section 10. All Pine trees growing or being upon any land so located, and all gold, silver, copper, lead, iron, or other mines or minerals, shall be considered as reserved from the location, and shall be the property of Her Majesty, except that the Locatee or those claiming under him or her, may cut and use such trees as may be necessary for the purpose of building, fencing, and fuel, on the land so located, and may also cut and dispose of all trees required to be removed, in actually clearing said land for cultivation, but no pine trees (except for the necessary building, fencing, and fuel as aforesaid), shall be cut beyond the limit of such actual clearing before the issuing of the Patent, and all pine trees so cut and disposed of (except for the necessary building, fencing, and fuel as aforesaid), shall be subject to the payment of the same dues, as are at the time payable by the holders of licenses to cut timber or saw logs. All trees remaining on the land at the time the Patent issues, shall pass to the Patentee. Free Grants and Homestead Act, 1868.

[42] THE EMPLOYEES' STATE INSURANCE ACT, 1948

[43] Minister of Finance (Incorporation) Act, Laws of Trinidad and Tobago, 1973 p. 6

[44] Constitution of Canada. The B.N.A. Act, 1867; Its Interpretation, etc., p. 165

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 corporation, same for municipalities. Once a municipality has been created, by Letters Patent, it is not "in the province" and does not belong to the province and that is why section 13[45] of Magna Charta (Carta) still stands. The statement that the municipalities are "creatures of the province" means that the province has the ability to dissolve the municipalities. An example is section 13.1 of the Conservation Authorities Act where municipalities have the ability to dissolve the Conservation Authorities.

[45] And the city of London shall have all its ancient liberties and free customs, as well by land as by water; furthermore, we decree and grant that all other cities, boroughs, towns, and ports shall have all their liberties and free customs. http://oll.libertyfund.org/?option=com_staticxt&staticfile=show.php%3Ftitle=338&chapter=48829&layout=html&Itemid=27, as of March 12, 2012.

THE BUILDING CODE AND PROPERTY STANDARD BY-LAWS

What of "Property Standard By-laws"? The Building Code restricts the usage of Sections 15.1 to 15.8, "Municipal Property Standards" by Section 1.1 and 1.2 of the Act, to Municipal/Public Properties only. The only sections of the Building Code that expressly grants permission to municipalities to create by-laws is section 7 of which a municipality must enter into agreements with a board of health, a planning board or a conservation authority under section 3.1. And section 3.1 is limited to municipal sewage systems.

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

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

Implementation of "property standard by-laws"[46] are only to be implemented on properties that are owned by the Municipalities, properties that are under the management of corporations that are created and regulated by the Municipalities as in Social Housing, public utilities corporations created by municipalities, or properties that the Municipalities have entered into agreements with the owners of certain public facilities/social housing and agreements entered into by knowing and willing private property owners. The last mentioned properties would have "covenants/easements" registered against the title of the property.

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

In Georgian Bluffs (Township) v. Moyer, Oct. 2012 on 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

[46] Property Standard By-Laws: What Municipal Councils Need To Know © By the OLA

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…"

Section 1 Interpretation (1.1)[47] expresses that there is a limitation and exclusion of sections 15.1 to 15.8., Municipal Property Standards. Section 1 (1.2)[48] expresses that 15.1 to 15.8 are only applicable to sections 2, 16, 19, 20, 21, 27, 31, 36, and 37 of the Building Code. This does not include section 35[49] of the Building Code – Municipal By-laws.

Under section 35 of the Building Code, Municipal By-laws, it expresses that the Building Code is the superior document. It also expresses (35. (2))[50] that municipalities may make by-laws involving section 10 of the Building Code, and in the event that there is a conflict or a difference in interpretation, of section 10, the Building Code prevails regarding Municipal sewage. Section 35. (3)[51] sets out that this section is applicable to both upper and lower tier municipalities and local boards, which include boards created for Social Housing and Heritage Committees. And under section 35.1[52] a regulation made by a Conservation Authority is not a regulation within the definition of Part III (Regulations) under the Legislation Act, 2006[53].

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

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

[49] **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).

[50] **Different treatments 35.** (2) In the event that this Act or the building code and a municipal by-law treat the same subject-matter in different ways in respect to standards for the use of a building described in section 10[50] 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).

[51] **35. (3)** For the purpose of this section, a municipal by-law includes a by-law of an upper-tier municipality and a local board as defined in the *Municipal Affairs Act*. 2002, c. 17, Sched. F, Table.

[52] **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).

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

Section 2[54] of the Building Code is for the administration and enforcement of the Building Code and is applicable to sections 15.1 to 15.8. Section 2 expresses that the Minister is responsible for the administration of this Act and that (2. (2)) there shall be a Director[55] appointed by the Lieutenant Governor for the Building and Development Branch of the Ministry of Municipal Affairs and Housing.

The limitation to the authority of Municipal Councils, Planners, Building Inspectors, 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 on private land/property. This may explain why Regulation 322/12 was passed.

"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."*

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

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

THE PLANNING ACT

"Ontario passed its first Planning Act in 1946, … From the outset, the PLA was binding upon municipalities through its definition of "public works". According to the Act, where an official plan was in effect, no public work could proceed that did not conform to the applicable official plan."[56]

The reason for a "planning act" in 1946 is evident. The War had ended and there was an influx of people. There was a need to ensure there was adequate employment, housing and infrastructure to accommodate this. We do not have "council housing"[57] in Ontario unless it is Social Housing on property acquired by the municipality. In no way did this impact 'private property' and the property owner would register his plan creating deeds for lots to be sold. Lots were 65 x 165 for a reason for well, septic and surveyed for roads[58]. Now the Planning Act, it would seem, is placing municipalities in jeopardy.

There is no definition of "official plan" in section 1 of the Planning Act and yet the Ontario Planning and Development Act (OPDA) instructs the reader to refer to the Planning Act for a definition under Section 1. From the OPDA it states: *"official plan" means an official plan as defined in section 1 of the* Planning Act*; ("plan officiel").* How can any planner, staff, or member of municipal council implement an act when there is no definition of what they are enacting? Without there being a definition of "official plan", it would seem that there is no foundation for the OPDA and it may not be able to be implemented leaving municipalities open for various situations that are not applicable under either act. This may also affect the Planning Act and other pieces of legislation that refer to the Planning Act.

Section 25[59] of the Planning Act states if there is an official plan a municipality must acquire land to place a "hold" on the property. This is supported by section 34 (8) of the Planning Act – Zoning By-laws.

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[56] LAW & POLICY UPDATE: TRENDS IN THE INTEGRATION OF ENVIRONMENTAL AND PLANNING LAW THE NEW ERA OF ONTARIO INFRASTRUCTURE: WHAT LAWS GOVERN INFRASTRUCTURE PLANNING? A PAPER FOR THE ONTARIO BAR ASSOCIATION CONTINUING LEGAL EDUCATION FEBRUARY 2009. The views expressed in this paper are provided by the author for present discussion purposes only. They do not constitute legal advice by the author or firm. Fogler, Rubinoff LLP. 95 Wellington Street W. Suite 1200, T-D Centre, Toronto, Ontario M5J 2Z9. Rodney Northey, M.A., LL.M., Partner, LSUC Specialist in Environmental Law

[57] A **council house**, otherwise known as a **local authority house**, normally part of a **council estate**, is a form of public or social housing. The term is used primarily in the United Kingdom and Ireland. Council houses were built and operated by local councils to supply uncrowded, well-built homes on secure tenancies at reasonable rents to primarily working-class people. Council house development began in the late 19th century and peaked in the mid-20th century, at which time council housing included many large suburban "council estates"[1] and numerous urban developments featuring tower blocks. Many of these developments did not live up to the hopes of their supporters, and now suffer from urban blight. Since 1979, the role of council housing has been reduced by the introduction of right to buy legislation, and a change of emphasis to the development of new social housing by housing associations. Nonetheless, a substantial part of the UK population still lives in council housing. In 2010 about 17% of UK households lived in social housing. Approximately 40% of the country's social housing stock is owned by local authorities, 15% is managed by arm's length management organisations, and 45% by housing associations. http://en.wikipedia.org/wiki/Council_housing - as of Sept 16, 2013

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

[59] **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

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

Which, in turn, leads to the "Holding" provisions in section 36[60] of the Planning Act. In the aforementioned sections a municipality cannot place an "H" or holding symbol on private property. Unless it has been acquired and is owned, managed or belongs to the municipality or a corporation/board created by/for the municipality.

Section 28 (2)[61] 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)[62] states when a by-law has been passed under subsection 2 the municipality may acquire the land within the community improvement area for the clearing, grading and/or prepare the land for community improvement and that it may hold the land acquired before or after the passing of the by-law.

Section 28 (6)[63] expresses that where a community improvement plan has come into effect, after acquiring the land/property, the municipality may construct, repair,

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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).

[60] **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).

[61] **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).

[62] **Acquisition and clearance of land (3)** When a by-law has been passed under subsection (2), the municipality may, (a) acquire land within the community improvement project area with the approval of the Minister if the land is acquired before a community improvement plan mentioned in subsection (4) comes into effect and without the approval of the Minister if the land is acquired after the community improvement plan comes into effect; (b) hold land acquired before or after the passing of the by-law within the community improvement project area; and (c) clear, grade or otherwise prepare the land for community improvement. R.S.O. 1990, c. P.13, s. 28 (3); 2001, c. 17, s. 7 (3).

[63] **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

rehabilitate buildings or the land, in conformity with the community improvement plan. It also expresses that the municipality may sell, lease or dispose of the buildings and/or land and that the sell, lease or disposal of the buildings/land can be to any person or government authority for use in conformity of the community improvement plan.

The definition of "community improvement"[64] includes:

> *"planning or replanning, design or redesign resubdivision, clearance, development or redevelopment, construction, reconstruction, rehabilitation, energy efficiency, and provides for residential ("Affordable housing 28. (1.1) Without limiting the generality of the definition of "community improvement" in subsection (1), for greater certainty, it includes the provision of affordable housing. 2006, c. 23, s. 14 (2)."), commercial, industrial, public, recreational, institutional, religious, charitable or other uses, buildings, structures, works, improvements or facilities, or spaces therefor, as may be appropriate or necessary."*

"Community improvement plan" means a plan for the community improvement of a community improvement project area; and "community improvement project area" means a municipality or an area within a municipality, the community improvement of which, in the opinion of the council, is desirable because of age, dilapidation, overcrowding, faulty arrangement, unsuitability of buildings or for any other environmental, social or community economic development reason. Please note "planning or replanning, design and redesign". A design is a designation and can only be implemented by the owner of the property meaning that a municipality may only designate what belongs or is property of the municipality.

Section 28 (7)[65] states that the municipality may make grants or loans for the purpose of carrying out the municipality's improvement plan. These grants or loans can be made to registered owners, assessed owners, tenants of lands and buildings within the municipality improvement project area and to any person that an owner or tenant has assigned rights to for receiving the grant or loan to pay part or all of the eligible costs of the community improvement plan, in other words entities that provide a public service and or future owners that purchase, lease or are the recipients of the disposed

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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).

[64] **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;

[65] **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).

properties. ”Eligible Costs[66] ” 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)[67] allows for grants and loans between upper and lower tier municipalities. (7.3)[68] limits the amount of grants or loans and brings in section 365.1[69] of the Municipal Act in regards to tax relief for an "eligible" property owner, who makes application, when property taxes are considered an “overburden” determined by the council.

Section 28 (10)[70] is the requirements for conditions of sale. This section includes section 34 (zoning by-laws) of the Planning act and explains that nothing that has been acquired by the municipality for a community improvement in a community improvement area can be sold unless a by-law is implemented and/or amended and that the purchaser, leases or entity that received the dispossession of property from the municipality enters into an agreement with the municipality covenanting the land use condition and/or zoning/designation[71].

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[66] **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).

[67] **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).

[68] **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).

[69] **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).

[70] **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).

[71] 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

Section 28 (11)[72] refers to grants and/or loans under subsection (7) and/or an agreement in regards to grants and/or loans. It also expresses that any agreement entered into under section (10) may be registered against the land and that the municipality may be able to enforce the conditions on the future purchaser of the property subject to the Registry Act and/or the Land Titles Act.

Section 32[73] of the Planning Act is for Community Improvement Areas and is regulations for Grants and/or Loans for repairs brings in Municipal Property Standards. Grants and Loans may be made by Municipal Councils to owners and or assessed owners of properties for repairs under the Social Housing Reform Act, the Housing Development Act, or for separate local boards that supply facilities for public services.

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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

[72] **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).

[73] **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[74] and 15.2 (2)[75] 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[76] of the Planning Act should be read in conjunction with Section 99.1[77], section 326[78] of the Municipal Act and section 15.1 and section 35[79] of the

[74] **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**).**

[75] **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[75] 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[75]; and (d) indicating the final date for giving notice of appeal from the order. 1997, c. 24, s. 224 (8).

[76] **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).

[77] Demolition and conversion of residential rental properties 99.1 (1) A local municipality may prohibit and regulate the demolition of residential rental properties and may prohibit and regulate the conversion of residential rental properties to a purpose other than the purpose of a residential rental property. 2006, c. 32, Sched. A, s. 40.
Same (2) The power to pass a by-law respecting a matter described in subsection (1) includes the power, (a) to prohibit the demolition of residential rental properties without a permit; (b) to prohibit the conversion of residential rental properties to a purpose other than the purpose of a residential rental property without a permit; and (c) to impose conditions as a requirement of obtaining a permit. 2006, c. 32, Sched. A, s. 40.
Restriction (3) The municipality cannot prohibit or regulate the demolition or conversion of a residential rental property that contains less than six dwelling units. 2006, c. 32, Sched. A, s. 40.
Effect of building code, etc. (4) Despite section 35 of the *Building Code Act, 1992*, in the event that the *Building Code Act, 1992* or a regulation made under that Act and a by-law prohibiting or regulating the demolition or conversion of a residential rental property treat the same subject-matter in different ways, that Act or the regulation under that Act

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

Under Part V – Land Use Control and Related Administration section 34.6 (3)[80] states that "The authority to regulate provided in paragraph 4 of subsection (1) includes and, despite the decision of any court, shall be deemed always to have included the authority to regulate the minimum area of the parcel of land mentioned therein and to regulate the minimum and maximum density and the minimum and maximum height of development in the municipality or in the area or areas defined in the by-law.", the criteria that is set out in section 34 (1). (4)[81] still stand. This is beyond the authority of the Province to interfere with the courts and could be considered *ultra vires,* or beyond the authority of the Province, unless it is only to be implemented on municipal properties. Then the municipality may implement "Land Use Control and Related Administration". Placing this statement leads to the confusion of Municipal Councils,

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prevails and the by-law is inoperative to the extent that the Act or regulation and the by-law treat the same subject-matter. 2006, c. 32, Sched. A, s. 40.
Same (5) If a permit to demolish a residential rental property is issued under this section, no permit is required under section 8 of the *Building Code Act, 1992* to demolish the property. 2006, c. 32, Sched. A, s. 40.
Report (6) The municipality shall report statistics and other information concerning the demolition and conversion of residential rental properties to the Minister and shall do so at the times and in the form and manner specified by the Minister. 2006, c. 32, Sched. A, s. 40.

[78] 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).

[79] **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).

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

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

the public/staff and residents to think that appealing to the courts is not an avenue, when the courts and one's right to appeal to the courts is part of our fundamental rights under the Constitution. Not to mention to make this statement is to amend the British North America Act, again which is beyond the authority of the Province, unless they are only referring to the administration, planning, zoning and designation of municipal properties by the municipal council and staff.

We are seeing that our municipally elected officials have not been informed of the various sections that must be read in conjunction with a number of pieces of legislation to enact by-laws. Section 34 of the Planning Act is "zoning by-laws", and the implementation of zoning by-laws is done when, either the municipality has ownership of the property, a public facility/government corporation has ownership or agreements have been knowingly and willingly, with full information, entered into between the municipality and the private property owner. Presently, caused by a lack of information, private property owners are being forced and/or "intimidated"[82] into entering into agreements that are beyond the ability of the municipality to demand, for permits/permission. This is a clear violation of the Registry Act[83].

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*

[82] 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.

[83] **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).

plan for it."[84], 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[85] if he chooses.

For an entity to be able to grant permission they must have the authority to deny permission of which another person does not have the ability to deny permission or interfere in private property.

> *"First, a duty is imposed on the companies to take out a license, and to be continually doing business under license. What is a license? It is a permit, --leave granted. What is the origin of the word? Undoubtedly Licet, licere, to grant leave. Now in order to grant leave, you must have power to prohibit. He who can grant leave, must first of all have authority to prohibit."* [86]

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[87]. With Municipal application process it is not being revealed to the private property owner and yet is being demanded of the private property owner, who is being forced by legislation, to dedicate his property to the Municipality[88]. This in turn gives the Municipality the authority to deny permission during the permitting process. This is beyond the jurisdiction of the province and/or the Municipality as they only have legislative jurisdiction over what belongs[89] to either the province and/or the Municipality. The province and/or the Municipalities, and other corporations (i.e. conservation authorities, NEC, etc.,), are implementing designations by demanding dedication by the

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[84] *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.

[85] 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.

[86] Constitution of Canada. The B.N.A. Act, 1867; Its Interpretation, etc., p. 224

[87] 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.

[88] "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

[89] 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.

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

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."[90]

Had this person not applied for a "rezoning" the municipality did not have authority to demand application or to implement any zoning. The municipality 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)."[91]

> *"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…"*[92]

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 below 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 municipalities, or any entity, the authority to demand application on private property. The zoning, planning, etc., is all for the various municipal properties, boards, social housing, etc., but not private property. Unfortunately, the majority of municipal councils 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 and staff in the position of committing a

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[90] Town of Lincoln letter to Theodore John Lizak, dated August 8, 2013.

[91] Constitution of Canada. The B.N.A. Act, 1867; Its Interpretation, etc., p. 207

[92] Constitution of Canada. The B.N.A. Act, 1867; Its Interpretation, etc., p. 209

criminal act as expressed in the Criminal Code of Canada. In July 2013[93] there has been an application to the courts of "torts of trespass", Criminal charges, etc., against all of a council 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 a council 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.

> *"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)." "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…"*[94]

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."*[95]

[93] Court File No. 49890 - VERNON REGISTRY

[94] Constitution of Canada. The B.N.A. Act, 1867; Its Interpretation, etc., p. 209

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

AMO

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[96]. 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."

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 "responsible and accountable governments with respect to matters within their jurisdiction" [97]? Were the Plans to be implemented only on municipal property and was there the ability in these plans to zone/designate private property, creating a trespass?

With the Association of Municipalities Ontario (AMO) actually administering the Gas Tax Transfers[98], 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 and federal governments, 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-

[96] "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.

[97] Municipal Act, 2001. Purposes 2. Municipalities are created by the Province of Ontario to be responsible and accountable governments with respect to matters within their jurisdiction and each municipality is given powers and duties under this Act and many other Acts for the purpose of providing good government with respect to those matters. 2006, c. 32, Sched. A, s. 2.

[98] "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.

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.

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."[99]

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". [100]

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

[99] 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.
[100] From: Mark Henderson [mailto:garageplus@yahoo.ca], Sent: Tuesday, December 04, 2012 1:09 PM

OFFICIAL PLANS ARE THEY A BENEFIT?

The Ministry of Natural Resources (MNR) claim that the land/property owned or administered by Ontario is 937,000 km squared being 87% [101] of the 1,070,000 square kilometers that make up the land mass of the geographical boundaries of this province. That means that only 13% of the land mass, within the boundaries of the province, is privately owned, of which can be owned by public bodies, such as the NEC, the conservation authorities, conservation bodies, etc. And with the province following the same failed reports[102] 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 economic 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[103], the government would be in the same financial difficulties as California.

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).[104]

Conformity = submitting and surrendering to something. This statement is leaving the impression that municipalities have jurisdiction over private property and yet in the Municipal Act, the municipalities are either natural persons or in some instances a "geographic area", and if something is not "in" or "belong to" the municipality, it does not have jurisdiction[105] to regulate. This statement also infers the removal of Municipalities ability, to represent the people of their communities, by enforcing, through legislation, mandatory conformity with the Provincial Plan. This is not in the best interest of the People of Ontario. This Act, in itself, is the removal of everyone's constitutional

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[101] 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 km2, including 164,000 km2 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, as of august 21, 2012.

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

[103] Investing in People: Creating a Human Capital Society, p. 31

[104] Places to Grow Act.

[105] By-laws - 27. (1) Except as otherwise provided in this Act, a municipality may pass by-laws in respect of a highway only if it has jurisdiction over the highway. 2001, c. 25, s. 27 (1).
Joint jurisdiction - (2) If a highway is under the joint jurisdiction of two or more municipalities, a by-law in respect of the highway must be passed by all of the municipalities having jurisdiction over the highway. 2001, c. 25, s. 27 (2).

fundamental rights and this is not the first time that legislation has been created, by this government that has been documented as unconstitutional[106].

Many Municipalities are questioning the Official Growth Plan and the Growth Plans for their communities. MPPs' are questioning the validity of the Growth Plans and the sustainability, where specific areas are slated for specific growth and yet the supporting industry is forced to close[107]. 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 that support these plans are faulted.

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., 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.

> "However, due to licensing restrictions and confidentiality issues, the OMAFRA is not able to release this information to municipalities and the general public."[108]

[106] 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.

[107] Local Grape Juice Industry – Worth Saving? Government says "NO". Destroy Your Crops. Landowner Magazine, 2007.

[108] Identification of Prime Agricultural Areas Using a LEAR Methodology for the Town of Mono, May 2011, p. 2.

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 placed in those documents in regards to exactly what the jurisdiction of the municipality is.

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 and are the designs/municipal plans of only a few corporations that are presenting plans to municipalities, including Stantec. It would seem that this is a planning company that hadn't checked to see if legislation was still in operation, in regards to the Lincoln plan, and had omitted other pieces of legislation (Forestry Act, etc.). 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.

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.

"Since Magna Carta the estate of a subject in lands or buildings has been protected against the prerogative of the Crown."[109]. 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[110].

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

[109] A.G. v. DeKeyer's Royal Hotel, 1920, p. 28

[110] Defence Act, 1842.

the municipality and it is collecting that tax as a revenue source for both the province and the municipalities.

In other words, the province and the municipalities 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.

As an elected official there are certain terms that one should be aware of. There are also certain sections, in the Municipal Act and other municipally geared legislation that, on the surface, may remove certain types of liability. There is section 45[111] of the Municipal Act stating that no proceeding shall be commenced against a member of council, staff etc., regarding maintenance/repairs of highways, and bridges within certain "reasonable" limits. As a councillor one must understand the term "reasonable care", "reasonable person" and "standard of care". These terms are defined as:

> **"REASONABLE CARE** – As a test of liability for negligence, the degree of care that a prudent and competent person engaged in the same line of business or endeavor would exercise under similar circumstances. Also termed due care; ordinary care; adequate care; proper care. See Reasonable Person.
> **REASONABLE PERSON** - Black's Law Dictionary, 9th Edition, 2009, p. 1380. – 1. A hypothetical person used as a legal standard, esp. to determine whether someone acted with negligence; specif., a person who exercises the degree of attention, knowledge, intelligence, and judgment that society requires of its members for the protection of their own and of others' interests. The reasonable person acts sensibly, does things without serious delay, and takes proper but not excessive precautions. Also termed reasonable man, prudent person, ordinarily prudent person, reasonably prudent person. See reasonable care. "The reasonable man connotes a person whose notions and standards of behaviour and responsibility correspond with those generally obtained among ordinary people in our society at the present time, who seldom allows his emotions to overbear his reason and whose habits are moderate and whose disposition is equable. He is not necessarily the same as the average man – a term which implies an amalgamation of courter-balancing extremes." R.F.V. Heuston, Salmond of the Law of Torts 56 (17th ed. 1977).
> **STANDARD OF CARE** - Black's Law Dictionary, 9th Edition, 2009, p. 1535 – In the law of negligence, the degree of care that a reasonable person should exercise."

[111] **No personal liability** **45.** (1) No proceeding shall be commenced against a member of council or an officer or employee of the municipality for damages based on the default of the municipality in keeping a highway or bridge in a state of repair that is reasonable in light of all of the circumstances, including the character and location of the highway or bridge. 2001, c. 25, s. 45 (1).
Exception, contractors (2) Subsection (1) does not apply to a contractor with the municipality, including any officer or employee who is acting as a contractor, whose act or omission caused the damages. 2001, c. 25, s. 45 (2).

This includes performing “due diligence”.

IS THERE IMMUNITY FOR COUNCIL?

It will also be brought to Municipal Councillors that they have insurance to cover any situation and section 279[112] of the Municipal Act expresses that municipalities may self-insure or have a co-operative reciprocal deal with other municipalities. Depending on these contracts what will or will not be insured must be determined, and is it financially prudent for one municipality to bear the financial obligations of another, when the other is in the wrong? And what if there is more than one instance, does that create a situation where there can be no insurance? And is this section of the Act actually constitutional? These are questions that Councillors should be asking.

Under section 448.1 it states that *“No proceeding for damages or otherwise shall be commenced against a member of council or an officer, employee or agent of a municipality or a person acting under the instructions of the officer, employee or agent for any act done in good faith in the performance or intended performance of a duty or authority under this Act or a by-law passed under it or for any alleged neglect or default in the performance in good faith of the duty or authority. 2001, c. 25, s. 448 (1).”*

The term “in good faith” may have left avenues open to Councillors and Staff except that there is instruction that you must a) know and understand the legislation, b) you must know and understand legal limitations, c) and you must perform “reasonable care” or due diligence. Under section 19[113] of the Criminal Code of Canada it states:

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[112] **Insurance 279.** (1) Despite the *Insurance Act*, a municipality may be or act as an insurer and may exchange with other municipalities in Ontario reciprocal contracts of indemnity or inter-insurance in accordance with Part XIII of the *Insurance Act* with respect to the following matters: 1. Protection against risks that may involve pecuniary loss or liability on the part of the municipality or any local board of the municipality. 2. The protection of its employees or former employees or those of any local board of the municipality against risks that may involve pecuniary loss or liability on the part of those employees. 3. Subject to section 14 of the *Municipal Conflict of Interest Act*, the protection of the members or former members of the council or of any local board of the municipality or any class of those members against risks that may involve pecuniary loss or liability on the part of the members. 4. Subject to section 14 of the *Municipal Conflict of Interest Act*, the payment of any damages or costs awarded against any of its employees, members, former employees or former members or expenses incurred by them as a result of any action or other proceeding arising out of acts or omissions done or made by them in their capacity as employees or members, including while acting in the performance of any statutory duty. 5. Subject to section 14 of the *Municipal Conflict of Interest Act*, the payment of any sum required in connection with the settlement of an action or other proceeding referred to in paragraph 4 and for assuming the cost of defending the employees or members in the action or proceeding. 2001, c. 25, s. 279 (1).
Limitation (2) Despite section 387 of the *Insurance Act*, any surplus funds and the reserve fund of a municipal reciprocal exchange may be invested only in accordance with section 418. 2001, c. 25, s. 279 (2).
Reserve funds (3) The money raised for a reserve fund of a municipal reciprocal exchange may be spent, pledged or applied to a purpose other than that for which the fund was established if two-thirds of the municipalities that are members of the exchange together with two-thirds of the municipalities that previously were members of the xchange and that may be subject to claims arising while they were members of the exchange, agree in writing and if section 386 of the *Insurance Act* is complied with. 2001, c. 25, s. 279 (3).
***Insurance Act* does not apply** (4) The *Insurance Act* does not apply to a municipality acting as an insurer for the purpose of this section. 2001, c. 25, s. 279 (4).

[113] Ignorance of the law 19. Ignorance of the law by a person who commits an offence is not an excuse for committing that offence. Criminal Code of Canada.

"Ignorance of the law 19. Ignorance of the law by a person who commits an offence is not an excuse for committing that offence."

So where does that leave Municipal Council and staff? It leaves them facing section 448.2

"Liability for torts

448. (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)."

Based on the Councillor's Guide 2010, if Council and staff haven't fulfilled the criteria that has been laid out in that document, you have no defence regarding what someone would display as "reasonable care" and it could be construed as "bad faith", even if you have done what you thought was "reasonable" by contacting Municipal Affairs as Municipal Affairs cannot give advice. This could leave council/staff open to legal action. All that is needed is for one not to know and understand the legislation. Remember the Province, the Ministry of Housing and Municipal Affairs, and AMO have placed this onus on Municipal Council and staff.

Regarding outside legal advice. It must be understood that, due to massive legislation, this also may not be reliable. Different legal advisors will have differing opinions and as expressed due to the amount of legislation that may pertain to a situation, and as all legislation must be taken into account and read in its entirety[114], Council, again will be left with, at the least, an ambiguous if not confusing opinion. Councillors, it would seem, should, perhaps, side on the side of caution and consider only the main pieces of law from the Federal level, those being: The Constitution, the BNA and the Common Law.

Below is the disclaimer from the 2010 Councillor's Guide. This should raise a red flag with any and all elected officials.

"Disclaimer

…It does not include all details and does not take into account local facts and circumstances. … Municipalities and councillors are responsible for making local decisions, including for compliance with law such as applicable statutes and regulations. …, the guide, …, should not be relied upon as a substitute for specialized legal or professional advice in connection with any particular matter. The user is solely responsible for any use or application of the guide." [115]

[114] E. A. Driedger: Construction of Statutes (2nd ed. 1983 at page 87.) "Today there is only one principle or approach, namely the words of the Act is to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act and the intention of Parliament."

[115] The Municipal Councillor's Guide. Ministry of Municipal Affairs and Housing, 2010, p. 2.

CONCLUSION

From the beginning of this document 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.

> "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…"[116]

The limitation to the authority of Municipal Councils, 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 stepping 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 Municipalities have the ability to regulate private property, other than those entities that Municipalities 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 "directly" and "indirectly" acquired by the Municipalities.

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 municipalities, that perhaps AMO has lost sight of what it was created for, including the original mandate and obligations to the municipalities. The municipalities 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

[116] In Georgian Bluffs (Township) v. Moyer, Oct. 2012 on pages 6 and 7.

parcel of the agreement. And how is it that the provincial plans are being implemented through an agreement involving the Federal Government and the Municipalities. 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, considering it is "public works" at the local level that are to be implemented in official plans.

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."[117]

Had this person not applied for a "rezoning" the municipality did not have authority to demand application or to implement any zoning. The municipality 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)."[118]

> *"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…"*[119]

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 below 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 municipalities, or any entity, the authority to demand application on private property. The zoning, planning, etc., is all for the various municipal properties, boards, social housing, etc., but not private property. Unfortunately, the majority of municipal

[117] Town of Lincoln letter to Theodore John Lizak, dated August 8, 2013.

[118] Constitution of Canada. The B.N.A. Act, 1867; Its Interpretation, etc., p. 207

[119] Constitution of Canada. The B.N.A. Act, 1867; Its Interpretation, etc., p. 209

councils 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 and staff in the position of committing a criminal act as expressed in the Criminal Code of Canada. In July 2013[120] there has been an application to the courts of "torts of trespass", Criminal charges, etc., against all of a council and staff, and it is only a matter of time before someone else will use some of the below against a council 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.

Throughout this document we are hopeful, that with the information provided, that Municipal Councils will take a step back and ask questions of their staff, advisors, consultants and the public. 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 municipality elected officials, their staff or the advisors. And it is with this document that we hope that our Municipalities will be protected from implementing “official plans” that there isn’t any definition of, placing our municipalities at risk. It is also to protect our municipalities from issuing licenses, permits, fees and fines that can be challenged in the courts, saving time, money and effort for both the Municipalities and the residents of their communities.

[120] Court File No. 49890 - VERNON REGISTRY

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;

GLOSSARY

AB ABSURDO: Latin: an evidentiary suggestion or statutory interpretation that is, or leads to, an absurdity. An example of an *ab absurdo* interpretation of a statute or of a contract would be where the conclusion empties the phrase under scrutiny of no effect whatsoever. Neither the legislature nor persons who sign contracts can intend that a phrase of their contract have no effect whatsoever and so therefore, such an interpretation would be *ab absurdo*.
http://www.duhaime.org/LegalDictionary/A/AbAbsurdo.aspx

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

ABSOLUTE INTEREST (Black's Law Dictionary, 9th Edition, 2009, p. 885) – An interest that is not subject to any condition.

ACQUIRED RIGHT DOCTRINE– Black's Law Dictionary, 9th Edition, 2009, p. 26. The principle that once a right has vested, it may not be reduced by later legislation.

ADVERSE POSSESSION - Black's Law Dictionary 9th Ed. 2009, p. 62. 1. The enjoyment of real property with a claim of right when that enjoyment is opposed to another person's claim and is continuous, exclusive, hostile, open, and notorious. 2. The doctrine by which title to real property is acquired as a result of such use or enjoyment over a specified period of time.

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

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

ASSIGN/ASSIGNS/ASSIGNEES: A person to whom property, rights, or powers are transferred. To sell, give or otherwise transfer some legal right or responsibility to another. The *assignee* (sometimes also called an "assign") is the person who receives the right or property being given. The *assignor* is the person giving; assigning the item of property. In *Sovereign Fire Insurance v Peters*, Justice Richie of Canada's Supreme Court wrote: "…assign is, in law, to transfer or make over to another the right one has in any object…A mortgage is one thing; an assignment of the property is quite another; the one being conditional the other absolute."
http://www.duhaime.org/LegalDictionary/A/AbAbsurdo.aspx

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

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

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

CIVIL CODE: A document in civil law jurisdictions that purports to be a compendium of the applicable law as it pertains to the citizen. Those jurisdictions that purport to prefer codification - the comprehensive publication of applicable private law - are called civil law jurisdictions, such as Quebec and Louisiana, most of Europe and all of South America. The primary document that they publish, as a core statute, is called the *Civil Code*, and if often accompanied by a more technical document related to procedure, a code of civil procedure (*code de procedure civile*). http://www.duhaime.org/LegalDictionary/A/AbAbsurdo.aspx

CLAIM - Black's Law Dictionary 9th Ed. 2009, p. 281-282 – 1. The aggregate of operative facts giving rise to a right enforceable by a court. 2. The assertion of an existing right; any right to payment or to an equitable remedy, even if contingent or provisional. 3. A demand for money, property, or a legal remedy to which one asserts a right; esp., the part of a complaint in a civil action specifying what relief the plaintiff asks for.

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

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

CORPOREAL POSSESSION - Black's Law Dictionary 9th Ed. 2009, p. 1282. Possession of a material object, such as a farm or a coin. – Also termed natural possession.

COVENANT: A written document in which signatories either commit themselves to do a certain thing, to not do a certain thing or in which they agree on a certain set of facts. They are very common in real property dealings and are used to restrict land use such as amongst shopping mall tenants or for the purpose of preserving heritage property. For example, a covenantor to a mortgage commits himself to pay the mortgage if the mortgagor defaults. A person buying a property may find that there is a covenant

prohibiting dog ownership on title.
http://www.duhaime.org/LegalDictionary/A/AbAbsurdo.aspx

DEDICATION (Black's Law Dictionary, 9th Edition, 2009, p. 473) – The donation of land or creation of an easement for public use.

DEDICATION – COMMON LAW - (Black's Law Dictionary, 9th Edition, 2009, p. 473) – A dedication made without a statute, consisting in the owner's appropriation of land, or an easement in it, for the benefit or use of the public, and the acceptance, by or on behalf of the land or easement. – Often shortened to *dedication.*

DEDICATION – BY ADVERSE USER - (Black's Law Dictionary, 9th Edition, 2009, p. 473) – A dedication arising from the adverse, exclusive use by the public with the actual or imputed knowledge and acquiescence of the owner.

DECIDATION – EXPRESS - (Black's Law Dictionary, 9th Edition, 2009, p. 473). A dedication explicitly manifested by the owner.

DEDICATION – IMPLIED - (Black's Law Dictionary, 9th Edition, 2009, p. 474). A dedication presumed by reasonable inference from the owner's conduct.

DEDICATION – STATUTORY - (Black's Law Dictionary, 9th Edition, 2009, p. 474). A dedication for which the necessary steps are statutorily prescribed, all of which must be substantially followed for an effective dedication.

DEDICATION – TACIT - (Black's Law Dictionary, 9th Edition, 2009, p. 474). A dedication of property for public use arising from silence or inactivity and without an express agreement.

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

EMINENT DOMAIN. – So great moreover is the regard of the law for private property, that it will not authorize the least violation of it; no, not even for the general good of the whole community. If a new road, for instance, were to be made through the grounds of a private person, it might perhaps be extensively beneficial to the public; but the law permits no man, or set of men to do this without consent of the owner of the land…Besides the public good is in nothing more essentially interested, than in the protection of every individual's private rights…" Blackstone Commentaries, 2:138-9

FEE SIMPLE – Black's Law Dictionary, 9th Edition, p. 691. An interest in land that, being the broadest property interest allowed by law, endures until the current holder dies without heirs; esp., a fee simple absolute. – Often shortened to *fee.* "Fee simple. Originally this was an estate which endured for as long as the original tenant or any of his heirs survived. 'Heirs' comprised any blood relations, although originally ancestors

were excluded; not until the Inheritance Act 1833 could a person be the heir of one of his descendants. Thus at first a fee simple would terminate if the original tenant died without leaving any descendants or collateral blood relations (e.g. brothers or cousins), even if before his death the land had been conveyed to another tenant who was still alive. But by 1306 it was settled that where a tenant in fee simple alienated the land, the fee simple would continue as long as there were heirs of the new tenant and so on, irrespective of any failure of the original tenant's heirs. Thenceforward a fee simple was virtually eternal." Robert E. Megarry & M.P. Thompson, A Manual of the Law of Real Property 24-25 (6th ed. 1993). FEE SIMPLE ABSOLUTE – An estate of indefinite or potentially infinite duration (e.g. Albert and his heirs"). – Often shortened to fee simple or fee. Also termed *fee simple absolute in possession.* "Although it is probably good practice to use the word 'absolute' whenever one is referring to an estate in fee simple that is free of special limitations, conditions subsequent, or executory limitation, lawyers frequently refer to such an estate as a 'fee simple' or even as a 'fee'. Thomas F. Bergin & Paul G. Haskell. Preface to Estates in Land and Future Interests 24 (2d ed. 1984).

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

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

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

HABENDUM: part of a title document separate from the legal description specifying an interest being conveyed in said property. i.e. terms of years, use restrictions. http://www.duhaime.org/LegalDictionary/A/AbAbsurdo.aspx

HEREDITAMENT: a right. Hereditament Corporeal: freehold estate in land. Hereditament Incorporeal: forms of property in land other than freehold estates or a right attached to freehold land.
http://www.duhaime.org/LegalDictionary/A/AbAbsurdo.aspx

HERITAGE – Property that passed on death to the owner's heir; esp., land and all the property connect to it (such as a house). – also termed *heritage property.* Black's Law Dictionary, 9th Edition, 2009, p. 796

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

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

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

2. An estate or interest in real property.

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

LAND – In its restrained sense means soil, but in its legal acceptation it is a generic term, comprehending every species of ground or earth, as meadows, pastures, woods, moors, water, marshes, furze, and heath; it includes also messauges (i.e. dwelling

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

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

LETTERS PATENT: A letter or document from someone in authority (Crown or Nobility, etc.) use to record an agreement, contract, a command, endow a right, privilege, title, property, etc., granting a sole right to something. Also see Crown land patent: Private property patented land that is privately owned. http://www.duhaime.org/LegalDictionary/A/AbAbsurdo.aspx

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

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

MESSUAGES - Dictionary of Jurisprudence, 1847, p. 421 (436) . A dwelling house with some adjacent land assigned to the use thereof.

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

NUISANCE – Black's Law Dictionary 9th Ed. 2009, p. 1171. 1. A condition, activity, or situation (such as a loud noise or foul odor) that interferes with the use or enjoyment of property; esp., a nontransitory condition or persistent activity that either injures the physical condition of adjacent land or interferes with its use or with the enjoyment of easements on the land or of public highways. Formerly also termed *annoyance.*

> *"A 'nuisance' is a state of affairs. To conduct a nuisance is a tort. In torts, the word 'nuisance' has had an extremely elastic meaning, a weasel word used as a substitute for reasoning…The general distinction between a nuisance and a trespass is that the trespass flows from a physical invasion and the nuisance does not." Roger A. Cunningham et al., The Law of Property ss. 7.2, at 417 (2nd ed. 1993).*

2. Loosely, an act or failure to act resulting in an interference with the use or enjoyment of property. In this sense, the term denotes the action causing the interference, rather than the resulting condition <the Slocums' playing electric guitars in their yard constituted a nuisance to their neighbours>. 3. The class of torts arising from such conditions, acts, or failures to act when they occur unreasonably. – Also termed *actionable nuisance.*

PATENT RESTRICTIONS: a generic term that includes, "reservations, land use conditions, qualifications, provisos," or other restrictions that are contained in letters patent. http://www.duhaime.org/LegalDictionary/A/AbAbsurdo.aspx

POSSESSION - Black's Law Dictionary 9th Ed. 2009, p. 1281. 1. The fact of having or holding property in one's power; the exercise of dominion over property. 2. The right under which one may exercise control over something to the exclusion of all others; the continuing exercise of a claim to the exclusive use of a material object. 3. Civil Law. The detention or use of a physical thing with the intent to hold it as one's own. 4. Something that a person owns or controls.

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

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

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

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

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

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

PUBLIC-SERVICE CORPORATION – A corporation whose operations serve a need of the general public, such as public transportation, communications, gas, water, or electricity. This type of corporation is usu., subject to extensive governmental regulation

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 NUISANCE – Black's Law Dictionary, 9th Edition, 2009, p. 1172. An unreasonable interference with a right common to the general public, such as a condition dangerous to health, offensive to community moral standards, or unlawfully obstructing the public in the free use of public property. Such a nuisance may lead to a civil injunction or criminal prosecution. – Also termed *common nuisance.*

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.

REASONABLE CARE – As a test of liability for negligence, the degree of care that a prudent and competent person engaged in the same line of business or endeavor would exercise under similar circumstances. Also termed due care; ordinary care; adequate care; proper care. See Reasonable Person.

REASONABLE PERSON - Black's Law Dictionary, 9th Edition, 2009, p. 1380. – 1. A hypothetical person used as a legal standard, esp. to determine whether someone acted with negligence; specif., a person who exercises the degree of attention, knowledge, intelligence, and judgment that society requires of its members for the protection of their own and of others' interests. The reasonable person acts sensibly,

does things without serious delay, and takes proper but not excessive precautions. Also termed reasonable man, prudent person, ordinarily prudent person, reasonably prudent person. See reasonable care. "The reasonable man connotes a person whose notions and standards of behaviour and responsibility correspond with those generally obtained among ordinary people in our society at the present time, who seldom allows his emotions to overbear his reason and whose habits are moderate and whose disposition is equable. He is not necessarily the same as the average man – a term which implies an amalgamation of courter-balancing extremes." R.F.V. Heuston, Salmond of the Law of Torts 56 (17th ed. 1977).

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.

SITUATE – Verb 1. situate - determine or indicate the place, site, or limits of, as if by an instrument or by a survey; "Our sense of sight enables us to locate objects in space"; "Locate the boundaries of the property" Based on WordNet 3.0, Farlex clipart collection. © 2003-2012 Princeton University, Farlex Inc.
http://www.thefreedictionary.com/situate

STANDARD OF CARE - Black's Law Dictionary, 9th Edition, 2009, p. 1535 – In the law of negligence, the degree of care that a reasonable person should exercise.

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

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

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Director – Canadian Justice Review Board
Associate Research Fellow – Arthur Meighen Institute for Public Affairs

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 ©

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 km2, including 164,000 km2 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, as of August 21, 2012.