

With reference to the Committee of the Whole meeting of December 2 referencing a proposed tree cutting bylaw affecting private property:

Please find enclosed a copy of a publication from the Ontario Landowners Association with respect to Tree Cutting Bylaws.

Please review prior to meeting as my presentation will reference this document.

Thank you,

Joan Olech, 



www.ontariolandowners.ca

**Tree Cutting By-Laws:
What Municipal Councils Need to Know. ©**

A report created by the
Research Team of the
Ontario Landowners Association
October 2012 ©

E.F. Marshall, Director of Research
o.b.o. Research Team
Ontario Landowners Association

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

Copyright and Disclaimer

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

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

Copyright © October, 2012 by the Ontario Landowners Association

EXECUTIVE SUMMARY

Throughout Ontario different Municipalities are entertaining the implementation of Tree Cutting By-laws. These Municipalities, under Section 135 of the Municipal Act have this authority, but there are other superior documents that must be considered before the creation and passing of such by-laws.

These different statutes include, but are not limited to, the Constitution (British North America Act, 1867 [BNA]) sections 92.5 and 109, 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.

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

THE MUNICIPAL ACT, 62, 135, 141, 394 AND 461

In the Municipal Act, Sections 62, 135, 141, 394, and 461 involve Tree Maintenance and Tree Cutting By-laws. Section 135 states that both upper and lower tier municipalities may create by-laws for the regulation and the prohibition of harvesting or damaging trees, and section 135¹ also refers the councils, that are creating by-laws, to refer to the Forestry Act.

Under Section 62. (1) and (2)² a municipality, at any reasonable time may enter upon their property that is a road allowance to inspect and/or conduct tests on the trees on the road allowance. They may also remove any trees, branches, etc., from that road allowance if they consider it a danger to the public that is using the road. If a tree on private property is hanging over the property line and becomes a danger to anyone using the road allowance and/or the roadway, the municipality can assume that those branches, under common law, become the property of the municipality and trim the overhanging branches.

Restrictions are placed on lower tier municipalities in 135 (4)³ if the upper tier has/have implemented tree cutting by-laws.

Section 135 (5)⁴ again refers municipalities to have reference to the Forestry Act and regards to good forestry practices described in the Forestry Act.

135 (7)⁵ expresses that municipalities may demand permits, fees and licenses for the removal, injury and/or harvesting of trees. The municipalities are limited to by-laws that only affect their property or property that they have entered into an agreement with the private property owner, as set out in the Forestry Act, the Public Lands Act, the Property and Civil Rights Act, etc.

¹ **Tree by-laws 135. (1)** Subject to subsection (4) and without limiting sections 9, 10 and 11, a local municipality may prohibit or regulate the destruction or injuring of trees. 2006, c. 32, Sched. A, s. 71 (1). **Woodlands (2)** Without limiting sections 9, 10 and 11, an upper-tier municipality may prohibit or regulate the destruction or injuring of trees in woodlands designated in the by-law. 2006, c. 32, Sched. A, s. 71 (1). **Definition (3)** In this section, "woodlands" means woodlands as defined in the *Forestry Act* that are one hectare or more in area. 2001, c. 25, s. 135 (3).

² **Entry on land, tree trimming, 62. (1)** A municipality may, at any reasonable time, enter upon land lying along any of its highways, (a) to inspect trees and conduct tests on trees; and (b) to remove decayed, damaged or dangerous trees or branches of trees if, in the opinion of the municipality, the trees or branches pose a danger to the health or safety of any person using the highway. 2001, c. 25, s. 62 (1).

Immediate danger (2) An employee or agent of the municipality may remove a decayed, damaged or dangerous tree or branch of a tree immediately and without notice to the owner of the land upon which the tree is located if, in the opinion of the employee or agent, the tree or branch poses an immediate danger to the health or safety of any person using the highway. 2001, c. 25, s. 62 (2); 2006, c. 32, Sched. A, s. 26.

³ **Restriction (4)** If an upper-tier municipality by-law in respect of woodlands is in effect in a lower-tier municipality, the lower-tier municipality may not prohibit or regulate the destruction of trees in any woodlands designated in the upper-tier by-law and any lower-tier by-law, whether passed before or after the upper-tier by-law comes into force, is inoperative to the extent that it applies to trees in the designated woodlands. 2001, c. 25, s. 135 (4).

⁴ **Factor to be considered (5)** In passing a by-law regulating or prohibiting the injuring or destruction of trees in woodlands, a municipality shall have regard to good forestry practices as defined in the *Forestry Act*. 2001, c. 25, s. 135 (5); 2002, c. 17, Sched. A, s. 27 (1).

⁵ **Conditions (7)** Without limiting sections 9, 10 and 11, a municipality may, in a by-law passed under this section, (a) require that a permit be obtained to injure or destroy trees; and (b) impose conditions to a permit, including conditions relating to the manner in which destruction occurs and the qualifications of persons authorized to injure or destroy trees. 2001, c. 25, s. 135 (7); 2006, c. 32, Sched. A, s. 71 (2).

Sub-section (12)⁶ involves exemptions from any tree cutting by-laws, implemented. These exemptions involve Municipal exemption, quarry exemptions, exemptions for Surveyors, development exemptions under the Planning act, exemptions under the Forestry Act, exemptions for electricity distribution towers/lines being constructed, etc. If there are exemptions from any by-law or legislation, the legislation is unconstitutional (Section 15 of the Charter).

Pertaining to tree management is Section 141⁷ which authorizes municipalities to plant trees along road sides, and with the consent of private property owners, to plant trees on private property. Please note that this section contains the provision that consent must be obtained from the private property owner, that has "acquired rights"⁸ that cannot be interfered with, for the municipality to plant trees on private property.

That being said, why would a municipality need permission from a private property owner to plant trees and yet not need permission from a private property owner and/or yet require a private property owner, that has previous acquired rights, to obtain permits, licenses and/or pay fees/fines for harvesting/using their private trees on/from their private property? It would stand to reason and historical documentation⁹ that the municipality does not have the authority to implement "tree cutting by-laws" on private property without having previously

⁶ **Exemption from by-law (12)** A by-law passed under this section does not apply to, (a) activities or matters undertaken by a municipality or a local board of a municipality; (b) activities or matters undertaken under a licence issued under the *Crown Forest Sustainability Act, 1994*; (c) the injuring or destruction of trees by a person licensed under the *Surveyors Act* to engage in the practice of cadastral surveying or his or her agent, while making a survey; (d) the injuring or destruction of trees imposed after December 31, 2002 as a condition to the approval of a site plan, a plan of subdivision or a consent under section 41, 51 or 53, respectively, of the *Planning Act* or as a requirement of a site plan agreement or subdivision agreement entered into under those sections; (e) the injuring or destruction of trees imposed after December 31, 2002 as a condition to a development permit authorized by regulation made under section 70.2 of the *Planning Act* or as a requirement of an agreement entered into under the regulation; (f) the injuring or destruction of trees by a transmitter or distributor, as those terms are defined in section 2 of the *Electricity Act, 1998*, for the purpose of constructing and maintaining a transmission system or a distribution system, as those terms are defined in that section; (g) the injuring or destruction of trees undertaken on land described in a licence for a pit or quarry or a permit for a wayside pit or wayside quarry issued under the *Aggregate Resources Act*; or (h) the injuring or destruction of trees undertaken on land in order to lawfully establish and operate or enlarge any pit or quarry on land, (i) that has not been designated under the *Aggregate Resources Act* or a predecessor of that Act, and (ii) on which a pit or quarry is a permitted land use under a by-law passed under section 34 of the *Planning Act, 2001*, c. 25, s. 135 (12); 2002, c. 17, Sched. A, s. 27 (3, 4).

⁷ Planting trees adjacent to highways 141. Without limiting sections 9, 10 and 11, a municipality may provide trees to the owners of land adjacent to any highway and may plant the trees on the owners' land with their consent. 2001, c. 25, s. 141; 2006, c. 32, Sched. A, s. 75.

⁸ ACQUIRED RIGHT – (Black's Law Dictionary, 9th Edition, 2009, p. 26) – The principle that once a right has been vested, it may not be reduced by later legislation.

⁹ An Act to secure Free Grants and Homesteads to actual Settlers on the Public Lands, [Assented to 28th February, 1868] "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."

entered into agreements with the private property owner, as expressed in the Forestry Act, and that both parties are in agreement, without hiding said agreements in applications for permits.

There is also the restrictions mandated in Section 394 of the Municipal Act which restrain municipalities, in regards to natural resources, with instruction that:

Restriction, fees and charges

394. (1) No fee or charge by-law shall impose a fee or charge that is based on, is in respect of or is computed by reference to, (e) the generation, exploitation, extraction, harvesting, processing, renewal or transportation of natural resources. 2001, c. 25, s. 394 (1); 2006, c. 32, Sched. A, s. 166.

And section 461¹⁰ limits the degree of which a tree cutting by-law is to be implemented, granting to either lower or upper tier the most restrictive by-law. This could create competition between the lower and upper tier as to which would have the harshest most intrusive by-laws, with complete disregard for public input. It also expresses that after December 31, 2002, this section is not applicable.

What has been determined is that there is a conflict within the Municipal Act between sections 62, 135 (1), (4), (5), (12), section 141, section 394 (e), section 461 and the Forestry Act, the Public Lands Act, the BNA, the Charter, the Property and Civil Rights Act, etc., and these conflicts are raising questions as to how much authority either tier may be able to implement in regards to a tree cutting by-law.

¹⁰ Conflict re: tree by-laws 461. (1) If, on January 1, 2003, there is a conflict between an upper-tier by-law and a lower-tier by-law relating to the regulation or prohibition of the destruction or injuring of trees, the by-law that is the most restrictive of the destruction or injuring of trees prevails. 2001, c. 25, s. 461. **By-laws made after December 31, 2002** (2) Subsection (1) does not apply to a conflict between a by-law of an upper-tier municipality passed after December 31, 2002 under this Act and a by-law of a lower-tier municipality passed after December 31, 2002 under this Act. 2002, c. 17, Sched. A, s. 87.

THE FORESTRY ACT

The Forestry Act strictly limits and sets out the criteria of what a Municipality and/or County may include in a Tree Cutting By-law. Below, the Forestry Act specifies that a municipal tree cutting by-law may only be implemented on properties that are owned, leased or acquired by the Municipality. In conjunction with section 394 (e) of the Municipal Act there must also be interaction with the Ministry of Natural resources to ensure that the Municipality is not violating its own act and a municipality must perform due diligence to ensure that when creating such a by-law it is not violating any other acts.

Section 2 of the Forestry Act¹¹ expresses that the Minister may enter into agreements with private property owners for the management and/or improvement of the land. Section 2 (2)¹² expresses that the Minister may make grants to, any conservation authority or municipality for the purpose of, either, corporations acquisition of land for forestry purposes. Section 2 (3)¹³ states that any land that the conservation authorities or municipalities or their predecessors have received grants for must be used for forestry purposes only and sub-section (4)¹⁴ demands repayment by the conservation authorities and the municipalities if they use the lands for any other purpose. Sub-sections (5), (6) and (7)¹⁵ regulate that the lands for which grants had been made cannot be sold, leased or disposed of unless approved by the Minister before the term of the agreement is fulfilled, saving that the Province may sell, lease or dispose of the land for the use of the Province.

¹¹ Agreements re forestry development, 2. (1) The Minister may enter into agreements with owners of land suitable for forestry purposes that provide for the management or improvement of the land for these purposes upon such conditions as the Minister considers proper. 1998, c. 18, Sched. I, s. 20.

¹² Grants (2) The Minister may make grants of the sums provided for in the agreement, on such conditions as the Minister considers appropriate, out of the money appropriated by the Legislature to any conservation authority or municipality for the purpose of assisting it in the acquisition of land that is suitable for forestry purposes and that is to be managed under an agreement. 1998, c. 18, Sched. I, s. 20.

¹³ Forestry purposes only (3) A conservation authority or municipality that has entered into an agreement under subsection (1) or a predecessor provision shall not, without the approval of the Minister, use any land in respect of which grants have been made under subsection (2) or a predecessor provision for any purpose that is inconsistent with forestry purposes at any time during or after the term of the agreement. 1998, c. 18, Sched. I, s. 20.

¹⁴ Repayment (4) A conservation authority or municipality that uses land covered by an agreement authorized under subsection (1) or a predecessor provision for a purpose that is inconsistent with forestry purposes shall repay to the Province of Ontario all grants that it received under the agreement to acquire the land unless the Minister provides that the grants need not be repaid. 1998, c. 18, Sched. I, s. 20.

¹⁵ Sale of land (5) Land in respect of which grants have been made under subsection (2) or a predecessor provision shall not, without the approval of the Minister, be sold, leased or otherwise disposed of during or after the term of the agreement. 1998, c. 18, Sched. I, s. 20. Proceeds shared (6) The proceeds from any sale, lease or other disposition of land in respect of which grants have been made under subsection (2) or a predecessor provision shall be divided as the Minister directs between the conservation authority or municipality, as the case may be, and the Province of Ontario, with the conservation authority or municipality receiving not less than 50 per cent of the proceeds. 2000, c. 26, Sched. L, s. 4 (2). Exception (7) Subsection (6) does not apply to a sale, lease or other disposition for the use of the Province of Ontario. 1998, c. 18, Sched. I, s. 20.

Section 3¹⁶ of the Forestry Act states that an agreement entered into between the province and the private property owner is to be registered by the owner of the land in the property registry office and is binding on successors-in-title for the term of the agreement. Section 4¹⁷ pertains to the Woodlands Improvement Act, of which agreements had been made. The Woodlands Improvement Act was repealed in 1998¹⁸, but any such agreements would continue. Under section 5¹⁹ the Minister may create programs for the encouragement of good forestry practices and under section 6²⁰ is protection for nursery stock, which has or is provided by the province, not to be sold, gifted or destroyed.

During a time of infestation the Minister may direct, at the cost of the Crown, measures to eradicate such infestations. Under this purview, for the protection of the Forest Industry and the Crown Forests, officers may enter onto any land between sunrise and sunset to inspect for infestations²¹. For any other reason, unless there has been an agreement with the private property owner would be trespass under the Criminal Code.

Section 10²² of the Forestry Act explains that two owners of abutting properties may plant boundary trees and they become the property of both neighbors. The only persons that may injure or destroy these trees are the owners of the properties that are abutting and/or permission must be obtained from both owners for someone else to injure or destroy the trees. That would include farm fence line trees.

Section 11²³ provides that Municipalities may make by-laws for acquiring land by purchase, lease or otherwise, for forestry purposes, declaring land

¹⁶ Registration of agreements 3. The Minister may direct that an agreement entered into under section 2 shall be registered by the owner of the land in respect of which the agreement is made in the proper land registry office, and thereupon such agreement is binding upon and inures to the benefit of every successor-in-title to such owner during the term of the agreement. R.S.O. 1990, c. F.26, s. 3.

¹⁷ Woodlands improvement agreements 4. An Agreement made under the *Woodlands Improvement Act* shall be deemed to be an agreement made under section 2. 1998, c. 18, Sched. I, s. 21.

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

¹⁹ Programs 5. The Minister may establish programs to protect, manage or establish woodlands and to encourage forestry that is consistent with good forestry practices. 2002, c. 17, Sched. C, s. 12 (2).

²⁰ Nursery stock 6. No person shall, directly or indirectly, sell or offer for sale or dispose of by gift or otherwise any nursery stock furnished by the Ministry under this Act. 1998, c. 18, Sched. I, s. 21.

²¹ Control measures 7. If, in the opinion of the Minister, the control of an infestation on any land is in the public interest, the Minister may direct an officer to enter upon the land and, at the expense of the Crown, take such measures to prevent, retard, suppress, eradicate or destroy the infestation as the officer considers advisable. 1998, c. 18, Sched. I, s. 21. Powers of entry 8. An officer, with or without the consent of the owner, may enter upon any land between sunrise and sunset to inspect the land and its trees and forest products for infestation and to survey and examine the timber and other natural resources on the land in order to determine the suitability of the land for forestry purposes. 1998, c. 18, Sched. I, s. 21. Obstruction of officers 9. No person shall obstruct an officer in the performance of his or her duty. 1998, c. 18, Sched. I, s. 21.

²² Boundary trees 10. (1) An owner of land may, with the consent of the owner of adjoining land, plant trees on the boundary between the two lands. 1998, c. 18, Sched. I, s. 21. Trees common property (2) Every tree whose trunk is growing on the boundary between adjoining lands is the common property of the owners of the adjoining lands. 1998, c. 18, Sched. I, s. 21. Offence (3) Every person who injures or destroys a tree growing on the boundary between adjoining lands without the consent of the land owners is guilty of an offence under this Act. 1998, c. 18, Sched. I, s. 21.

²³ By-laws for acquiring lands for forestry purposes 11. (1) The council of a municipality may pass by-laws, (a) for acquiring by purchase, lease or otherwise, land for forestry purposes; (b) for declaring land that is

owned by the municipality for forestry purposes, planting and protecting trees on land acquired for forestry purposes, for the management of land acquired for forestry purposes and for the sale or disposition of the trees, for issuing debentures for purchasing land for forestry purposes to an amount prescribed by the Minister, for entering into agreements for the management of the land acquired for forestry purposes, and for the leasing, selling or disposing of the land acquired for forestry purposes. It would seem that any other by-laws created, outside of this criteria, would be in conflict with the Forestry Act, in conflict with good forestry practices and beyond the authority of the municipalities, in regards to permits, license, etc., if agreements had not previously been entered into.

Sub-section (2), (3), (4)²⁴ and (5) of section 11 express that one municipality may acquire land in another municipality for forestry and that there may be payment in lieu of taxes and that these amounts cannot be more than what the taxes would be worth. It also stipulates that the Minister may make regulations in regards to the amount of sub-section (3). Sub-section (5)²⁵ refers to the Trees Act and section 9 immediately before it was repealed and although repealed, by-laws in regards to it continue.

It would seem that section 135 of the Municipal Act is in complete violation of section 12²⁶ of the Forestry Act, as the Municipalities must enter into agreements prior to any demands for permits, fees, fines or restoration orders being passed through by-laws. Regards to the Forestry Act, as it has been reference that the Municipalities must follow good forestry practices, involves

owned by the municipality to be required by the municipality for forestry purposes; (c) for planting and protecting trees on any land acquired for or declared to be required for forestry purposes; (d) for the management of any land acquired for or declared to be required for forestry purposes and the sale or other disposition of the trees thereon; (e) for issuing debentures, without the assent of the electors, for the purpose of purchasing land for forestry purposes to an amount not exceeding the amount prescribed by the Minister to be owing at any one time; (f) for entering into agreements for the management of any land acquired for or declared to be required for forestry purposes; (g) for leasing, selling or otherwise disposing of any land acquired for or declared to be required for forestry purposes. 2002, c. 17, Sched. C, s. 12 (3).

²⁴ Land in another municipality (2) Land may be acquired under subsection (1) in another municipality with the consent of the council of that municipality. 2002, c. 17, Sched. C, s. 12 (3). Payment in lieu of taxes (3) If a municipality acquires land or declares land to be required for forestry purposes in another municipality under this section, the council of the first-mentioned municipality may agree to pay annually to the municipality in which the land is situate a sum not exceeding the amount that would have been payable to the municipality as taxes if the land were not exempt from taxation. 2002, c. 17, Sched. C, s. 12 (3). Regulations (4) The Minister may make regulations prescribing the amount under clause (1) (e). 2002, c. 17, Sched. C, s. 12 (3).

²⁵ Application for minor exceptions (5) Despite the repeal of the *Trees Act*, section 9 of that Act, as it read immediately before its repeal, continues to apply in respect of by-laws passed under that Act before December 18, 1998. 2002, c. 17, Sched. C, s. 12 (3).

²⁶ Agreements for forestry purposes 12. (1) The council of any municipality may enter into agreements with the owners of land located in the municipality providing for, (a) the reforestation of portions of the land; (b) the entry and planting of trees upon such portions by the employees or agents of the council; and (c) the fencing of the portions and conservation of all growing trees thereon by the owner. 2002, c. 17, Sched. C, s. 12 (4). Acreage (2) No agreement shall provide for the reforestation of less than five acres of land for every 100 acres belonging to the same owner. 2002, c. 17, Sched. C, s. 12 (4). Cutting (3) Every agreement shall prescribe the conditions under which the cutting of timber upon the portions may be carried out. 2002, c. 17, Sched. C, s. 12 (4). Exemption from taxation (4) The council of the municipality may exempt any portion from general taxation as long as it continues to be used for the purposes set out in the agreement. 2002, c. 17, Sched. C, s. 12 (4).

following the Forestry Act and provincial legislation. Which section 394 (e), of the Municipal Act references, regarding natural resources.

In these agreements, of which by-laws subscribing to the Forestry Act, the Municipalities may offer a reduction in property taxes to the private property owner, but these agreements must be acceptable to both the private property owner and the municipality, without third party interference. Any demand for permits, licenses, etc., through legislated dictates, third party environmental groups or NGOs recommendations, and/or promotion by conservation authorities, is doing indirectly what cannot be done directly²⁷, which is not legal. And as the conservation authorities may enter into their own agreements with private property owners under section 21 of the Conservation Authorities Act, which includes the Conservation Land Act²⁸ there is no need for them to assist municipalities, in regards tree cutting by-laws.

²⁷ *"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."* [G.R. No. 166471, March 22, 2011], TAWANG MULTI-PURPOSE COOPERATIVE, PETITIONER, VS. LA TRINIDAD WATER DISTRICT, RESPONDENT.

²⁸ Conservation Land Act, R.S.O. 1990, CHAPTER C.28

PUBLIC LANDS ACT

Another statute that must also be considered when municipal councils decide to implement regulatory by-laws is the Public Lands Act. This is the Act that regulates the Letters Patent and in the Letters Patent issued under this act, there may be reservations for certain trees for the use of the Crown. The right²⁹, title³⁰ and interest³¹ (including the possession) of the land³², which includes the trees is in the property owner (patentee) and as before mentioned these rights have been established and cannot be infringed on or the municipality is violating a Crown instrument.

Under section 57³³ of this act it states that until the issuance of the Letters Patent, the trees on agricultural property remain the property of the Crown, but when the Letters Patent are issued, the trees become the property of the patentee (private property owner).

57 (2)³⁴ During the settlement period, prior to the letters patent being issued the locatee (pre-patent user of the land) may use the trees and dispose of the trees but only those required for clearing the land for cultivation, for the construction of fences and constructing buildings. And until the letters patent are issued all clear cutting is to be authorized by an officer of the Minister.

Under 57 (3)³⁵ any trees sold or used for trade must be paid for, the same as any licensee for timber, to the Minister unless he exempts this restriction in

²⁹ 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.

³⁰ 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.

³¹ 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.

³² 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.

³³ Reservation of trees 57. (1) All trees on land that has been disposed of under this Act for agricultural purposes remain the property of the Crown until the issuance of letters patent, whereupon the property in such trees passes to the patentee. R.S.O. 1990, c. P.43, s. 57 (1).

³⁴ Cutting rights of settlers before patent (2) During the time the trees on land that has been disposed of under this Act for agricultural purposes remain the property of the Crown, the purchaser or locatee of such land or anyone claiming under the purchaser or locatee may cut and use all such trees as are necessary for building on and fencing such land, and may cut and dispose of all such trees required to be removed in clearing the land for cultivation, but no trees except those necessary for such building and fencing shall be cut beyond the limit of the actual clearing without the consent in writing of an officer authorized by the Minister for the purpose. R.S.O. 1990, c. P.43, s. 57 (2).

³⁵ Payment of Crown dues (3) All trees cut under subsection (2) and sold or bartered are subject to the payment of the same charges as are at the time payable by the holders of licences to cut timber, unless the Minister otherwise directs in writing. R.S.O. 1990, c. P.43, s. 57 (3).

writing. 57 (4)³⁶ if at the time of issuance there is a timber license open and able to be implemented on a patentee's land, in regards to agriculture, the Minister shall revoke the timber license and compensate the owner, of that timber right that has been revoked.

Under section 58³⁷ of the Public Lands Act, all trees become the property of the patentee, particularly if the property is going to be used for agricultural purposes and reservations under this act for any class or kind of tree contained in the letters patent shall be deemed void. Subsection (2)³⁸ expresses that the same voidance of the reservations, under this act, is also for property known as summer resort location. 58 (3)³⁹ expresses that any reservations for trees in letters patent prior to April 1869⁴⁰, are also void and summer resort locations reservations and any penalties are also void under sub-section (4)⁴¹. In regards to these voidances, one should always side on the side of caution and uphold the reservations of the Crown, as this is the writing of the Sovereign, Sealed with the Great Seal and one wouldn't want to place the Crown in disrepute, particularly when one had sworn an oath to uphold the Crown. Sub-section (6)⁴² of 58 expresses that if public/Crown land has been alienated or disposed of by the Crown under this or any other Act, any species of trees on those lands alienated

³⁶ Revocation of timber licences on settlers' land (4) Where land is disposed of under this Act for agricultural purposes and a licence to cut timber on such land is subsisting at the time the disposition is made, the licence shall be deemed to be revoked in respect of such land, and in any such case the Minister may compensate the holder of such licence by granting the holder a licence to cut timber elsewhere. R.S.O. 1990, c. P.43, s. 57 (4).

³⁷ Property in trees vested in patentee 58. (1) Where land is disposed of under this Act for agricultural purposes, the property in all trees thereon shall be deemed to have passed to the patentee by the letters patent, and every reservation of any class or kind of tree contained in the letters patent shall be deemed to be void. R.S.O. 1990, c. P.43, s. 58 (1).

³⁸ Reservations of trees voided (2) A reservation of all timber and trees or any class or kind of tree contained in letters patent granting public lands disposed of under this or any other Act for a summer resort location is void. R.S.O. 1990, c. P.43, s. 58 (2).

³⁹ Idem (3) A reservation of all timber and trees or any class or kind of tree contained in letters patent dated on or before the 1st day of April, 1869 and granting public lands disposed of under this or any other Act is void. R.S.O. 1990, c. P.43, s. 58 (3).

⁴⁰ An Act to secure Free Grants and Homesteads to actual Settlers on the Public Lands, [Assented to 28th February, 1868] "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."

⁴¹ Idem (4) Every provision contained in letters patent granting public lands for a summer resort location that, (a) prohibits the cutting of pine timber, except for necessary building or clearing with the written permission of the Minister, and, in default, sets out penalties and exacts prices for cut timber; or (b) provides for the manner of disposal of cut timber, is void. R.S.O. 1990, c. P.43, s. 58 (4). (5) Repealed: 1994, c. 25, s. 85.

⁴² Acquisition or release of trees (6) If public lands have been disposed of by the Crown under this or any other Act and some or all of the species of trees on the lands have been reserved to the Crown and are not under timber licence, the Minister may acquire any species of trees not so reserved or release any species of trees so reserved at such price and on such terms and conditions as the Minister considers proper. 2001, c. 9, Sched. K, s. 5 (3).

and reserved to the Crown but no timber license had been issued or hadn't been reserved and no timber license had been issued, the Minister, to acquire those trees, may pay for those trees a price that the Minister considers proper.

So again under section 135 of the Municipal Act, the municipality when creating a by-law that demands permits, licenses, fees and prescribes fines, is ultra vires of the municipality as it interferes with another superior Act.

PROPERTY AND CIVIL RIGHTS ACT

The property and civil rights act is one paragraph. It declares the following:

Property and Civil Rights Act, R.S.O. 1990, CHAPTER P.29
Consolidation Period: From December 31, 1990 to the e-Laws currency date.
No amendments.
Rule of decision

1. In all matters of controversy relative to property and civil rights, resort shall be had to the laws of England as they stood on the 15th day of October, 1792, as the rule for the decision of the same, and all matters relative to testimony and legal proof in the investigation of fact and the forms thereof in the courts of Ontario shall be regulated by the rules of evidence established in England, as they existed on that day, except so far as such laws and rules have been since repealed, altered, varied, modified or affected by any Act of the Imperial Parliament, still having the force of law in Ontario, or by any Act of the late Province of Upper Canada, or of the Province of Canada, or of the Province of Ontario, still having the force of law in Ontario. R.S.O. 1990, c. P.29, s. 1.

In regards to the laws of England in 1792, the Imperial Act known as "*An Act to repeal certain Parts of an Act, passed in the fourteenth Year of his Majesty's Reign, intituled, An Act for making more effectual Provision for the Government of the Province of Quebec, in North America; and to make further Provision for the Government of the said Province, 31 Geo. III, c. 31 (U.K.)*" created the two provinces of Upper and Lower Canada and during the creation of these two different provinces a new constitution was enacted bringing the same laws of England to these provinces in regards to property and civil rights. And under 31 Geo. III, c. 82, Section IX of this act specifically states:

IX. Provided always, That nothing in this act contained shall extend, or be construed to extend, to any lands that have been granted by his Majesty, or shall hereafter be granted by his Majesty, his heirs and successors, to be holden in free and common soccage⁴³ ⁴⁴.

⁴³ FREE SOCCAGE – 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 soccage. Black's Law Dictionary, 9th Edition, 2009. 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... 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, according to certain rules elsewhere explained. Such persons are called heirs, and he whom they thus represent, the ancestor. When the interest extends beyond the ancestor's life, it is a freehold of inheritance, and when it only endures for the ancestor's life, it is a freehold not of inheritance. An estate to be a freehold, must 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 Jurisprudence, J.J.S. Wharton, Esq., 1847-48, pg. 268.

A definition of “free and common socage” is:

“Freehold tenure is without any incidents or obligations for the benefit of the Crown. All lands granted by the Crown in fee simple are granted in free and common socage - freehold tenure.

A fee simple may be transferred without licence or fine and the new owner holds from the Crown in the same manner as the previous tenant held from the Crown.”⁴⁵

With bringing the laws of England to the provinces through the Constitution of 1792, and as it is specifically stated that it is to be the laws of England that pertain to property and civil rights, it would seem that the intent of the “Property and Civil Rights Act” of Ontario was to ensure that all private property is protected from overzealous legislation and bylaws, and again it would seem that a by-law demanding permits, licenses, fees and eventual fines is in conflict with a superior act.

At the time of implementation the documents that restricted the legislators was the Constitution of the United Kingdom, which still apply today. These include, but are not limited to: Magna Carta 1215-1297⁴⁶, the Forest Charters 1217-1297, the Common Law, the Petition of Right, the Statute of Monopolies, the Star Chamber Act, the Statute of Fraud, the Bill of Rights⁴⁷, the Nullum Tempus Act (60 years separate possession from the Crown and places the Crown on the same footing as the subject, in regards to “property” and estates), Habeas Corpus, the Coronation Oath Act, the Settlement Act, etc. Since the implementation of the Charter in 1982-83, these documents are still in use therefore they restrict the creators of legislation and by-laws.

⁴⁴ The Statutes of The Province of Upper Canada; together with such British Statutes, Ordinances of Quebec, and Proclamations, as Relate to the Said Province. Revised and Printed for, and Published by Hugh C. Thomson and James MacFarlane. Revised by James Nickalls, Junior, Esquire, Barrister at Law. Kingston, U.C. Printed by Francis M. Hill. 1831, p. 8

⁴⁵ Ownership and Title to Real Property, <http://lawstudies.wikidot.com/laws3112-lecture-3>

⁴⁶ “...notice by Sir Edward Coke, that it is declaratory of the ancient law and liberty of England, not adding any new freedom, nor taking away any lawful duties, but only repetition of former privileges, which time or oppression had brought into disuse.” Historical Essay on the Magna Carta, R. Thomson, 1829, p. 270

⁴⁷ The Rise and Progress of the English Constitution, E. S. Creasy, M.A. p. 3-5

THE BRITISH NORTH AMERICA ACT, 1867

Under Sections 92 (5) "*The Management and Sale of the Public Lands belonging to the Province and of the Timber and Wood thereon*", and Section 109 – "*Property in Lands, Mines, etc. 109. All Lands, Mines, Minerals, and Royalties belonging to the several Provinces of Canada, Nova Scotia, and New Brunswick at the Union, and all Sums then due or payable for such Lands, Mines, Minerals, or Royalties, shall belong to the several Provinces of Ontario, Quebec, Nova Scotia, and New Brunswick in which the same are situate or arise, subject to any Trusts existing in respect thereof, and to any Interest other than that of the Province in the same.*" The Province is to receive the royalties from the management of public lands, including the timber and wood for revenues for the Consolidated Revenue Fund. It is also to receive the royalties from section 109, again for the support of the provincial corporation, saving any trusts or interests not of the Crown or the province. The Trusts and Interests not of the province is the private property that has been alienated from the Crown. This can only be determined through the Letters Patent, as they too, are constitutional documents and pertain to sections 92 (5) and section 109.

Municipalities may pass by-laws in regards to the management of the public lands and timber/wood that is owned by the municipalities for forestry use and may license and/or require permits for those purposes, but in regards to private property it is for the private property owner to issue permits and/or licenses for any forest and/or tree management on their own property.

CONSTITUTION ACT, 1982-83 – CHARTER OF RIGHTS

Under section 15 of the Canadian Charter of Rights and Freedoms, everyone is to be equal in the eyes of the law and by-laws, legislation, policy and regulation cannot determine any inequality between persons for any reasons. What section 15 (1) specifically states is:

(1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

When a municipality creates by-laws that violate any equality they are violating this section. Also if all municipalities do not create the exact same by-laws they, too, are violating this section, as one person in one community cannot have any greater protection from the law than someone from another community.

This is perhaps why any municipal tree cutting by-laws are to pertain to only those properties which are owned by the municipality or to properties which the private property owner has entered into an agreement with the municipality under the Forestry Act.

CONCLUSION

When one is in a position of authority it is difficult to be sure that all avenues have been presented by advisers. This type of situation causes by-laws to be written that are of no force or effect, as under section 14 of the Municipal Act:

Conflict between by-law and statutes, etc.

- 14. (1)** *A by-law is without effect to the extent of any conflict with,*
- (a) a provincial or federal Act or a regulation made under such an Act; or*
 - (b) an instrument of a legislative nature, including an order, licence or approval, made or issued under a provincial or federal Act or regulation. 2001, c. 25, s. 14.*

Same

(2) Without restricting the generality of subsection (1), there is a conflict between a by-law of a municipality and an Act, regulation or instrument described in that subsection if the by-law frustrates the purpose of the Act, regulation or instrument. 2006, c. 32, Sched. A, s. 10

From the beginning we have presented the Constitution (British North America Act, 1867 [BNA]), the Charter of Rights and Freedoms, the Forestry Act, the Public Lands Act, the Property and Civil Rights Act, including section 394 (e) of the Municipal Act, etc., and the Municipalities, it would seem to be creating by-laws that violate these superior documents.

The violation also includes interfering with the Crown Grants/ Letters Patent, which again are Acts of the Crown prerogative and are known to repeal certain sections of various constitutions and are considered part and parcel of the creation of Canada and Ontario.

Time and time again, due to lacking information for the Councils to make informed decisions on by-laws, private property owners are accused and charged under by-laws that have been created without all of the pertinent information required.

The private property owner then, in turn, must pay for legal defense and advice, while the municipality uses rate-payers money for their prosecution. This is creating a huge rift between the elected officials and their communities. It is also removing all property owner's rights, including the private property rights of the elected officials.

From research we have done, it is recommended that a rule be implemented that before any by-law or legislation is created one should seek out every and all pieces of legislation and statutes to ensure that any by-law or piece of legislation is not found to be ultra vires, beyond the territorial and/or constitutional ability of the level of government that is creating the piece.

And from Supreme Court cases, it is also a rule that when a piece of legislation is referred to in one piece, both pieces need to be read together to

ensure the legislation is being implemented and interpreted properly⁴⁸. Ergo, Section 135 of the Municipal Act must be read together with the Constitution (British North America Act, 1867 [BNA]), the Charter of Rights and Freedoms, the Forestry Act, the Public Lands Act, the Property and Civil Rights Act, including section 394 (e) of the Municipal Act, etc., to ensure that any tree cutting by-law is only implemented for property owned by municipality/county and/or public/Crown property or property that the municipality/county have entered into an agreement with a private property owner.

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

⁴⁸ [21] Provisions within a regulation should be read in the context of the regulation and the enabling Act as a whole: R. Sullivan, *Driedger on the Construction of Statutes*, Butterworths, 1994, at p. 246. From the perspective of the two pieces of relevant legislation here being read together, the following passage from another text by the same author, R. Sullivan, *Statutory Interpretation*, Irwin Law, 1997, at 124, is instructive: "A legislature may enact more than one statute on the same subject or may enact provisions in one statute that touch on a matter dealt with in another. A single legislative scheme may be embodied in more than one enactment. Statutes, or portions of statutes, that deal with the same subject or contribute to an integrated scheme are said to be *in pari material*. These statutes are read together as if they were part of a single Act." *Earthroots Coalition v. Ontario (Minister of natural resources)*, 2003 CanLII 49397 (ON SCDC)

GLOSSARY

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

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

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

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

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

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

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

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

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

FREE SOCAGE – Socage in which the services were both certain and honorable. By the statute 12 Car. 2. ch. 24 (1660), all tenures by knight service were, with minor exceptions, converted into free socage. Black's Law Dictionary, 9th Edition, 2009. 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, according to certain rules elsewhere explained. Such persons are called heirs, and he whom they thus represent, the ancestor. When the interest extends beyond the ancestor's life, it is a freehold of inheritance, and when it only endures for the ancestor's life, it is a freehold not of inheritance. An estate to be a freehold, must 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 Jurisprudence, J.J.S. Wharton, Esq., 1847-48, pg. 268.

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

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

LAND (Black's Law Dictionary, 9th Edition, 2009, p. 955) – 1. An immovable and indestructible three-dimensional area consisting of a portion of the earth's

surface, that space above and below the earth's surface, and everything growing on or permanently affixed to it.

2. An estate or interest in real property.

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

LAND – In its restrained sense means soil, but in its legal acceptation it is a generic term, comprehending every species of ground or earth, as meadows, pastures, woods, moors, water, marshes, furze, and heath; it includes also messuages (i.e. dwelling houses, with some adjacent land assigned to the use of them, usually called curtilage), tofts (i.e. places where houses formerly stood), crofts (derived from the old English word 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 Jurisprudence, J.J.S. Wharton, Esq., 1847-48, pg. 356-357

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.

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

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

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

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

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

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

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

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

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

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

RIGHT (Black's Law Dictionary, 9th Edition, 2009, p. 1436) – 1. That which is proper under law, morality, or ethics . 2. Something that is due to a person by just claim, legal guarantee, or moral principle. 3. A law <the right to dispose of one's estate>. 4. A legally enforceable claim that another will do or will not do a given act; a recognized and protected interest the violation of which is a wrong. 5. The interest, claim, or ownership that one has in tangible or intangible property.

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

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