MEMORANDUM OF ARGUMENT

PART I – OVERVIEW AND STATEMENT OF FACTS

OVERVIEW

1. Land granting in Upper Canada, and later in the Province of Canada, was accomplished by exercise of the prerogative of the Sovereign. Alienating real property that belonged to the Sovereign by way of an Imperial grant was a critical component of the colonization and development of what is now Ontario. The grants of land came with rights, restrictions and reservations. On accepting the reservations and complying with the restrictions, the grantee could swear a prescribed oath and the grant of land became patent, or published as an open letter for all to see.

2. The patent was registered and was relied on as a matter of record in establishing the root of title. True certified copies of the original patented grant of land can generally be ordered through the Ministry of Natural Resources and Forestry, MNRF. Copies may also be available at the provincial archives at York University.

3. Once patented, land could be severed and sold, in whole or in part. The patent, being a matter of record, remained as issued, but the changes to title and description of land were reflected in the subsequent deeds of conveyance. Although the title may have changed and the description of the land may have changed, what didn't change were the rights and interests that ran with the land. That's not to say that an owner cannot give up any or all of those granted rights, but they are not obligated.

4. The phrase "all the woods and waters lying and being" is clear. At the time of the pre Confederation grants, the white pine trees were reserved for the Crown, as they were desirable for ship building. Following Confederation, all reservations of trees were statutorily released via the Public Lands Act.

5. With respect to the restrictions in the pre Confederation grants, the condition was clearing of a section of the granted land and building a residence of a certain size. This was most often accomplished by using the trees felled in clearing to build a log dwelling. The grantee could only go from grant to patent by fulfilling the restrictions.

Patenting of the grant confirmed that the restrictions had been fulfilled and what the grantee was left with was title to the land, the rights and interests of the Sovereign that granted the land, subject only to the rights reserved for the Crown in the form of reservations, and the obligations of fee simple ownership.

6. Understanding those beginnings, it has been challenging to understand how the express Imperial grant of the trees to the original patentee, heirs and assigns forever, could be interfered with by municipal governance. Certainly, they can make bylaws for the management of their own trees. Certainly they can enter into agreements with private landowners. But to impact privately owned trees would require the consent of the private landowner or express words in statute confirming the intent to impact the prerogative right of the Sovereign in granting trees, which are incidents of the land.

7. The intent of the Sovereign is clear in pre-Confederation grants of land. The Crown is bound by its grants. Yet the municipality fails to respect those grants. In fact, it has become very apparent that many of the mayors and councilors are totally unaware of the foundation of the rights to real property, including the issuance of Letters Patent confirming the granted rights. When confronted with a true certified copy of original grant, we have yet to find a municipality willing to acknowledge superiority of the patent.

8. In granting land in Upper Canada or the Province of Canada, the Sovereign chose the terms “heirs and assigns forever”. And Nullum Tempus entitled the Sovereign 60 years to take back or make revision to those grants of land. Sixty years has long passed, and the grants remain largely unchanged. The early grants had provision for clergy reserves, but those were ultimately removed as unworkable. So we know that if the Sovereign was aware that something needed to be changed, it was changed. “Heirs and assigns forever” was never amended or repealed.

9. Municipal officials swear an oath of allegiance to the Sovereign of the Crown. Yet they disregard the rights of private landowners in the implementation of tree or woodlot bylaws. They give 3rd parties such as bylaw officers, arborists and others unfettered access to our private land with the intent of governing our private trees. This was not

what the Sovereign intended in granting land and its incidents into private ownership. The wording of early deeds of conveyance, beyond the original grant from the Crown, add the phrase "sole and only use" immediately before the words heirs and assigns forever. I don't think the intent could be more clear.

10. The land granting system established ownership of land and its incidents in fee simple. Fee simple is the foundation for municipal taxation. On the very first page of the SCC ruling on the matter of Church v. Fenton, the court said:

> ***"Held,*** affirming the judgment of the Court below, that upon the lands in question being surrendered to the Crown, they became *Page 240]* ordinary unpatented lands, and upon being granted became liable to assessment." [emphasis added] [1]

11. The lands being surrendered to the Crown were native lands. Upon surrender they became ordinary unpatented lands aka. Crown lands, and on granting, meaning private lands, became subject to assessment. It appears only privately owned granted lands pay taxes. We are confident the municipality respects that part of the granting process, even if they don't know where it originated.

12. There are 3 distinct categories of land: Native land, Crown land and Private patented land. In the province of Ontario, approximately 87% of the total land mass remains in the Crown, leaving less than 13% private, patented land. And the preponderance of land granted in this province was prior to Confederation, a time when neither the province of Ontario nor the Region of Niagara existed. The Crown could not have intended for the region to impact the trees granted in any way being that the region did not exist at the time of the grant.

13. We ask that this Honourable Court uphold the Honour of the Sovereign by hearing this case and restore respect for the laws protecting the rights granted to the subjects of this challenge.

STATEMENT OF FACTS

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[1] *Church v Fenton,* (1800) 5 S.C.R. 239

14. The facts are not in dispute. The Applicant is a corporation without share capital, incorporated by letters patent April 1, 2019, with its head office at the Property. Anthony Kaluzny ("Mr. Kaluzny"), is president of UCLT, and the owner of Lot 20, Concession 5, part 59, of the township of North Grimsby also known as 595 Kemp Road, West Grimsby and his interest in the Property originates through his purchase in 1980. This purchase is captured in a deed of purchase being registered instrument RO426088 ("Deed").

15. The Deed states: "to have and to hold onto the said Grantees their heirs and assigns to and for their sole and only use forever as joint tenants and not as tenants in common SUBJECT NEVERTHELESS to the reservations, limitations, provisos, and conditions expressed in the original grant thereof from the Crown." The Property's parcel register states "Subject to the Reservations in Crown Grant".

16. Mr. Kaluzny traced the title underlying the Deed to an Imperial Crown Patent, issued under the Great Seal of the United Kingdom dated August 12, 1818. The Patent states:

> "TO HAVE and to HOLD the said parcel and tract of land hereby given and granted to him the said Thomas Fitzgerald his heirs and assigns for ever… Saving nevertheless to us, our heirs and successors, all claims of Gold, Silver, ~~Copper, Tin, Lead, Iron and Coal~~, that shall or may be hereafter found on any part of the said parcel or tract of land hereby given or granted as aforesaid, and saving and reserving to us, our heirs and successors all White Pine Trees that shall, or may now or hereafter grow or be growing, on any part of the said parcel or tract of land hereby granted as aforesaid."

17. A representative of the Crown (through the Ministry of Natural Resources) confirmed to Mr. Kaluzny that section 58(3) relinquished the original Crown reservations over "White Pine Trees" on the Property. Debate about releasing tree reservations and the *Public Lands Act* is recorded in Hansard, on June 25, 1970 p. 4503, which noted the tree reservation to be voided so that the Crown could avoid liability from falling trees reserved to the Crown.[2]

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[2] Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 28th Legislature, 3rd Sess. Vol. 4 (25 June 1970), at p. 4503 (Hon. Mr. Brunelle re *The Public Lands Act*). Sections 135(2) and 135(7)

18. Sect. 109 of the B.N.A. Act of 1867 gives to each Province the entire beneficial interest of the Crown in all lands within its boundaries, which at the time of the union were vested in the Crown, subject to such rights as the Dominion can maintain under sects. 108 and 117. Mercer v Attorney General of Ontario (1881) 8 App. Cas. 767, 5 SCR 538, followed. But with respect to lands patented by the Sovereign of the Crown, granted prior to Confederation such as mine, the fee was vested in the grantee and only the reservations remained as the beneficial interest of the Crown.

19. Section 58(3) of the Public Lands Act, R.S.O. 1990, c. P.43, states "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.**" Thus, the Crown relinquished all reservations of all timber and trees or any class or kind of tree in lands granted by letters patent dated on or before April 1, 1869, including the Property. [emphasis added]

20. Section 15 of the Conveyancing and Law of Property Act R.S.O. 1990, c. C.34 confirms trees are incidents of the land which pass through conveyances of land. It states:

> "15 (1) Every conveyance of land, unless an exception is specially made therein, includes all houses, outhouses, edifices, barns, stables, yards, gardens, orchards, commons, trees, woods, underwoods, mounds, fences, hedges, ditches, ways, waters, watercourses, lights, liberties, privileges, easements, profits, commodities, emoluments, hereditaments and appurtenances whatsoever to such land belonging or in anywise appertaining, or with such land demised, held, used, occupied and enjoyed or taken or known as part or parcel thereof, and, if the conveyance purports to convey an estate in fee simple, also the reversion and reversions, remainder and remainders, yearly and other rents, issues and profits of the same land and of every part and parcel thereof, and **all the estate, right, title, interest, inheritance, use, trust, property, profit, possession, claim and demand** whatsoever of the grantor into, out of or upon the same land, and every part and parcel thereof, with their and every of their appurtenances. R.S.O. 1990, c. C.34, s. 15 (1)." [emphasis added]

21. Sections 135(2) and 135(7) of the Municipal Act 2001, S.O. 2001, c. 25

addresses regulations concerning trees. These sections state:

> 135 (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). …
>
> (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).

22. The Region, an upper-tier municipality, passed the By-law on October 22, 2020[3]. The Region's public notices stated, among other things, that section 135(1) of the Municipal Act permitted to prohibit or regulate trees, "including on private lands" , although section 135 does not mention private lands.

23. Section 14 of the *Municipal Act* addresses conflicts between bylaws and provincial or Federal Acts, regulations and instruments. It states:

> 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.
>
> (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. (2) In this section, "by-law" includes an order or resolution. 2001, c. 25, s. 273 (2).[4]

24. The Attorney General of the Province of Ontario ("AGO") and Attorney General of Canada ("AGC") were served with notice of this application including notice of constitutional question. AGO and AGC both stated the application does not seek any relief requiring their respective involvement.

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[3] *A By-Law To Prohibit or Regulate the Destruction or Injuring of Trees in Woodlands in The Regional Municipality of Niagara*, Regional Municipality of Niagara, By-Law No. 2020-79 (the "By-Law")

[4] *Municipal Act, 2001*, S.O. 2001, c.25, s. 273.

25. Public Interest has questioned the validity of Imperial Letters Patent issued prior to April 1st 1869 and why they are not being respected which this research is based on. This public interest has also generated financial support of this initiative Hence the need to set up a Corporation to manage donated funds.

26. The Royal Proclamation of 7 October 1763 largely deals with land. Although it is commonly referred to as the Indian Magna Carta, establishing and confirming the ongoing rights of our Native peoples, it also establishes the role of granting and patenting those land grants to "the speedy settling Our said new Governments, that Our loving Subjects should be informed of **Our Paternal Care for the Security of the Liberties and Properties of those who are and shall become Inhabitants thereof;" [**emphasis added]

27. Section 273 of the *Municipal Act* addresses applications to quash a municipal by-law.

It states:

> 273 (1) Upon the application of any person, the Superior Court of Justice may quash a by-law of a municipality in whole or in part for illegality. 2001, c. 25, s. 273 (1).

PART II – STATEMENT OF THE QUESTIONS IN ISSUE

28. This factum first addresses a Constitutional question of the Patent, then following issues on appeal:

a. Whether the Region's Bylaw is *ultra vires;*

b. Whether the Bylaw conflicts with section 14; Specifically 14 (1) of the Municipal Act.

c. Whether Section 58-3 of the Public Lands Act RSO 1990 applies to the by law.

d. Whether Section 71 of the Legislation Act RSO 2006 has been violated;

e. Whether Section 24 of the Evidence Act RSO 1990 has been respected;

f. Whether the intent of the Sovereign in granting land has been respected.

29. The Applicant submits that the Court's Decision on these issues made errors of law, and the appropriate remedy is a declaration that the Bylaw, is invalid in its entirety, or in part, as against the Property, and in the Order sought.

Preliminary Issue A: The Crown Patent

30. A Crown patent (a term interchangeable with crown grant[5]) has been "accepted from the earliest days of European settlement until the present as the foundation for right, title and interest to land." It is not a simple conveyance of land through title as stated in the Superior Court decision. It established ownership in fee simple. Thus, the Patent is the Property's root of title. Courts describe a patent's issuance as an exercise of Crown prerogative.[6] As an exercise of Crown prerogative, no other entity could issue the Patent, establish its intentions, or set its rights; all of which became mandatory upon the public and publicly transparent. Also known as "Open Letters Patent" The question before us is how can the Region of Niagara, a subordinate creature of the Province of Ontario elevate itself to affect an express incident (trees) granted through an exercise of the Royal prerogative as stated in Letters Patent issued August 12th, 1818?

31. Historically, a patent is relied on by the Crown, the grantee and innocent third parties, and accepted by all as the basis for real property. Because of the importance of patents in Canada, courts have hesitated to invalidate patents that have created third party

[5] *Municipality Northern Bruce Peninsula v. Rauchfleisz*, 2019 ONSC 5460, para. 37.
[6] *Chippewas of Sarnia Band v. Canada (Attorney General)* (2000), 51 OR (3d) 641, (C.A.) para. 248

reliance. "Patents are not to be lightly disturbed. They lie at the foundation of every person's title to his or her property."[7]

32. A patent binds parties, including the Crown, and may be repealed only in limited instances. In the text, Crown Law, the author writes:

> "Her Majesty cannot grant what she does not own. The Crown is bound by its grants. However, if the grant is illegal either in itself or void for uncertainty or deception, or unjust as injurious to the rights and interests of third parties, the Crown may repeal its own grant.[8]

33. Similar to limited instances to repeal, the Applicant contends the Crown has a limited ability to alter rights conveyed through a patent, and doing so requires an express intention from a legislature. Section 71 of the Legislation Act, 2006, S.O. 2006, c. 21, Sch. F, states: "No Act or regulation binds Her Majesty or affects Her Majesty's rights or prerogatives unless it expressly states an intention to do so." Further, concerning Crown prerogatives, Crown Law states: "Where the language of the statute is general, and in its wide and natural sense would divest or take away any prerogative or right from the Crown, it is construed so as to exclude that effect."[9] The Applicant also contends that as an exercise of Crown prerogative, the Patent can only be modified through express intention. Neither the Municipal Act nor the by law states the express intention to alter the prerogative of the imperial patent.

34. Through this Patent, the Crown conveyed land to the patentee in fee simple "together with all woods and waters lying and being". Trees are an expressed incident of the land and so were conveyed with the Patent. This conveyance, inclusive of trees, is confirmed through the Deed of purchase to Mr. Kaluzny, which includes the phrasing: "to have and to hold onto the said Grantees their heirs and assigns to and **for their sole and only use forever**" and "subject nevertheless to the reservations, limitations,

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[7] *Chippewas of Sarnia Band v. Canada (Attorney General)*, (2000), 51 OR (3d) 641, (C.A.) para., 259, citing *Bailey v. Du Cailland* (1905), 6 O.W.R. 506 (Ont. Div. Ct.).
[8] Paul Lordon, *Crown Law*. (Toronto: Butterworths, 1991), p. 280.
[9] Paul Lordon, *Crown Law*. (Toronto: Butterworths, 1991), p. 126.

provisos, and conditions expressed in the original grant thereof from the Crown." [emphasis added] This contract flows from the previous Grantee going back in time until it reaches the Patent. How can the Region of Niagara negate a contract established long before its existence?

35. The By-law's exemptions permit injuring or harming of trees in limited circumstances or by certain classes of people. However, absent those exemptions, no step may be taken that may injure or damage a tree, unless a permit is first obtained from the municipality, lest the party and Owner risk enforcement measures, including charges. The By-law also requires that Owner, with whatever level of control it may have, to apply for permits that may be declined, or issued yearly, with potential for limited renewal, before that party may act to destroy or injure trees. The application for a permit may be denied with written reason and an appeal may follow only to the Regional Council. All parties other than the owner have the right to use or injure trees on the property.

Preliminary Issue B. Bylaw's impact upon the Property?

36. UCLT submits that the initial issue is whether the By-law is *ultra vires* as the municipal Act does not state an intent to remove or alter the prerogative of the Sovereign. Section 71 Legislation Act.

Conflict between by-law and statutes, etc.

37. 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) (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. The court did not consider 14 (1)a in the decision.

38. Imperial Letters Patent are an exercise of the prerogative of the Sovereign of the Crown, matters of record and subject to Nullum Tempus and limited to 60 years. They are outside of provincial or federal jurisdiction if they affect the prerogative of

the Sovereign. They are to be read at face value in the context of the era of when they were written. The by law is in conflict with Section 58-3 of the Public Lands Act and Section 71 of the Legislation Act. The court did not acknowledge either of these violations of the law in the decision.

39. In supporting that Imperial Letters patent alienated the land granted the court acknowledged that … "Her Majesty the Queen in right of Ontario has no right, title or interest in and to the lands described as Blocks A, B, and each of the individual lots 1 to 45 inclusive, Registered Plan 750 save the free access to the shore of Lake Huron for all vessels, boats and persons from Lake Huron." Ontario (Attorney General) v. Rowntree Beach Assn., 1994 CanLII 7228 (ON SC) (Conclusion). This case was not considered in the decision.

40. Justice Madalena in Demarais relied on R. v Mackie and iterated that "...*legislative authority to control the use of land* ***generally undoubtedly*** *belongs to the province…"* Superior Court Justice Nightingale agreed, and the Honourable Justices of the Court of Appeals were also in substantial agreement with the application Judge. The words *generally undoubtedly* may correctly be referring to the greatest percentage of land in the Province, namely the 87% of land plus the reservations that remain as Crown land. (Less than 13% of land in the Province has been granted into private ownership)[10].

Preliminary Issue C. Public Lands Act Section 58-3

Property in trees vested in patentee

[10] Ontario Ministry of Natural Resources and Forestry, *Crown Land Management: What Crown land is and how it is managed*, July 17, 2014

41. 58(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). Statute was not considered in the decision.

42. The Public Lands Act states that a reservation… under this Act or any other Act is Void. This would include the Municipal Act. The court did not consider this act in their decision.

43. [52] From the application Judges decision: The Region states that the Applicant in effect is claiming that the Crown Patent to the Property supersedes the powers delegated to the provinces under section 92 of the Constitution Act, 1867 and/or the powers delegated by the provinces to municipalities through provincial statutes including statutes that authorize municipalities to regulate land use.

44. But in fact, the Public Lands Act, 58 (3) is a provincial statute that states all trees patented before April 1st, 1869, are vested in the patentee. This was not considered in the decision.

Preliminary Issue D. The Legislation Act

45. Section 71 of the Legislation Act, 2006, S.O. 2006, c. 21, Sch. F, states: "No Act or regulation binds Her Majesty or affects Her Majesty's rights or prerogatives unless it expressly states an intention to do so." The by law is in direct conflict with section 71 of the Legislation act as stated.

> 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
> This section of the Act was not considered in the decision.

46. Neither the by law or the Municipal Act state the intention to affect the Sovereigns rights or Prerogatives. The granting of all of the woods and waters expressed through letters patent are the prerogative of the Sovereign. A reservation or interests in trees is

an action that takes away from the whole of any incident expressly granted in the patent. Bluntly this is a taking of private property rights of trees.

Preliminary Issue E. The Evidence Act

47. Evidence Act.

Letters patent under the Great Seal of the United Kingdom, or of any other of Her Majesty's dominions, may be proved by the production of an exemplification thereof, or of the enrolment thereof, under the Great Seal under which such letters patent were issued, and such exemplification has the like force and effect for all purposes as the letters patent thereby exemplified or enrolled, **as well against Her Majesty as against all other persons whomsoever.** R.S.O. 1990, c. E.23, s. 24. (Emphasis added) This Act was not considered in the decision.

48. Letters patent … the like and force and effect for all purposes …as well against Her Majesty as against all other persons whomsoever. Meaning that the Letters Patent so issued for the Property are to be respected, even an exemplification as written at face value be respected by everyone.

Preliminary issue F. deals with the intent of the Sovereign in granting land

49. "only the Crown bought native lands in the province and only the Crown conveyed **property rights** to individual settlers" [emphasis added] Settlers, soldiers and loyalists were the most common recipients of granted land in Upper Canada in the earliest days, with much of this land being in what is now known as Southern Ontario. By conveying the land in fee simple with the promise of heirs and assigns forever, it was the source of livelihood and security to the recipients. By ignoring the intent of the Sovereign and claiming the granted "**property rights**" in trees for the municipality, the municipality has dishonoured the Crown and the prerogative.[11]

[11] The 'First Business of Government': The Land Granting Administration of Upper Canada David T. Moorman, Ph.D copyright 1994 page 7

PART III – STATEMENT OF ARGUMENT

50. That the Application Judge and the Ontario Court of Appeals Judge decision may be correct when applied to lands patented after April 1st, 1869. However, the property was patented prior to April 1st, 1869, and the decision is not correct. The court failed to recognize this line in time defined by section 58-3 of the Public Lands Act.

51. **"In short, the Act does not apply."** This statement has been made apparent, in Saker v. Middlesex Centre (Chief Building Official), 2001 CanLII 28088 (ON SC) where the court explains one of the differences between pre-confederation and post confederation patents Para. [17]

> In my view, the legal effect of the Act, from a simple reading of its language and the cases, is that in "the absence of an express grant" of the "bed of a navigable body of water or stream, a patent **from the Province** of land bordering on a navigable body of water or stream, is deemed not to pass the bed of such body of water. See the case of the Tadenac Club Ltd., supra, at p. 276 O.R. per Gale J. Such is not the case here; here, there is an express grant from the Crown of the "land and waters thereon lying". In short, the Act does not apply. It matters not whether the waterway is navigable since **the fee is vested in the grantee.** As was stated by Mulock C.J.O. in the Rice Lake case at pp. 449-50 O.L.R.: The defendant in his evidence seemed to claim that the waters covering a portion of the plaintiff company's land were navigable, and that therefore he had the right, from a boat, to carry on trapping operations there. Where, naturally or by artificial means, water covering the land of a private owner is navigable, a stranger, whether he has or has not the right of navigation in such water, is not entitled, under the guise of using the water for navigation purposes, to hunt, shoot, or fish within the precincts of such private property. Such is the right of the owner of the land: cujus est solum ejus est usque ad caelum: Fitzhardinge (Lord) v. Purcell, [1908] 2 Ch. 139; Micklethwaite v. Vincent (1892), 8 Times L.R. 685; Beatty v. Davis, 20 O.R. 373.And again, in the Tadenac Club case per Gale J. at p. 277 O.R.:I am of the opinion, therefore, that after 1911, if a person received a grant of land in Ontario beside or surrounding a body of navigable waters, he did not thereby receive ownership of the solum unless the patent was so worded, and further, that by acquiring ownership of the solum he did not, as a result, become entitled to an exclusive right to fish unless such right was expressly given to him either at the time or later. It follows that had the grants of the lands surrounding and under the waters not been otherwise phrased, the plaintiff would not have gained title to

> the solum and by statute would not have held exclusive fishing rights therein. However, because of the express grant of the lands under Tadenac Bay and Tadenac Lake and of the fact that the plaintiff did receive a separate grant of the exclusive right to fish, it is now in exactly the same position as it would have been at common law as owner of lands bordering upon navigable inland waters, and that being so, it enjoys the exclusive right to fish those particular waters. (emphasis added)

This case was not considered in the decision.

The intent of Letters Patent.

52. Letters Patent Act 1571 Chapter 6 13 Eliz 1

> …concerning the Landes Tenements Hereditamentes or other Thinges whatsoever specified or contayned in any suche Letters Patentes, or of for or concerninge any parte or parcell thereof, by shewinge foorth an Exemplification or Constat, under the Greate Seale of England, of the Inrolment of the same lettres Patentes, or of so muche thereof as shall and may serve to or for suche Title Clayme or Matter; the same lettres Patentes then being and remayninge in force, not lawfully surrendred nor canceled, for or concerninge so muche and suche parte and parcell of suche Landes Tenements Hereditamentes or other Thynge whereunto suche Tytle or Clayme shalbe made, as yf the same Letters Patentes selfe weare pleaded and shewed forthe; Any Lawe Usuage or other Thinge whatsoever to the contrary notwithstandinge".

53. This act was in force when the patent was issued for the property and was replaced by the Statute Law Revision Act 1948. Ch 62 Page 1405 states the following:

> And this Act shall not affect the validity, invalidity, effect, or consequences of anything already done or suffered, or any existing status or capacity, or any right, title, obligation or liability, already acquired, accrued, or incurred, or any remedy or proceeding in respect thereof, or any release or discharge of or from any debt, penalty, obligation, liability, claim, or demand or any indemnity, or the proof of any past act or thing.

54. The above shows the intent of letters patent when the Act was created and how it was to be respected moving forward in time.

55. That the Attorney General's office along with the Municipality of Niagara and the Courts failed to respect Imperial Letters patent and defend the honour and Prerogative

of the Sovereign. And by doing so have violated their sworn oath of allegiance to the Sovereign and laws of Canada.

56. Imperial Letters Patent are an agreement and the Queen/King is bound by them. (Prerogative of the Crown by Joseph Chitty, page 330) "The King is, generally speaking, bound by his grants; but this is only when they are not contrary to law either in themselves; or void for uncertainty or deception; or unjust as injurious to the rights and interest of third persons."

57. BNA Section 109

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

58. The Fee for land Granted prior to Confederation was vested in the Grantee.

> BNA Section 129. Except as otherwise provided by this Act, all Laws in force in Canada, Nova Scotia, or New Brunswick at the Union, and all Courts of Civil and Criminal Jurisdiction, and all legal Commissions, Powers, and Authorities, and all Officers, Judicial, Administrative, and Ministerial, existing therein at the Union, shall continue in Ontario, Quebec, Nova Scotia, and New Brunswick respectively, as if the Union had not been made; subject nevertheless **(except with respect to such as are enacted by or exist under Acts of the Parliament of Great Britain or of the Parliament of the United Kingdom of Great Britain and Ireland,)** to be repealed abolished, or altered by the Parliament of Canada, or by the Legislature of the respective Province, according to the Authority of the Parliament or of that Legislature under this Act. (Emphasis added)

59. Walter et al. v. Attorney General of Alberta et al., 1969 CanLII 64 (SCC), [1969] SCR 383.

> The appellants also contended that the Act was in conflict with the statute of the Province of Canada of 1852, to which reference has already been made, it being contended that this statute was in force in Alberta by virtue of s. 129 of the *British*

> *North America Act* and ss. 3 and 16 of *The Alberta Act*, 4-5 Edward VII, c. 3. The Appellate Division of the Supreme Court of Alberta had held that this Act was in force in Alberta, in R. v. Gingrich[7]. I agree with the view expressed by Johnson J.A. and by McDermid J.A. that the effect of s. 129 of the British North America Act, which continued laws in force in Canada, Nova Scotia and [Page 394] New Brunswick in Ontario, Quebec, Nova Scotia and New Brunswick respectively, was only to continue that Act in effect in the Provinces of Ontario and Quebec, and not to make it a part of the law of any other province.

Limitation where the Crown interested

60. (1) No entry, distress, or action shall be made or brought on behalf of Her Majesty against any person for the recovery of or respecting any land or rent, or of land or for or concerning any revenues, rents, issues or profits, but within sixty years next after the right to make such entry or distress or to bring such action has first accrued to Her Majesty. Real Property Limitations Act R.S.O. 1990, c. L.15, s. 3 (1). This Act was not considered in the decision.

61. Sadly, the applications Judge and the Court of Appeal did not consider the validity of the patent, the Evidence Act, the Legislation Act and the Public Lands Act as presented. Opposing Council for the Region of Niagara, stated 7 times in the response factum of consequence should the Court order the Region to follow the law.
Please consider the following quotes from the Appeal factum of the Respondent, Region of Niagara:

62. Seven distinct warnings presented by the Respondent to the Appeal Court. (The following are quotes from the respondents appeal factum)

> “At each stage of this litigation, the appellant has sought to advance an interpretation of the legal significance of Crown Patents that, if adopted, could frustrate the local regulation of land use by municipalities as authorized by the Province.”
>
> “The applicant/appellant has also failed to provide any evidence that the relief sought in this litigation, which could have far reaching consequences for the regulation of land use across the Province, is necessary and could have predictable consequences.”
>
> ” Under these circumstances, and in absence of evidence on the reasonableness of the relief sought and the potential consequences, the Court should exercise restraint with respect to it's authority to change the current state of the law.”

“A POTENTIAL FLOODGATE”:

“The respondent raised during the first instance proceeding the potential broader implications and precedential effect of the relief sought”.....

“The treatment and interpretation of Crown Patents sought by the applicant could significantly impact the local regulation of land use in Ontario if it is approved or endorsed by this Court.”

”The relief sought by the appellant would undermine (if not outright invalidate) the jurisprudential tradition in this Province already cited above that has long held that a "bylaw restricting the use of land is not a bylaw affecting the title but is a bylaw affecting the land."

“A decision which treats Crown Patents as instruments of a legislative nature could have far reaching consequences across the Province.”

63. The difficulty is to what limitation must the Region adhere to or ignore provincial statute or Imperial letters patent. I expect that all parties follow the law upon the same standard and it applies equally to all and that no person or entities are above the law.

PART IV – COST SUBMISSIONS

64. The Applicant has approached this matter due to interest of landowners of real property in the region of Niagara and throughout the province. This matter applies throughout our Dominion. Our financing is limited to donations of owners of real property and our own money to cover costs incurred to date in an effort to get this matter resolved. The questions asked to the Region of Niagara and to the Court came without malice, what we seek is resolution to the matter before us that has not been directly addressed and be put to rest. The Applicant requests that each party covers their own costs.

PART V – ORDER SOUGHT

65. The Applicant seeks an order granting leave to appeal to this Honourable Court.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS ____ DAY OF AUGUST 2023.

_____

Anthony R. Kaluzny
Applicant's Representative
pursuant to Rule 15(3)

PART VI – TABLE OF AUTHORITIES

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