

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

**BARRY GLASPELL**

**Plaintiff**

- and -

**HER MAJESTY THE QUEEN, in right of the Province of Ontario, as represented by the  
Minister of Municipal Affairs and Housing, HER MAJESTY THE QUEEN, in right of the  
Province of Ontario, as represented by the Minister of Natural Resources,  
BRUCE MIGHTON, MUNICIPAL PROPERTY ASSESSMENT CORPORATION,  
THE CORPORATION OF THE TOWNSHIP OF NORTH KAWARTHA, TIM POWELL  
and JANE DOE**

**Defendants**

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**STATEMENT OF DEFENCE OF  
HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO**

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1. The Defendant, "Her Majesty the Queen in right of the Ontario Province of Ontario as represented by the Minister of Municipal Affairs and Housing, Her Majesty the Queen, in right of the Province of Ontario, as represented by the Minister of Natural Resources" is properly styled as "Her Majesty the Queen in right of Ontario", pursuant to section 9 of the *Proceedings Against the Crown Act*, R.S.O. 1990, c. P.27 (hereafter "Ontario").
2. Ontario admits the allegations made in paragraphs 6, 9, 10 and 52 of the statement of claim.

3. Ontario has no knowledge or insufficient knowledge to enable it to plead to the allegations contained in paragraphs 11, 12, 16-20 and 38-50 of the statement of claim.

4. Ontario denies the balance of the allegations in the Statement of Claim and puts the plaintiff to the strict proof thereof.

### **Planning Act and Building Code**

5. The *Planning Act*, R.S.O. 1990, chapter P.13 generally applies throughout Ontario. However, the enactment of zoning by-laws governing land use is at the discretion of each respective municipality. A municipality may in some circumstances enact and enforce by-laws governing permitted uses on land covered by water within its geographic jurisdiction.

6. Similarly, the *Building Code Act*, 1992 S.O. 1992, chapter 23 also generally applies throughout Ontario. However, it is up to each Municipality to interpret and enforce the *Building Code Act*, 1992. The Act does, in some circumstances, apply to boathouses and other buildings built on water.

7. Whether the *Building Code Act*, 1992 and *Planning Act* apply to any particular boathouse is a highly fact specific inquiry. The analysis depends, inter alia, on the boathouse's configurations, the location of the municipality's boundaries respecting adjacent water bodies, and the ownership of the lake bed.

## **Public Lands Act**

8. Furthermore, contrary to the plaintiff's claims, docks, boathouses and similar structures built on Ontario's lakes do not necessarily contravene the *Public Lands Act*, R.S.O. 1990, c. P. 43, as amended. They may be specifically permitted under the MNR's "Free Use Policy".

9. Contrary to the plaintiff's claims, the MNR's "Free Use Policy" is within the scope of the discretion conferred upon the Minister or an officer authorized by the Minister under s.2 of the *Public Lands Act*.

## **The Boathouse at Issue**

10. The plaintiff refers to a floating dock and house (hereinafter, collectively, the "Boathouse") that have impacted his enjoyment of his cottage. Ontario believes that the Boathouse referred to in the pleading was built and is owned by Mr. Glaspell's neighbour, currently named 'John Doe' in the statement of claim. Despite this, Mr. Glaspell has elected not to add his neighbour to this action.

11. Contrary to the plaintiff's claims, the Boathouse does not contravene the *Public Lands Act*, as it is permitted under the Free Use Policy and is in compliance with that Policy.

12. The Boathouse falls well within the projected property lines of the Boathouse owner and does not fall within the Plaintiff's property line.

13. Contrary to the plaintiff's claims, Ontario Regulation 453/96, which requires a permit for the construction of a structure "that occupies more than 15 square meters of shore land", does not apply to "floating structures, docks or boathouses".

#### **No Duty of Care**

14. In any event, the Crown owes no duty of care to the Plaintiff to enforce these Acts in his favour against his neighbour, and no action may be based on an alleged failure to do so.

15. Furthermore, Ontario denies that it breached any statutory duty respecting the plaintiff and specifically denies that it owed any private law duty of care to the plaintiff. No duty of care is owed to the plaintiff with respect to the policy or planning functions of Ontario which involve the making of policy decisions.

#### **Declaratory Relief**

16. The declarations sought by the plaintiff that are of general application, and beyond the specific facts of this case, are not available to the plaintiff in law.

#### **Injunctive Relief**

17. Injunctive relief cannot be granted against Ontario pursuant to the *Proceedings Against the Crown Act*, R.S.O. 1990, c. P.27.

### **No Claims against Bruce Mighton**

18. No allegations are made against Bruce Mighton, an employee of MNR. Therefore, the claim should be struck against him personally.

### **Bad Faith**

19. Ontario denies that any government officials have acted in bad faith. This allegation is completely without foundation and no facts are pleaded in support thereof.

### **Policy Decisions are Immune from Suit**

20. The decision to issue the moratorium on offshore wind projects was a policy decision made within the ambit of responsibilities of the Ministries involved. Policy decisions are immune from prosecution. As such, this entire claim should be dismissed.

### **No Harm Suffered by the Plaintiff**

21. Ontario denies that the plaintiff suffered the damages alleged and puts the plaintiff to the strict proof thereof. The plaintiff's damages are remote, excessive and unrecoverable at law.

22. Alternatively, the defendant pleads that the plaintiff failed to mitigate its alleged losses.

23. Ontario pleads and relies upon the provisions of the following legislation:
- a. *Planning Act*, R.S.O. 1990, chapter P.13;
  - b. *Building Code Act*, 1992, S.O. 1992, chapter 23; O.Reg. 350/06
  - c. *Public Lands Act*, R.S.O. 1990, c. P. 43, as amended;
  - d. Ontario Regulation 453/96: Work Permit – Construction, under the *Public Lands Act*;
  - e. Ministry of Natural Resources Free Use Policy, PL 3.03.01 dated September 20, 2004; and
  - f. *Proceedings Against the Crown Act*, R.S.O. 1990, c. P.27.
24. Ontario seeks an order dismissing this claim against it with costs.

Date: June 13, 2013

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