

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

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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.

Statutes Protecting prerogative Rights of the Sovereigns in granting land and the granted rights of the grantee:

1. 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.

2. Public Lands Act

R.S.O. 1990, CHAPTER P.43

Consolidation Period: From February 22, 2024 to the e-Laws currency date.

Last amendment: 2021, c. 34, Sched. 23.

Property in trees vested in patentee

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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).

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).

3. Evidence Act

R.S.O. 1990, CHAPTER E.23

Consolidation Period: From March 6, 2024 to the e-Laws currency date.

Last amendment: 2024, c. 2, Sched. 19, s. 6.

Letters patent

24 Letters patent under the Great Seal of the United Kingdom, or of any other of His 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 His Majesty as against all other persons whomsoever.** R.S.O. 1990, c. E.23, s. 24; 2024, c. 2, Sched. 19, s. 6 (3)..

4. Legislation Act, 2006

S.o. 2006, chapter 21

Schedule F

Consolidation Period: From March 6, 2024 to the e-Laws currency date.

Last amendment: 2024, c. 2, Sched. 19, s. 9.

Crown not bound, exception

71 No Act or regulation binds the Crown or affects the Crown's rights or prerogatives unless it expressly states an intention to do so. 2006, c. 21, Sched. F, s. 71; 2024, c. 2, Sched. 19, s. 9 (3).

Succession

72 (1) A change of reigning sovereign does not affect anything done or begun under the previous reigning sovereign, and all matters continue as if no succession had occurred. 2019, c. 14, Sched. 4, s. 1.

5. Conveyancing and Law of Property Act

R.S.O. 1990, Chapter C.34

Consolidation Period: From July 1, 2024 to the e-Laws currency date.

Last amendment: 2024, c. 8, s. 21.

What included in conveyance

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).

6. Real Property Limitations Act

R.S.O. 1990, CHAPTER L.15

Consolidation Period: From December 15, 2009 to the e-Laws currency date.

Last amendment: 2009, c. 33, Sched. 2, s. 63.

Limitation where the Crown interested

3. (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. R.S.O. 1990, c. L.15, s. 3 (1).

7. British North America Act, 1867

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.

Crown Law by Paul Lordon

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4.5 Invalid and Void Grants

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.

Once the grant is held void or is repealed for having been improvidently granted, prejudicial to public interests, the parties are put back in their original positions. The rights of the respective parties will be left to be adjudicated upon by Her Majesty.

What happened in our Constitutional Challenge?

At Superior Court, having put the AG for the province and the AG for the Dominion on notice, we got the response from both offices that since we were not seeking relief, the AG would not attend. But they followed that with should this matter go to appeal, they must be notified. As you know, in the most convoluted way possible, we lost our case and proceeded to appeal that decision. We again put both AG's on notice re: the Court of Appeals and neither responded nor attended. **How can a constitutional question be answered if the office protecting the Constitution won't attend the case to weigh in on the facts presented?** We had to pay costs at both levels of court, but our purpose was not addressed. In fact, in both decisions, our position was misrepresented, our evidence ignored and one would have wondered why we even took the issue to court! We did seek Leave to Appeal to the Supreme Court of Canada, but leave was not granted.

What can you do?

Please speak to your MP or MPP and have them ask the following questions to the AG for the Province or the Dominion as they have the right to pose legal questions and to have them answered. Please ask them to present the questions in writing and insist on a written response.

Questions for MPP's and MP's to ask their respective AG's

1. Is the Crown bound by its own grants?
2. Can any Court in Canada unilaterally interpret or disregard the explicit language and terms of an Imperial Grant?
3. Are administrators of the Crown, including government officials and courts obligated to uphold the rights and prerogatives of the Sovereign as expressed in Imperial grants, once patented?
4. What legal recourse and remedies are available to the holder of a patented Imperial Grant when administrators fail to respect the prerogatives of the Sovereign as stated on the Patent?
5. Who is responsible for defending and upholding the Honour of the Crown, particularly in relation to the terms and conditions of Imperial grants?