

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:



BARRY GLASPELL

Plaintiff

- and -

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO AS REPRESENTED BY
THE MINISTER OF MUNICIPAL AFFAIRS AND HOUSING, HER MAJESTY
THE QUEEN IN RIGHT OF ONTARIO AS REPRESENTED BY THE MINISTER
OF NATURAL RESOURCES, G. BRUCE MIGHTON, MUNICIPAL PROPERTY
ASSESSMENT CORPORATION, THE CORPORATION OF THE TOWNSHIP OF
NORTH KAWARTHA, TIM POWELL and JANE DOE**

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, **WITHIN TWENTY DAYS** after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: March 15, 2012

Issued by:


Local Registrar

Y. Grant
Registrar

Address of Court Office: 393 University Avenue
Toronto, Ontario
M5G 1E6

10th floor,

**TO: Her Majesty the Queen in Right of Ontario as represented
by the Minister of Municipal Affairs and Housing**

777 Bay Street, 17th Floor
Toronto, ON M5G 2E5

Tel: (416) 585-7041
Fax: (416) 585-6470

**AND TO: Her Majesty the Queen in Right of Ontario
as represented by the Minister of Natural Resources**

Legal Services Branch (MNR LSB)
c/o Ministry of Attorney General
McMurtry-Scott Building
720 Bay Street, 11th Floor
Toronto, ON M7A 2S9

Tel: (416) 326-2220
Fax: (416) 326-4007

AND TO: G. Bruce Mighton

Area Supervisor
Ministry of Natural Resources
P.O. Box 500
106 Monck Street
Bancroft, ON K0L 1C0

Tel: (613) 332-3940
Fax: (613) 332-0608

AND TO: Municipal Assessment Property Corporation

Suite 400
5255 Yonge Street
Toronto, ON M2N 6P4

Tel: (416) 250-2150
Fax: (416) 250-2141

**AND TO: The Corporation of the Township
of North Kawartha**

280 Burleigh Street
P.O. Box 550
Apsley, ON K0L 1A0

Tel: (705) 656-4445
Fax: (705) 656-4446

AND TO: Tim Powell

Chief Building Officer
Township of North Kawartha
280 Burleigh Street, P.O. Box 550
Apsley, ON K0L 1A0

Tel: (705) 656-4445
Fax: (705) 656-4446

CLAIM

1. The plaintiff claims as against all defendants except the Municipal Property Assessment Corporation (“MPAC”) and Jane Doe:

Declaration of Contravention of Ontario Planning and Building Laws

- (a) A declaration that the Ontario *Building Code Act* inclusive of regulations promulgated thereunder applies to all structures built or to be built on, over or under Ontario lakes;
- (b) A declaration that the Ontario *Planning Act* inclusive of regulations and by-laws thereunder applies to all lands in Ontario inclusive of lands covered by lakes;
- (c) A declaration that all Ontario municipalities have jurisdiction over structures proposed to exceed 100 square feet to be built on, over or under Ontario lakes;
- (d) A declaration that building permits are required for all structures in excess of 100 square feet to be built on, over or under Ontario lakes;

Declaration of Contravention of North Kawartha By-Laws

- (e) A declaration that the Township of North Kawartha’s by-laws apply to all structures built or to be built on, over or under lakes in the municipality including Big Cedar Lake and a declaration that said by-laws are within the powers of the municipality;

- (f) A declaration that the Dock (defined below) recently installed on Big Cedar Lake contravenes the by-laws of the Township of North Kawartha and a declaration that the Dock and similar structures are not permissible on Big Cedar Lake;
- (g) A declaration that the House (defined below) recently constructed on top of the Dock on Big Cedar Lake contravenes the by-laws of the Township of North Kawartha and a declaration that the House and similar structures are not permissible on Big Cedar Lake;
- (h) A declaration that no on-water housing structure is permissible under the laws of the Township of North Kawartha;
- (i) In the alternative but without admission, a declaration that the Dock recently installed on Big Cedar Lake requires a permit from the Township of North Kawartha prior to installation and a declaration that the House recently constructed on Big Cedar Lake requires a permit from the municipality prior to construction;
- (j) A declaration that the Dock and the House are each: (i) attached to land without a permit contrary to applicable North Kawartha by-laws; (ii) anchored to land without a permit contrary to applicable North Kawartha by-laws; and (iii) placed less than 40 feet from the plaintiff's property line extension without any permit at all, contrary to applicable laws and regulations;

- (k) A declaration that the Dock and the House are each constructed and installed in breach of laws applicable in the municipality including applicable enactments, regulations and zoning by-laws under the *Municipal Act*, the *Building Code Act* and the *Planning Act*;

Contravention of *Public Lands Act*

- (l) A declaration that each of the Dock and the House and any similar structure to be placed on, over or under an Ontario lake requires a permit from the Ministry of Natural Resources prior to commencement of construction or installation;
- (m) A declaration that each of the Dock and the House occupy more than 15 square meters of public lands and a declaration that each of the Dock and the House is in violation of the regulations under the *Public Lands Act*;
- (n) A declaration that the Ministry of Natural Resources' "Free Use Policy" is *ultra vires*, contrary to the *Public Lands Act* and regulations thereunder, and of no force or effect, to the degree it purports to permit any structure to be built on, over or under Ontario lakes in excess of 15 square meters, without a prior permit and public consultation process;

Bad Faith, Misfeasance in Public Office, Abuse of Statutory Powers

- (o) A declaration that each defendant acted in bad faith, improperly delegated their powers, unlawfully fettered their discretion, acted with improper motives and in reckless disregard of their duties, and conspired together with an unlawful

purpose and/or having an unlawful effect, in regard to the Dock, the House and each and every similar structure on lakes through the Township and the Province of Ontario, in agreeing without lawful justification, to no longer take any steps to enforce the applicable enactments, regulations and zoning by-laws under the *Public Lands Act*, the *Building Code Act*, the *Municipal Act* and the *Planning Act*;

- (p) A declaration that the Dock and the House each unlawfully obstructs and is an unlawful trespass, nuisance physically and visually, breach of privacy and in breach of duties owed to all cottagers on Big Cedar Lake including the plaintiff;
- (q) A declaration that the defendants owed a duty to all cottagers on Big Cedar Lake including the plaintiff to ensure all applicable laws are complied with prior to construction and installation of the Dock and erection of the House on the Dock, and a declaration that they are jointly and severally liable for all failures to identify and apply statutory, regulatory and by-law violations with respect to each of the Dock and the House;
- (r) A declaration that the defendants breached the duty owed to all cottagers on Big Cedar Lake including the plaintiff when their respective inspectors failed to take steps to apply and enforce the *Building Code Act*, the *Planning Act*, the *Municipal Act*, the *Public Lands Act* and applicable enactments thereunder;
- (s) A declaration that the defendants breached a duty owed to all cottagers on Big Cedar Lake including the plaintiff by failing to inform them in a timely manner or at all of the intention of Jane Doe to build, install and anchor the Dock, construct

the House, and install and construct similar structures on, over or under Big Cedar Lake and other Ontario lakes without any of the required governmental permits or prior public consultation;

- (t) An interim, interlocutory and permanent joint and several order requiring that the defendants take all steps available to remove the Dock and the House from Big Cedar Lake;
- (u) An interim, interlocutory and permanent joint and several order requiring that all similar structures placed since March 15, 2010 on, over or under Big Cedar Lake and any other lake in Ontario in breach of Ontario and/or municipal laws shall be removed by the defendants;
- (v) In the alternative, an interim, interlocutory and permanent order requiring that the defendants take all necessary steps to ensure the Dock, the House and all similar structures erected since March 15, 2010 shall be brought into compliance with all applicable provincial and municipal enactments as declared by the Court, failing which they shall be removed from Big Cedar Lake and the other affected Ontario lakes;
- (w) In the further alternative, an interim, interlocutory and permanent order that the defendants move the Dock, the House and all similar structures more than 40 feet from the plaintiff's and similarly affected property owners' property line extensions;

- (x) An interim, interlocutory and permanent order that no house or structure in excess of 100 square feet shall be constructed or installed in the Township of North Kawartha on, over or under lake waters, pending the outcome of this litigation;
 - (y) An order pursuant to Rule 10 of the *Rules of Civil Procedure*, in equity or under the *Ontario Class Proceedings Act, 1992*, appointing the plaintiff to represent all persons in Ontario impacted by unregulated construction on Ontario lakes, such as the Dock and the House, and an order that all such persons so represented shall be bound by the outcome of this action;
 - (z) General damages and punitive damages including payments to each Jane Doe for damages, losses, injuries, disbursements, out-of-pocket costs and legal fees necessary to place each Jane Doe in the position she or he would have been in had the defendants not treated as non-existent the provincial and municipal laws which prohibit construction without prior statutory permission of housing structures on, over or under Ontario lakes;
 - (aa) Costs, interest and applicable taxes in accordance with the *Rules of Civil Procedure* or in equity; and
 - (bb) Such further and other relief as the plaintiff may advise and this Honourable Court may permit.
2. Should either the Dock or the House be permitted to remain in any form on Big Cedar Lake, then the plaintiff claims against MPAC:

- (a) An order requiring issuance of a supplementary notice of assessment regarding the plaintiff's property at 1459 FR 45 on Big Cedar Lake, for the taxation years 2011 and each taxation year thereafter during which the facts remain the same, reducing the assessed value of the plaintiff's property by 40% from the amount otherwise applicable absent presence of the Dock and the House;
- (b) An order refunding correlative taxes paid in regard to the plaintiff's property for the 2011 taxation year and each taxation year thereafter during which the facts remain the same;
- (c) Parallel adjustments for each affected property owner regarding every non-permitted structure built since March 15, 2010 on, over or under any Ontario lake; and
- (d) Such further and other relief as may be advised and this Honourable Court may permit.

Nature of the Claim

3. This claim raises an issue of importance to all persons owning or enjoying waterfront properties in Ontario:

Can boathouses, docks, gazebos or other structures including residences in excess of 100 square feet be placed or built on, over or under Ontario lakes without compliance with the Ontario Building Code; municipal by-laws; and the *Public Lands Act*?

4. The plaintiff pleads that the answer is “no”. This type of construction without prior permits is prohibited under North Kawartha’s by-laws; under the *Public Lands Act* regulations governing the powers and duties of the Ministry of Natural Resources; and under the Ontario Building Code.
5. Should this type of construction directly on Ontario lakes become permissible, Ontario lakes can be literally carpet-covered by unregulated development. Safety, public use and accessibility, beauty and cleanliness of Ontario’s lakes will be seriously impacted. Endless intractable conflicts as amongst neighbours will arise and become litigated. Municipalities across Ontario will become liable in respect of the unregulated construction.

Parties

6. The plaintiff is a resident of Ontario. The plaintiff owns a lot on Big Cedar Lake.
7. The defendant Her Majesty the Queen in Right of Ontario through her representative the Minister of Municipal Affairs and Housing is the Ontario government ministry responsible for applying and overseeing Ontario’s *Municipal Act* and *Building Code Act*.
8. The defendant Her Majesty the Queen in Right of Ontario through her representative the Minister of Natural Resources is the Ontario government ministry responsible to protect and manage Ontario’s Crown land which includes the soil and subsoil of Ontario lakes.
9. The defendant G. Bruce Mighton is Area Supervisor for the Ministry of Natural Resources based in Bancroft, Ontario.

10. The defendant MPAC is the corporation responsible for property tax assessment in Ontario.
11. The defendant the Corporation of the Township of North Kawartha is a corporation under the Ontario *Municipal Act*. Its offices are based in Apsley, Ontario.
12. The defendant Tim Powell is the Chief Building Official of the Corporation of the Township of North Kawartha.
13. The pseudonym Jane Doe represents each legal and each natural person who owns or purports to own a legal, equitable, insurable or assessable interest in the Dock, the House and every other similar structure in excess of 100 square feet installed on, over or under an Ontario lake since March 15, 2010, without any permit at all from the defendants. Jane Doe singular shall be treated as plural where context so requires. There is no register for determining beneficial or equitable ownership of houses and structures installed or built on, over or under Ontario lakes.

Big Cedar Lake

14. Big Cedar Lake is a land-locked lake about four kilometres north of Burleigh Falls, Ontario. It is a beautiful clean lake with unobstructed shorelines and gorgeous vistas over sunrises and sunsets.
15. Premium prices are paid by cottagers on Big Cedar Lake for lots with spectacular views over the water. Generally one sees natural shoreline across the lake, not cottages and certainly not houses or structures built right on the lake.

Chief Building Official

16. In the Fall of 2009 the Township of North Kawartha's Chief Building Official and one or more Jane Does entered into an arrangement to the effect that if Jane Doe built structures like the Dock and the House on Big Cedar Lake, the Chief Building Official would turn a blind eye and would not take steps to enforce or apply North Kawartha by-laws, which otherwise do prohibit each of the Dock and the House.
17. The Chief Building Official provided detailed advice to Jane Doe as to how to structure the Dock and the House so as to, in the Chief Building Official's view which was false, avoid application of not only municipal laws but also Ontario laws and federal laws applicable in Ontario.
18. The Chief Building Official instructed the planning, design, building and placement of the House and the Dock despite the fact they far exceed 100 square feet -- knowing they are not permitted structures on Big Cedar Lake, with wilful and reckless disregard of public duties to apply and enforce the by-laws.
19. As a result, Jane Doe commissioned construction of the Dock and the House.
20. Other Jane Does commenced doing the same, the municipality having baldly and publicly signalled it no longer intends to apply the laws of Ontario to on-lake construction.

The Dock

21. In late spring of 2011, a super-sized wooden dock (“Dock”) was placed by Jane Doe in Big Cedar Lake.
22. No advance warning was given. No planning process took place. No permission from government authorities or neighbours was obtained. There was no public consultation about whether the Dock was legal either in size, construction, placement, aesthetics or impacts.
23. Jane Doe anchored the oversized Dock, in excess of 1,000 square feet, partially in front of a neighbouring lot on Big Cedar Lake and partially in front of the plaintiff’s lot.
24. The Dock is anchored permanently to land above the high water mark with thick steel cables and walkways.
25. The Dock is unattractive; blocks passage over the waters; treats public space as owned by Jane Doe; and spoils the view of cottagers including that of the plaintiff.

House Erection

26. Jane Doe commenced constructing a house similar in appearance to an unattractive multi-car suburban garage with windows (“House”) on the Dock. A cheap large plastic door and plastic windows were installed.
27. The House is placed partly in front of a neighbouring lot and partly in front of the plaintiff’s lot.

28. The House is unsightly, out of character with the surrounding cottages and cottages generally on Big Cedar Lake – including those built on land in accordance with the by-laws.
29. The House is larger in size than many cottages built on lands fronting on Big Cedar Lake.
30. The Dock and the House are being used by Jane Doe and third parties to store boats, gas and other materials on a year round basis on Big Cedar Lake.
31. The Dock and House appropriate public space to the exclusion of other lake users without authority contrary to municipal, Ontario and federal laws and to customary, public trust and common law rights applicable in Ontario.
32. The Dock and the House impact public perception as to what is permissible as a structure occupying space on Big Cedar Lake.
33. The plaintiff's waterfront is obstructed. The plaintiff's view and that of neighbouring cottagers is occluded.
34. The Dock and House adversely affect the value of and potential uses of the plaintiff's lot. They interfere with privacy. They are obtrusive. They set a terrible precedent for Ontario lakes, should they not be each ordered removed.
35. The Dock and House are positioned in a way to unreasonably interfere with use and enjoyment of the plaintiff's lot and his family's use and enjoyment of their property.

Boats entering and exiting the Dock and House cross directly in front of the plaintiff's property including swimming area creating danger for the plaintiff's children and visitors.

36. Cottagers on Big Cedar Lake are upset, appalled, that the Dock and House have been installed without any permission at all from the public authorities or other cottagers.
37. Unilateral and uncontrolled construction of this sort on Ontario lakes leads to extraordinary conflict between neighbours -- the sort of conflict that was to have been avoided specifically with the protective laws already in place prohibiting such unbridled and unregulated construction.

Municipality Makes Bad Faith Claim of "No Jurisdiction"

38. The plaintiff and others requested the North Kawartha Chief Building Official to review the Dock and to issue a cease construction order regarding the House before it was finally constructed
39. The Chief Building Official and subsequently the municipality took the position that the municipality had "no jurisdiction".
40. The refusal to act was an unlawful fettering of statutory powers; an improper delegation of powers to the Ministry of Natural Resources; a decision made in bad faith; misfeasance in public office; and a concerted and unlawful effort to reduce the municipality's duties at law and its insurance costs.

41. Prior to the House and Dock every structure fronting Big Cedar Lake in excess of 100 square feet had received a permit or a *Planning Act* variance from one or more of the defendants after public consultation especially but not only with impacted neighbours.
42. The Chief Building Official in conjunction with other chief building officials in the County of Peterborough agreed without proper purpose to stop enforcing municipal by-laws regarding construction on, over and under County of Peterborough lakes. The purpose of the agreement was to reduce duties owed by the municipalities and to reduce insurance costs.
43. For example, in 2011 a large house was constructed in Havelock-Belmont-Methuen Township on Jack's Lake without permit. The North Kawartha Chief Building Official communicated regularly with the building official in Havelock-Belmont-Methuen Township with the view to ensuring a common position to not apply otherwise applicable by-laws. They agreed to advance that common position, that by-laws evaporate once construction takes place on water, to reduce the workload and duties for all building officials in the County. In acting in concert in this manner, they abused statutory powers. Their determinations were made in bad faith, absent any statutory authority, and well outside any area within which to exercise their discretion.
44. The municipal defendants' subsequent claim of no jurisdiction having directly assisted in the planning, construction and installation of the Dock and the House was in bad faith, an abuse of public power and misfeasance in public office.

45. The municipal defendants claim to have a legal opinion supporting their no jurisdiction position. No legal opinion exists to support the municipal defendants' position and the claim they are acting under legal advice is made in bad faith. The plaintiff provided case law and by-laws to the municipal defendants indicating the Dock and the House are not permissible structures on Big Cedar Lake. Much smaller structures require building permits or variances.
46. The plaintiff and others made presentations to the Township of North Kawartha Council during construction of the House. Council requested municipal staff to do a full legal review.
47. The municipality's chief administrative officer subsequently instructed staff not to carry out the legal review, repeating that she already has a legal opinion; the Township has no power to act; and the issues do not need a legal review. At the next Council meeting, the municipal defendants changed their decision and declined to do a legal review.

Conflict of Interest

48. The Chief Building Official's family owns a cottage on Big Cedar Lake. The Chief Building Official acted at all times in regard to construction on, over or under Big Cedar Lake with an irreconcilable conflict of interests, public and personal.
49. The Chief Building Official has been discussing these issues with other Big Cedar Lake cottagers who as a result decided to build similar structures now, "ask questions later".

50. Consequent upon the Chief Building Official's and North Kawartha's decisions not to apply or enforce the by-laws, other cottagers in North Kawartha including on Big Cedar Lake commenced constructing structures that do not comply with the by-laws and Ontario laws referenced herein. The municipal defendants continue to take a "no jurisdiction" position. Accordingly, the plaintiff requests an order requiring the defendants to carry out their statutory duties and powers in accordance with law and natural justice.
51. Had the defendants properly exercised their powers and duties, neighbouring cottagers would not be placed in the position of conflict, one with the other. The rule of law is designed to reduce conflict, not exacerbate it – the rule of law is intended to remove these issues from neighbours into the hands of responsible public authorities. Unfortunately, for improper motives the defendants seriously let down their constituents. Cottages are for fun and relaxation – not litigation seeking court orders requiring public authorities to carry out statutory duties and exercise powers for which they have been paid.

Dock and House Breach *Public Lands Act* Regulation

52. The plaintiff requested the Ministry of Natural Resources to order removal of the Dock and the House.
53. The Ministry through the Area Supervisor refused, relying on an absurd, legally unsupportable interpretation of regulations under the *Public Lands Act* that do in fact require permits for all structures exceeding 15 square meters prior to being placed on, over or under Ontario lakes.

54. The municipal and provincial defendants faced cutbacks in the 1990s and decided the best way forward was to simply stop applying laws. The Ministry defendants and the municipality communicated with each other since at least 1990 to reduce their respective work loads and liability exposure in dealing with on-water building.
55. In particular but without limitation, the Ministry of Natural Resources communicated with the Chief Building Official over a course of time, including with regard to the Dock, the House and the new structure on Jack's Lake -- despite the fact that under Ontario law each is required to carry out their respective duties unfettered by decisions of officials under other Ontario legislation.

House and Dock Not Permissible

56. The defendants have no right or power to permit the Dock or the House on Big Cedar Lake. They have no right or power to permit the visual or physical obstruction of the plaintiff's property.
57. The defendants have a duty to properly exercise powers to ensure municipal and provincial laws including those applicable to the Dock and the House are complied with.
58. Were the Dock or the House permissible on North Kawartha lakes including Big Cedar Lake, which is not admitted but expressly denied, they could not be placed closer than 40 feet to the extension of the plaintiff's/neighbouring properties and could not exceed 650 square feet.

59. Use of the Dock and the House directly on the lake for boat, gas and other storage is contrary to municipal, provincial and federal laws. Electrical feeds into structures like the Dock and House without building permits are illegal. Lighting on structures like the Dock and House interfere with all cottagers' use and enjoyment of Ontario lakes. Bubblers on structures such as the Dock and the House endanger all lake users and are contrary to Ontario's environmental laws.
60. Having not been built in accordance with the Ontario Building Code, the Dock, the House and all similar structures including those contemplated in the Ministry of Natural Resources' Free Use Policy in excess of 15 square meters and built without permits create dangers to all lake users and hence are constructed in breach of the duty of care in negligence owed by the defendants to all cottagers in Ontario.
61. For the foregoing reasons, the plaintiff requests the relief set out in paragraph 1, in the alternative paragraph 2 above.
62. The plaintiff requests that the trial of this action be held in the City of Toronto, Ontario.

Date of Issue: March 15, 2012

Barry Glaspell
163 Howland Ave.
Toronto, ON
M5R 3B7

Tel: 416-367-6104
Fax: 416-361-7051

BARRY GLASPELL

Plaintiff

- and -

**THE CORPORATION OF THE TOWNSHIP OF
NORTH KAWARTHA et al.**

Defendants

**ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDINGS COMMENCED AT TORONTO**

STATEMENT OF CLAIM

Barry Glaspell
163 Howland Ave.
Toronto, Ontario
MSR 3B7

Tel: 416-367-6104
Fax: 416-361-7051