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July 4, 2008

Ontario Morning  
3A – 200  
Box 500, Station A  
Toronto, Ontario  
M5W 1E6

Dear Sirs:

On Friday morning, July 4, 2008 there was an interview between your Wei Chen and a Mr. Lorriman, a spokesman for a Citizens Group at Balm Beach.

I was dismayed of the treatment of Mr. Lorriman by your Ms. Chen, who not only interrupted him repeatedly, seemed to be taking the position of Mr. Lorriman's group's adversary, one Marion – the property owner who has extended his fence line right into the water.

In my opinion, it would have been more journalistically professional to have had someone on Mr. Marion's side speak for him rather than your interviewer.

The interview was most unbalanced.

The writer has considerable experience with the Tiny Beaches issue. I was pro bono lawyer for the citizens group "Save the Beaches" during the failed mediation, funded by the Province. I did that work as part of my Master Degree at Osgoode Hall of York University in alternative dispute resolution between 2000 – 2002. Actually, I continued to assist the citizen's group on a pro bono basis for some time after my graduation in 2002.

The history of the Tiny Beaches is reflected in the long held view that the property owners on those beaches owned only to the "high water mark". It was astonishing that our Courts in the early '90s accepted the evidence of a surveyor that the patents of the beachfront properties, at one beach (Rowntree Beach) extended to the water's edge. Actually, land holdings vary from beach to beach throughout the Township of Tiny and Mr. Marion's right to his claim of ownership to the water's edge has never been legally tested. A Boundaries Act application such as Mr. Marion made does not deal with land ownership only with where boundaries might be established. As I understand it, Mr. Marion's application was ex-parte and was not challenged in the Courts. I was asked whether or not I recommended a legal

challenge to what Mr. Marion was attempting to do through the Boundaries Act and replied that it really did not add or subtract to the real issue about access to these beautiful beaches.

The real issue was decided in a case a year or so after the Rowntree decision – a case which unlike Rowntree went to the Court of Appeal. I refer to the case in Grand Bend where one Gibbs, the owner of some of the lands of this much used beach (equivalent to Balm Beach), began to exclude the public. A court case was brought by the Township involved, at Township expense. The Township solicitor, Mr. Dan Murphy (I urge you to speak to him – he practices law in Goderich) was successful at both the trial level and at appeal. The court decision stands for the proposition that while Mr. Gibbs may be the title holder, the long and the historic use by members of the public meant that he no longer could exclude them. It is laudable that the municipal government in Grand Bend took such an initiative; it is lamentable that the municipal government (or the provincial government for that matter) abdicates its responsibility in Tiny Township.

Mr. Lorriman tried to explain to Ms. Chen that this long user at Balm Beach not only involved the public recreating on the beach in front of property owners' lands but the beach was policed and actually maintained – garbage pickup, grading and raking by the local Township authorities.

The legal solution to this entire matter is to launch a lawsuit, and the Marion case would be ideal, and then on to the Court of Appeal. In that way, our highest provincial court could sort out the contradictions between the Rowntree case and the Grand Bend case.

Unfortunately, the costs of litigating such a case, could range in excess of one hundred thousand dollars, and is beyond the ability of any private member of the public – particularly when stacked up against the resources of the Tiny Township shoreline property owners' associations and, the Township politicians whom they are successful in having elected.

Yours truly,

Roderic G. Ferguson, Q.C.

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