Green v. The Queen in right of the Province of Ontario et al.

[1973] 2 O.R. 396

ONTARIO
HIGH COURT OF JUSTICE
LERNER, J.
11TH DECEMBER 1972

Practice -- Parties -- Status -- Action against Crown in right of Province -- Claim based on breach of trust in maintenance of public park -- Whether individual may maintain action.

Crown -- Action against provincial Crown -- Claim based on breach of trust in maintenance of provincial park -- Whether reasonable cause of action disclosed by claim -- Provincial Parks Act, ss. 2, 3(2).

In an action in which it is alleged that a public or quasi-public body has exceeded or abused its authority in such a manner as to affect the public, whether a nuisance be involved or not, the right of the individual to bring the action will accrue, as it accrues in cases of nuisance, on proof that he is more particularly affected than other people. An individual who brings an action against the Crown in right of the Province alleging that the Crown is in breach of its trust under s. 2 of the Provincial Parks Act, R.S.O. 1970, c. 371, in failing to maintain a particular park in keeping with the spirit of s. 2, but who alleges no particular damage to himself, lacks status to maintain the action. The indication in the style of cause that the action is on behalf of himself and all other people of the Province and of future generations does not improve his legal position.

Section 2, which provides that "All provincial parks are

dedicated to the people of the Province of Ontario and others who may use them for their healthful enjoyment and education, and the provincial parks shall be maintained for the benefit of future generations in accordance with this Act and the regulations" does not, in any event, create a trust. There is no certainty of subject-matter and, furthermore, s. 3(2) empowers the Province to increase, decrease or even put an end to the existence of any park. A claim based on the fact that land leased by the Province to a cement company, prior to the creation of a provincial park on adjoining land, was being used for the purpose of quarrying sand as intended by the parties, and that this constituted a breach of trust by the Province is a claim which is frivolous and vexatious. Accordingly, the statement of claim should be struck out and the action dismissed.

[Grant v. St. Lawrence Seaway Authority, [1960] O.R. 298, 23 D.L.R. (2d) 252; Thorson v. A.-G. Can. et al. (No. 2), [1972] 1 O.R. 86, 22 D.L.R. (3d) 274; affd [1972] 2 O.R. 340, 25 D.L.R. (3d) 400; Cowan v. Canadian Broadcasting Corp., [1966] 2 O.R. 309, 56 D.L.R. (2d) 578, apld]

MOTIONS by both defendants in an action for an order striking out the statement of claim and dismissing the action.

J.D. Hilton, Q.C., and D.K. Gray, for defendant, applicant, The Queen in right of the Province of Ontario.

C.L. Dubin, Q.C., and R.A. Blair, for defendant, applicant, Lake Ontario Cement Ltd.

R. Timms and D. Estrin, for respondent, plaintiff.

LERNER, J.:-- These reasons are the result of separate motions by each defendant in the same terms wherein they seek orders striking out the statement of claim as it relates to each of them and dismissing the action or perpetually staying

the action or, in the alternative, to the relief sought, an order extending the time for the delivery of the statement of defence.

A preliminary objection was put to the Court by the plaintiff that these applications should be dismissed on the ground that they had been wrongfully conceived or are premature. I reserved this preliminary objection because this matter is of sufficient importance to be dealt with upon the merits, notwithstanding any such objection and regardless whether the objection would succeed: Smith v. A.-G. Ont., [1924] S.C.R. 331, [1924] 3 D.L.R. 189, 42 C.C.C. 215.

The motions are brought pursuant to Rule 126 which states:

> 126. A judge may order any pleading to be struck out on the ground that it discloses no reasonable cause of action or answer, and in any such case, or in case of the action or defence being shown to be frivolous or vexatious, may order the action to be stayed or dismissed, or judgment to be entered accordingly.

The respondent argued and relied on Rule 124:

> 124. Either party is entitled to raise by his pleadings any point of law, and by consent of the parties or by leave of a judge, the point of law may be set down for hearing at any time before the trial, otherwise is shall be disposed of at the trial.

On the return of the motions, the writ of summons and statement of claim were the only outstanding pleadings. The applicants relied on their affidavit material. The respondent insists that the applicants should have raised these objections as matters of substance in their respective statements of defence to be filed, if they are important points of law, and then argued by consent of the parties or by leave of a Judge on motions to be set down before trial for that purpose pursuant to Rule 124 unless the objections were to be determined at trial.

Rule 126 may be broken into two parts and the second part can be said to begin as follows:

> 126. ... or in case of the action or defence being shown to be frivolous or vexatious, may order the action to be stayed or dismissed, or judgment to be entered accordingly.

The applicants relied upon both parts as I have delineated them. Rule 126 is meaningless unless it is not to be invoked where there are allegations in the statement of claim of sufficient definitive clarity to permit them to be argued on the basis of the available law. Sovereign Securities & Holdings Co. Ltd. v. Hunter, [1964] 1 O.R. 7, recognized the availability of now Rule 126 for this purpose on the basis of the statement of claim and affidavit material. Additionally, the Court of Appeal stated in any event that there was the inherent jurisdiction of the Court which may be invoked pursuant to the present s. 18, para. 6 of the Judicature Act, R.S.O. 1970, c. 228. I recognize that such inherent jurisdiction should be sparingly exercised and only in exceptional cases: Orpen v. A.-G. Ont. (1924), 56 O.L.R. 327, [1925] 2 D.L.R. 366 (affirmed 56 O.L.R. 530, [1925] 3 D.L.R. 301). In the latter report at p. 369 D.L.R., p. 332 O.L.R., Riddell, J., stated:

> The power left in the Court by the Judicature Act, R.S.O. 1914, c. 56, s. 16(f), and asserted by C.R. 124 (Ont.), of staying or dismissing any action which is plainly frivolous or vexatious or which discloses no reasonable cause of action, is simply that inherently possessed by the Court to prevent abuse of its process.

And, at p. 332 O.L.R., p. 370 D.L.R.:

> Many such expressions of opinion are to be found. Some of the cases are referred to in Holmested's Judicature Act, pp. 45, 46, 546. But, although the power is inherent and is certainly not diminished by anything in statute or rule, it must be carefully and sparingly exercised.

Whether the inherent power of the Court or jurisdiction under

Rule 126 is to be exercised, cannot be determined until the merits of the applications have been argued and considered. That is what I propose to do here because the respondent has not satisfied me on this preliminary matter that I am not so entitled to do. Furthermore, I think it useful to make reference to three reported decisions confirmed by the Court of Appeal which support my approach to this preliminary objection.

In Hollinger Bus Lines Ltd. v. Ontario Labour Relations Board, [1952] O.R. 366, [1952] 3 D.L.R. 162, the plaintiff had brought an action against the defendants and on a motion under then Rule 124, now Rule 126, Spence, J., made an order staying the action [[1951] O.R. 562, [1951] 4 D.L.R. 47]. In the above-cited report the Court of Appeal affirmed his order on two grounds, i.e., that the defendant was not a suable entity and that the relief sought was not obtainable in an ordinary action but only obtainable by way of certiorari and/or prohibition. The action had been for a declaration that the defendant in adjudicating upon a collective agreement had acted either without jurisdiction or in excess of jurisdiction as a result of which an injunction was sought to restrain it from proceeding further.

Rule 126 was also employed in Bramalea Consolidated Developments Ltd. v. A.-G. Ont. et al., [1971] 1 O.R. 252. Wright, J., in dismissing the action based his decision on the proposition that an order under the Rule ought not to be made

> ... only in the clearest and in very exceptional cases and that the matter must be determined on the basis that the plaintiff can establish the allegations of the statement of claim.

The plaintiff, apparently a landowner and land developer, sought a declaration that the Minister of Municipal Affairs for Ontario was acting without jurisdiction in allegedly purporting to prohibit, restrict or otherwise control the use of land. It was an attempt to secure from the Court, in the face of announcements of policy by the federal and provincial Governments, some statement of the constitutional rights which might arise and affect the lands of the plaintiff if both

Governments carried out the intentions which, as pleaded, purported to contemplate the expansion of existing runways and create additional runways at Toronto International Airport. The action was dismissed with costs, subsequently affirmed by the Court of Appeal ([1971] 2 O.R. 570).

Similarly in Westlake et al. v. The Queen in right of the Province of Ontario, [1971] 3 O.R. 533, 21 D.L.R. (3d) 129, an action was brought against the Ontario Securities Commission. The defendant moved to strike out the statement of claim and dismiss the action as against the Ontario Securities Commission on the ground that it was not an entity which can be sued for damages. The plaintiffs were the owners of securities of the bankrupt Prudential Finance Corporation Limited which had sold various types of securities to the public, issued pursuant to a prospectus and other documents accepted by the Ontario Securities Commission. The holders of the securities alleged that the Ontario Securities Commission failed to perform its statutory duties and that they as a consequence suffered damage. Employing Rule 126, Houlden, J., dismissed the action, subsequently affirmed by the Court of Appeal, [1972] 2 O.R. 605, 26 D.L.R. (3d) 273.

I now turn to the substantive parts of these applications. From the statement of claim it appears that the plaintiff, Larry Green, is a Canadian citizen residing in Metropolitan Toronto and a researcher in the employ of "Pollution Probe" at the University of Toronto. The other undisputed facts from the material and the argument of counsel I summarize as follows. Lake Ontario Cement Limited, a body corporate, with head office at Toronto, entered into a written lease on January 12, 1968, with the Province of Ontario for a parcel of land containing 16.02 acres and forming part of the sand banks and some lands under the waters of West Lake in the Township of Hallowell, Prince Edward County. Pursuant to the lease, Lake Ontario Cement Limited are lessees for 75 years commencing January 1, 1965, and pursuant thereto, have the right to excavate sand expressed in part in the lease as follows:

> ... and shall be entitled to remove and use sand so excavated and shall also be entitled to exclude all persons from using

> the said right-of-way except the Lessor, her servants and agents, during the term of the said Lease.
>
> The Lessor hereby grants to the Lessee the exclusive right and privilege to remove and carry away, from time to time and without charge, sand in unlimited quantities from the lands ...

Some two years and three months later, pursuant to the authority of the Provincial Parks Act, R.S.O. 1970, ch. 371, the Province of Ontario established the "Sandbanks Provincial Park" as a provincial park within the meaning of said Act consisting of 1,802 acres, more or less, of land which coincidentally is adjacent to and adjoining the 16.02 acres previously leased to Lake Ontario Cement before any park was ever in existence. The 16.02 acres have never been nor are they now, part of the said park lands so dedicated.

The statement of claim at para. 5 sets out s. 2 of the Provincial Parks Act which states:

> 2. All provincial parks are dedicated to the people of the Province of Ontario and others who may use them for their healthful enjoyment and education, and the provincial parks shall be maintained for the benefit of future generations in accordance with this Act and the regulations.

and on the basis of s. 2 alleges that it imposes a trust upon the Province of Ontario with regard to Sandbanks Provincial Park so designated, to maintain that park in keeping with the "spirit" of s. 2 and that by permitting the use of the adjoining lands which the Province of Ontario had legally conveyed by leasehold to the other defendant were in breach of the trust implicit in s. 2 set out above.

The plaintiff alleges further at para. 6 of the statement of claim that:

> ... the towering sand dunes which constitute a small percentage of the park but virtually the entirety of the interest leased by the Province to LOCL are a unique

ecological, geological and recreational resource required to be maintained for the benefit of the people of Ontario.

That "the towering sand dunes ... constitute ... a unique ecological, geological and recreational resource ..." is clearly a statement of opinion as much as a comment that a particular objet d'art is good or bad esthetically.

If the area of the sandbanks contained in the leasehold form part of the natural part of the park as alleged and were originally intended by the Province to form part of the park as further alleged, it becomes difficult to understand how that allegation could ever be a fact even if no defence were ever put forward, when one considers the allegations which the statement of claim sets out as fact with respect to the history, that is to say, that there exists more than a two-year spread between the execution of the lease to Lake Ontario Cement Company Limited and the creation of the park. This allegation is so obviously unsound as to warrant the appellant "frivolous".

Quite apart from the foregoing, both applicants take the position that:

(a) the plaintiff has no status to bring this action;

(b) the statement of claim discloses no reasonable cause of action.

This plaintiff was careful not to frame the action in public nuisance. Counsel for the plaintiff conceded in argument that on the basis of a public nuisance, the action could not succeed because there is no suggestion of any damage or injury to the plaintiff, Larry Green, beyond that which might be alleged by any other member of the public. The plaintiff has carefully attempted to avoid that pitfall but apart from the allegation of a trust and breach thereof, it is my view that public nuisance is the only intention to be taken from the following allegations quoted directly from the statement of claim:

8. The plaintiff alleges that the aforesaid sand removal

operations carried on immediately adjacent to the boundary of the park have deleteriously affected and impaired the healthful enjoyment and natural environment of the said park. Particulars of such impairment are as follows:

a) the magnificent view of towering dunes heretofore available to users of the park, including users of the waters within the park limits, has been destroyed by the removal by the defendant LOCL or its agents of the two largest dunes within the leasehold. This aesthetic impairment is worsened by the resulting view consisting of barren flat land partially covered with stagnant water, mud, and rubbish, and upon which weeds have grown;

b) the excavated portions of the leasehold, now flat-land, have resulted in swamps and stagnant pools of water in which insects, including mosquitoes, not heretofore prevalent in the park, breed and from which they fly to bother users of the Park.

c) the defendant LOCL has made no efforts to control access to the leasehold by unauthorized persons, and the plaintiff alleges that gangs of motor cycle riders, dunebuggys, and motor vehicles in general enter onto the leasehold causing noise and dust disturbance to users of the Park. The said vehicles and their operators cause further disturbance to the Park users by continuing across the defendant LOCL's leasehold and into the park. The plaintiff further alleges that prior to the excavation by the defendant LOCL of sand dunes and the simultaneous construction of a roadway on the leasehold for vehicles removing the sand, access by the said vehicles to the sand banks portion of the Park and to the area immediately adjacent to it was not possible.

d) the plaintiff alleges that the roadway constructed by the defendant LOCL and its excavation of sand dune to the edge of West Lake have attracted the launching of motorized boats which pollute the said West Lake,

including portions of water included in the Park by the regulations as aforesaid. The said boats create wave action which under-cuts and damages the sand dunes within the Park, and the said boats further cause noise disturbance to park users;

e) The noise from the excavation and removal of sand by the defendant caused by its use of huge diesel powered tractors and trucks, together with the said noise from motor vehicles and boats using the defendant LOCL's leasehold, and the removal of large dunes between the park boundary and a private resort, all have materially interfered with the isolation and privacy heretofore enjoyed by park users.

f) The operations carried out by the defendant LOCL are not in compliance with relevant provincial laws designed for the safety and protection of persons, especially small children, who frequent the Park and who are attracted to the leasehold boundaries which are steep perpendicular cuts made in the high dunes. The safety and comfort of park users are thereby interfered with.

Furthermore, the inclusion in the name of the plaintiff shown in the style of cause of the words:

> ... on his own behalf and on behalf of all other people of the Province of Ontario now living and on behalf of future generations thereof

add nothing to the issues, nor do they improve the plaintiff's legal position. They are pretentious and again frivolous, and a paradox. As part of the case argued by the respondent (dealt with post) reliance is had to s. 2 of the Provincial Parks Act which refers to and includes the people of the world in its all-embracing expression "and others". If any weight was to be given to this description of the plaintiff in the style of cause and reliance was seriously had to the wording of s. 2 of the Act, the plaintiff had no right to be selective and leave out "and others".

On the authority of Grant v. St. Lawrence Seaway Authority, [1960] O.R. 298 at p. 302, 23 D.L.R. (2d) 252 at p. 255, Aylesworth, J.A., stated that the proposition, supported by the authorities therein quoted, that such an action cannot be maintained as here, by the plaintiff, but only in the name of the Attorney-General with someone (e.g., Green in this case) as relator in the proceedings. The discretion of the Attorney-General as to what is a proper case for him so to do (maintain or bring an action) is absolute. For the plaintiff to maintain this action in his own name would require that he show that he:

> ... suffered some particular, direct and substantial damage over and above that sustained by the public at large when the interference with the public right involves a violation of some private right of those persons ...

(the Grant case, at p. 303 O.R., p. 256 D.L.R.). In the Grant case, the plaintiff claimed [at p. 298 O.R.]:

> "... an injunction to restrain the defendants [St. Lawrence Seaway Authority] from maintaining a public nuisance; being a high-level suspension bridge of faulty construction and design spanning the St. Lawrence River near Cornwall, the impending ... danger to the persons and property of Her Majesty's subjects using or passing beneath such bridge."

In the case at bar, nowhere in the statement of claim does the plaintiff allege that he personally has attempted to make use of any part of the 16.02 acres or that the defendant Lake Ontario Cement Company has by its use of the lands caused any special and peculiar damage to him: Salmond, Law of Torts, 15th ed. (1969), p. 64. For what it is worth, he does not allege that he has ever used the park lands.

Thorson v. A.-G, Can. et al. (No. 2), [1972] 2 O.R. 340, 25 D.L.R. (3d) 400, was an unsuccessful appeal by the plaintiff, Thorson, from the dismissal of his action by Houlden, J., [1972] 1 O.R. 86, 22 D.L.R. (3d) 274. There the plaintiff was challenging the constitutional validity of an Act of

Parliament, viz., the Official Languages Act. The action was dismissed on motion under Rule 124 brought to determine a question of law whether the plaintiff had any status to maintain the action. Houlden, J., held that since the only injury or damage he might suffer would be liability to pay higher taxes as the result of the enactment thereof, such increase of taxes, if any, would be borne by all taxpayers and not by him alone. Therefore, not having been able to show that he was affected by way of special damage or prejudice to him personally, the learned Judge held that he had no status to maintain the action.

In Cowan v. Canadian Broadcasting Corp., [1966] 2 O.R. 309, 56 D.L.R. (2d) 578, the Court of Appeal dismissed the appeal of the plaintiff from the judgment of King, J., striking out the statement of claim and dismissing the action on the ground that the plaintiff had no status to maintain same. The plaintiff had sought a declaration that the Canadian Broadcasting Corporation had no lawful authority to constitute and operate a radio broadcasting station in Ontario in the French language; that public funds were unlawfully appropriated by the defendant for the purpose of operating such a station and among other relief, an injunction restraining the defendant from so broadcasting. Schroeder, J.A., at p. 311 O.R., p. 580 D.L.R., stated:

> A plaintiff, in attempting to restrain, control, or confine within proper limits, the act of a public or quasi-public body which affects the public generally, is an outsider unless he has sustained special damage or can show that he has some "special interest, private interest, or sufficient interest". These are terms which are found in the law of nuisance but they have been introduced into cases which also involve an alleged lack of authority. Therefore, in an action where it is alleged that a public or quasi-public body has exceeded or abused its authority in such a manner as to affect the public, whether a nuisance be involved or not, the right of the individual to bring the action will accrue as it accrues in cases of nuisance on proof that he is more particularly affected than other people.

(The emphasis is mine.)

In addition to the authorities referred to above, there are many numerous restatements of these propositions which confirm the law on facts and situations similar and analogous to the allegations included in the writ of summons and statement of claim herein. Therefore, the plaintiff has no status to maintain this action.

Perforce, I turn to the second argument of the applicants that the statement of claim discloses no reasonable cause of action. The only suggestion or allegation that the lease was entered into improperly or that it is not binding upon the lessor and the lessee is found in part of para. 6 of the statement of claim which states:

> In authorizing the removal by the defendant Lake Ontario Cement Limited of the aforesaid sand dunes the Province acted without legal authority and committed a breach of trust in that a grant of public lands was made to a private company for the personal gain and advancement of that company and not in the public interest.

At the risk of repetition it must be noted again that when the lease was entered into on January 12, 1968, "Sandbanks Provincial Park" had not been established and in fact was not so established until the promulgation of O. Reg. 165/70 [now R.R.O. 1970, Reg. 695] on April 20, 1970, pursuant to the Provincial Parks Act. Furthermore, this Regulation did not include the 16.02 acres demised under the lease. There are bilateral obligations in the lease, e.g., the lessee shall have the right to excavate designated areas and to remove and use the same so excavated in unlimited quantities during the term of the lease (75 years), provided, however, that no sand shall be removed from the said lands below a level of 244.10 ft., International Great Lakes Datum. The lessee is not permitted to put any building or structure on the premises without the approval of the appropriate provincial authorities designated in the lease nor remove trees, or timber. The lease further carries the injunction that if the lessee fails to remove sand from the said area for a period of three consecutive years that

the lessor is entitled to cancel the lease upon 60 days' notice in writing. There is nothing in the statement of claim seeking to set aside what appears, prima facie, to be a valid and subsisting lease and in any event there is no basis on the statement of claim upon which the plaintiff would have any right to attack the lease per se.

The plaintiff, pursuant to paras. 12(c), (d), and (e) of the statement of claim, seeks temporary and permanent injunctions restraining the defendant Lake Ontario Cement Limited from excavating or removing sand from these lands which they hold by lease and a mandatory injunction requiring the same defendant to restore the leasehold to its natural state which can only mean returning and filling in the sand on the land where same has been excavated. As pointed out above, with respect to some of the terms of the lease, the defendant Lake Ontario Cement Limited, in my view, has not only a right to excavate the sand but has an obligation to perform pursuant to the provisions of the said lease, none of which provisions, it is alleged in the statement of claim, have been breached.

The substantial part of the issues raised by the statement of claim (not the facts) is the allegation that both defendants have committed a breach of trust in violation of s. 2 of the Provincial Parks Act. In the first instance it is clear that there is no duty required of any person or corporation to maintain the Sandbanks Provincial Park other than the Province of Ontario and therefore, the defendant Lake Ontario Cement Company Limited could not be so included on any conceivable basis. That part of the prayer for relief is set out in para. 12 (b):

> a declaration that the defendant LOCL has breached a duty on all persons by virtue of s. 2 of the said Act;

Secondly, if there is any duty upon the Province of Ontario to maintain the park lands that is set out in para. 12(a) thereof:

> a declaration that the defendant the Province has breached the trust imposed upon it by virtue of s. 2 of The Provincial Parks Act;

Paragraph 12(b) is so implausible as to put that part of the prayer in the same context as being "frivolous".

The plaintiff, in fact, is seeking a declaration of breach of a statutory trust which is not open to him unless he has a special interest above that of the general public, the authority for which proposition I find to be in Cowan v. Canadian Broadcasting Corp., supra. Although the action was not framed in nuisance, nevertheless, I alluded to that as being a possible basis of giving status to the plaintiff earlier. As obiter I add that a stranger cannot complain about use made of one's own lands, and only the Province of Ontario, in this instance, could take the necessary steps to abate a public nuisance.

It was also admitted by counsel for the plaintiff that but for the existence of s. 2 of the Provincial Parks Act there would be no basis for bringing the action. Notwithstanding the philosophical and noble intentions (my expression) of the Legislature to express in the pertinent section an ideological concept, no statutory trust has been created. It becomes necessary to break down the wording thereof: "All provincial parks are dedicated to the people of the Province of Ontario and others who may use them ...". This simply makes it clear that all persons (and I presume that includes those lawfully in Canada) are entitled to make use of the parks without the inhibitions or restrictions of race, religion, creed or other prejudicial implications inimical to the welfare of society and particularly the people of Ontario. "... and the provincial parks shall be maintained for the benefit of future generations in accordance with this Act and the regulations" implies that the Province of Ontario is required to physically maintain the parks so dedicated. This view is confirmed and amplified by the provisions of s. 3(1) and all the subsections of s. 19 covering such things as the issuing of permits, the fees for the right to enter and use the parks, which are so complete as to make the power of the Province in the whole concept of park lands, absolute.

A reading of s. 2 together with s. 3(2) makes it clear that

the subject-matter of the trust is not certain. Section 3(2) empowers the Province to increase, decrease or even put an end to or "close down" any park. There cannot be a trust as is alleged by the plaintiff herein unless the subject-matter of the trust is of certainty.

The significance of the powers in s. 3(2):

> 3(2) ... decrease the area of any provincial park and may delimit any provincial park.

defeats any comfort that one can obtain in the words of the learned authority, Keeton in Law of Trusts, 9th ed. (1968), p. 5, where it is stated:

> All that can be said of a trust, therefore, is that it is the relationship which arises wherever a person called the trustee is compelled in Equity to hold property, whether real or personal, and whether by legal or equitable title, for the benefit of some persons (of whom he may be one and who are termed cestui que trust) or for some object permitted by law, in such a way that the real benefit of the property accrues, not to the trustee, but to the beneficiaries or other objects of the trust.

(The emphasis is mine).

This statement when considered in the light of s. 3(2) and when coupled with s. 2 should make it clear that the Province of Ontario cannot be held to be a trustee. Section 3(2) cannot be construed as compelling the Province to hold these lands or for that matter any park lands, for any certain period of time or forever for the purposes that are alleged by the respondent to be read into s. 2 of the Provincial Parks Act.

Again, when one considers the whole of s. 19 of the Provincial Parks Act and apart from my view with respect to uncertainty that prevents the establishment of a trust here, and apart from the fact that it is impossible to determine that there is a cestui que trust, s. 19 gives unfettered and wide ranging powers to the Province in the operation and use of its

parks and their ancillary or collateral benefits not only for the public but it also permits the use of same for private business enterprises, other gainful activities for special "classes", e.g., amusement operators, tourist accommodation operators, retail and wholesale stores and all manner of trades and businesses all of which would depend upon the discretion of the government. The action therefore as framed for breach of trust discloses no reasonable cause of action.

No one can be critical of resort to the Courts to remedy social wrongs or injustices by way of interpretation of law, either statutory or by precedent. This is desirable in our rapidly changing society and preferable to the lawless or anarchial way of seeking rectification of real as well as unreal injustices, inequities and abuses as practised in other jurisdictions. Nevertheless, if resort to the Courts is to be had, care must be taken that such steps are from a sound base in law otherwise ill-founded actions for the sake of using the Courts as a vehicle for expounding philosophy are to be discouraged.

Having first concluded that the plaintiff has no status to maintain this action and that the statement of claim discloses no reasonable cause of action, on reflection, I do not think it improper for me to find also that the action is vexatious and frivolous. I say this because the plaintiff had to know of the existence and terms of the lease and that it pre-dated by a substantial period of time, the establishment of Sandbanks Provincial Park.

In the result, the applications of both defendants are allowed and the action against all defendants is dismissed with costs of the application and the action forthwith after taxation thereof to the defendants who are each entitled to their costs as taxed separately.

Applications allowed.

CIVT ENVT ESTT