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Death, taxes, and Tiny beaches

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Editorial - To the certainties in life of death and taxes we can confidently add the dispute over public accesses to the beaches of Tiny Township. I wrote about this in an op-ed piece for this paper in 2004. The issue is as far from being resolved as it's ever been. And for that we have the province to blame.

I don't know if it's possible for citizens or a municipality to sue the province for breach of duty, but this sure would make a good test case. Our southern neighbors give us some hope in that direction, as a number of states and stakeholders successfully sued the Environmental Protection Agency this year for failing (under White House direction) to consider carbon dioxide, a greenhouse gas, as a form of pollution.

In the case of the Tiny beaches (and contentious beaches in a number of other Ontario communities), Queen's Park has taken a do-nothing attitude to an issue that can only be resolved by the province.

Queen's Park is abundantly aware of this issue. My op-ed piece ended up being cited at length by a Queen's Park researcher, and helped inspire a private member's bill from a Niagara Falls MPP, which in an attempt to snuff out a similar crisis in Crystal Beach by enshrining in statute the public use of shorelines on Great Lakes waters. It won't happen, because private members' bills hardly ever pass third reading, and this one will die on the order paper before the next provincial election.

Nevertheless, I still feel strongly that what I wrote in the first place still stands. I was, at the time, researching a book for Cottage Life on vacation property ownership in North America.

When I looked into the issue of waterfront property rights, I encountered the Public Trust Doctrine movement in the U.S., by which progressive lawmakers at the state and federal level had reached back to concepts in English common law to forge a doctrine of the public's right to access and enjoy shorelines. Rights have varied in interpretation from state to state, but nevertheless one has to admire these lawmakers for realizing that the public has a right to the use of shorelines in one form or another in a legal heritage reaching back to the emperor Justinian of Rome, and for resolving that the American people should not surrender those rights to private property owners and developers.

I don't want to revisit the whole Public Trust Doctrine here.

Suffice to say that it requires governments to think hard about how far public rights to the water's edge can and should extend. It requires governments to uphold their responsibility to protect a public trust, which in Ontario's case is the lake bottom to which it already defends the public right, up to a point on the shore that requires defining, sometimes on a case by case basis. Regardless of whatever language might have been scribbled down in an old property deed, that point on the shoreline in common law is customarily considered to be the high water mark, sometimes a historic mark as evidenced by physical features.

And in a place like Tiny Beaches, it is imperative that the province get its act together on this front, because Georgian Bay will only continue to recede with time, as the phenomenon of post-glacial geological rebound is causing the land to slowly rise and the water's edge to correspondingly withdraw.

Every year, more beach is created. Will shoreline property owners be allowed to extend their claims westward towards the retreating water's edge for eternity?

The previous Conservative government tried to settle this through a mediator. We all know how that ended up.

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Nothing was accomplished, and the public treasury burned through about four hundred grand in the process.

Nothing ever could have been accomplished, because the province itself lacked the political will to define its public trust where shorelines are concerned.

The province could have said, "We've done our legal research, and we say the public domain extends to the historic high water mark, at all disputed beaches in this province. If you don't like it, sue us. Now, let's get down to the business of drawing the high-water mark." Instead, it tossed the issue into the impossible realm of mediation between contrary parties.

You can't mediate fundamental rights in piecemeal local fashion. Imagine if we handled human rights in this way. Women could have the right to vote in Tay, but not in Tiny. Minorities could drink from public water fountains in Penetanguishene, but only ride at the front of buses in Midland.

Defining and defending rights requires political will and courage.

Tiny council has been left to resolve a dispute that it is in no position to resolve. The province is only too happy to intrude on shoreline property owners when they build boathouses, so that they can nail them with water lot leases for the use of provincial lake bottom beyond the high water mark.

But when property owners try to claim they own the entirety of a traditional public beach, the attorney general's office is nowhere to be seen, impressively disinterested in drawing the necessary lines in the sand. Tiny mayor Peggy Breckenridge told A-Channel last week that she and the town's CAO had made repeated requests to the attorney general's office for a meeting, but that the office had "totally ignored" them.

When I interviewed the incoming lieutenant governor, David Onley, for this paper a few weeks ago, he shared with me fond memories of growing up in Midland in the 1950s and making day trips with his family to Balm Beach.

I didn't have the heart to tell him that a boy like him today, confined to a wheelchair, would have a heck of a time using the beloved beach of his childhood, given the severe parking restrictions and the notions that property owners can build ghastly fences down to the water.

Queen's Park continues to fiddle while a treasure of the province is mired in acrimony and increasingly ruined by the visual clutter of a turf war that causes fences and other barriers to be thrown together on what was otherwise a sparkling vista of sand and water.

That's shameful.

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