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## RULE OF LAW

### **John and Greg Marion were found not guilty of assault at trial in Midland last week by a judge who called on Balm Beach residents to respect**

**Posted 4 days ago**

A judge says unless the residents of Balm Beach respect the rule of law "no one in the province will want to have anything to do with the increasingly lawless community."

Justice Jon-Jo A. Douglas made his comments in an addendum to a 25-page written decision handed down Tuesday that found John Marion and his son, Greg, not guilty of assaulting James Brennan in 2008.

The charges came after a summer of violence to people and property with fire, chainsaws and a variety of missiles. Public access to the Nottawasaga Bay shoreline in Tiny Township has been a contentious issue for years and has, at times, turned violent.

(In 2008, someone took a chainsaw to the wooden fence erected by Marion. At the time, OPP Inspector Rick Philbin, who served in a policing role with the UN in Kosovo, said that in his nine months in Kosovo he had never witnessed the kind of hatred shown and heard on the tapes that captured the crowd's actions that day in Balm Beach.)

The lengthy decision dealt mostly with issues of law and evidentiary matters, but Justice Douglas made it clear the addendum was a message to the residents of Balm Beach to seek lawful ways to resolve the long-standing dispute over fences on the Marion's property.

In his written decision concerning the alleged assault, the Judge noted that Brennan was clearly a trespasser, having three times vaulted the fences on the Marion property and that his actions "constituted trespassing.

"...on the only evidence before me, it cannot be in dispute that the Marion's own the land within their fencing. Hence, without express or implied licence, anyone on that property is, prima facie, a trespasser.

The judge further said that when he (Brennan) climbed those fences to enter or exit their (the Marions) property (he) arguably was actively engaged in a breach of Section 430 (1) of the Criminal Code, mischief to property, which include both damage to property and interference with it.

It is very apparent that, out there, there are some who do not like that the Marions have decided to build these fences."

Judge Jon-Jo A. Douglas He said that under the Trespass Act, the Marions, as occupiers, had the right to arrest without warrant, the complainant, if they believed on reasonable and probable grounds [that the Complainant was] ... on the premises in contravention of s. 2.

"Also, under s. 41 of the Criminal Code, the Marions, being in peaceable possession of a dwelling house or real property' would be "justified in using force to prevent any person from trespassing on ... the real property or to remove a trespasser therefrom, if [the person] ... uses no more force than is necessary."

He said that before Brennan could vault the fence to leave the property he was confronted by either John or Greg Marion.

"In short, I have no reliable evidence as to who did what to whom after this melee broke out that is sufficient to make any sort of findings to the degree required to displace the presumption of innocence. Each of the accused,

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accordingly, must be found not guilty."

In the addendum, the Judge wrote:

"I have found the accused not guilty, but before leaving this case, which, I gather, is one of others winding its way through the criminal justice system, I feel compelled to comment on "this very disturbing situation.

"I do so not to support either the Marions or the unknown others, but only to caution the community at large as to what it risks becoming.

"It is very apparent that, out there, there are some who do not like that the Marions have decided to build these fences.

On one of the days this court sat on this matter, it was noted that someone had posted a sign on the beach indicating that some 'asshole' was to go on trial today -a reference counsel for the Marions reasonably took as a direct reference to his clients and this case; such conduct is contemptible, and possibly contemptuous.

There have been numerous other incidents of trespass, vandalism and assault referenced in the evidence.

"The community of persons, who oppose the Marions, be they individuals or those with commercial interests, and those who lead that opposition into lawlessness really have only three legitimate choices.

"The first would be to accept the situation for what it appears to be on the evidence before me: the legitimate attempts of a property owner to enforce the rights of a property owner against those who seek to ignore them.

"The second is to mount a challenge, in court, to the status or nature of the Marions' property rights-the current authority of which I am aware, the Boundaries Act Order, was litigated after notice, was contentious, and was determined in the Marions' favour.

"The third option is to purchase the Marions' property, either privately or through some fair expropriation procedure.

"The fourth option is illegitimate; it would be to continually break both Provincial property law and Federal Criminal law, by doing, or aiding and abetting, or counselling and inciting or conspiring with others to break those laws-that is simply unacceptable.

"To the others in the community who may take little note of this particular piece of beach front, you must nonetheless support not only the rule of law, but the known civility of rural communities such as yours.

"You thus must take action to assist the police in identifying either those breaking these laws or those encouraging others to break these laws. You must encourage those law breakers to cease their cowardly lawlessness and pursue lawful means.

"I understand from the evidence that the police are being diligent in their duty to uphold the law so I hope this encourages the Marions to resort to self-help to a lesser degree than has perhaps been necessary in the past.

"If consideration is not given to these points, no one in the Province will want anything to do with the increasingly lawless community of Balm Beach and its value will be set accordingly," the addendum concludes.

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