

COURT FILE NO.: 2455/05

DATE: 2006/05/02

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

**RE:** 1<sup>st</sup> Aylmer, 1<sup>st</sup> Belmont, 1<sup>st</sup> Shedden, 1<sup>st</sup> Springfield, 7<sup>th</sup> St. Thomas,  
8<sup>th</sup> St. Thomas, 13<sup>th</sup> St. Thomas, 14<sup>th</sup> St. Thomas, 18<sup>th</sup> St. Thomas and  
24<sup>th</sup> St. Thomas Scout Groups

Applicants

The Provincial Council For Canada; Boy Scouts of Canada

Respondent

**BEFORE:** Justice B.T. Granger in St. Thomas on April 24, 2006**COUNSEL:** Mark Shields, for the Applicants  
Ron Craigen, for the Respondents

**ENDORSEMENT**

[1] The Applicants are unincorporated Associations of individuals involved in local Boy Scout groups. The application has been commenced against the Provincial Council for Ontario, Boy Scouts of Canada (improperly named in the title of proceedings as The Provincial Council For Canada; Boy Scouts of Canada) regarding a claim by the Applicant groups that they are entitled to the beneficial ownership of certain lands in the St. Thomas area.

[2] There are approximately 350 members of the various groups named as Applicants. Of these 350 members, approximately 70-80 are adults, with the remainder being minors.

[3] On May 16, 2005 the Applicants obtained an ex-parte order "that the Applicants shall be allowed to bring this Application pursuant to Rule 12.08 of the Rules of Civil Procedure." No representative individual was named in the order or the title of the proceedings as required by Rule 12.08.

[4] The Respondent seeks to set aside the ex-parte order of Justice Haines as the order fails to identify a party as a "representative" and to have the application dismissed as a nullity. The thrust of the Respondent's argument is that the Applicants are unincorporated Associations, which are not legal entities capable of commencing an action in the name of the Associations.

[5] Mr. Shields, on behalf of the Applicants, acknowledges that the order granted by Justice Haines on May 16, 2005 is defective, as it does not appoint a representative for the proposed applicants. Accordingly, Mr. Shields seeks an order amending the order of Justice Haines dated May 16, 2005 by appointing David Palmer as the representative of the Applicants.

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[6] Mr. Shields submits that the failure to appoint a representative is an irregularity, which can be cured by the proposed amendment pursuant to Rule 2.01.

[7] In my view, if the named applicants had the status to commence an application, the failure to name a representative would simply be an irregularity and could be cured by the proposed amendment. The difficulty is that the proposed amendment does not address the issue that the named Applicants cannot bring an action in the name of the Associations. Accordingly, even if David Palmer is appointed as the representative of the unincorporated Associations, the application remains a nullity, as David Palmer will be purporting to represent the named Applicants who have no status to institute an application.

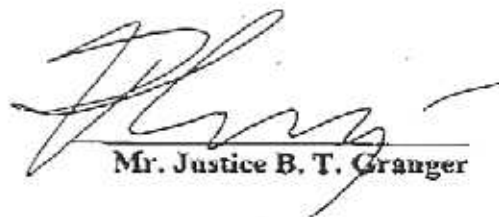
[8] The Respondent is entitled to know the identities of those who are bringing the action: see Rule 14.06, Are all of the members of the association bringing the action or just a few of the members? This could easily be accomplished by indicating the identities of those whom David Palmer will represent pursuant to a Rule 12.08 order. Once the identities of the members that David Palmer purports to represent is determined, the Respondent can, if it wishes, challenge the list of members David Palmer represents and the court can determine if a Litigation Guardian should be appointed to represent any minor members joining in the litigation.

[9] As the application is a nullity, the fact the Respondent took steps in the application before moving to set aside the order of Justice Haines and seek a dismissal of the application, is of no consequence, as the delay cannot breathe life into a nullity.

[10] Accordingly, the order of Justice Haines dated May 16, 2005 is set aside and the application is dismissed without prejudice to the right of the members of the Associations to bring a further action.

[11] Counsel may make brief written submissions on the issue of costs of this application including this motion within 30 days.

DATE: May 2, 2006.



Mr. Justice B. T. Granger