

Environmental
Law
Association

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CANADIAN ENVIRONMENTAL LAW ASSOCIATION

TORONTO, ONTARIO

Publication #06
ISBN#978-1-77189-723-5

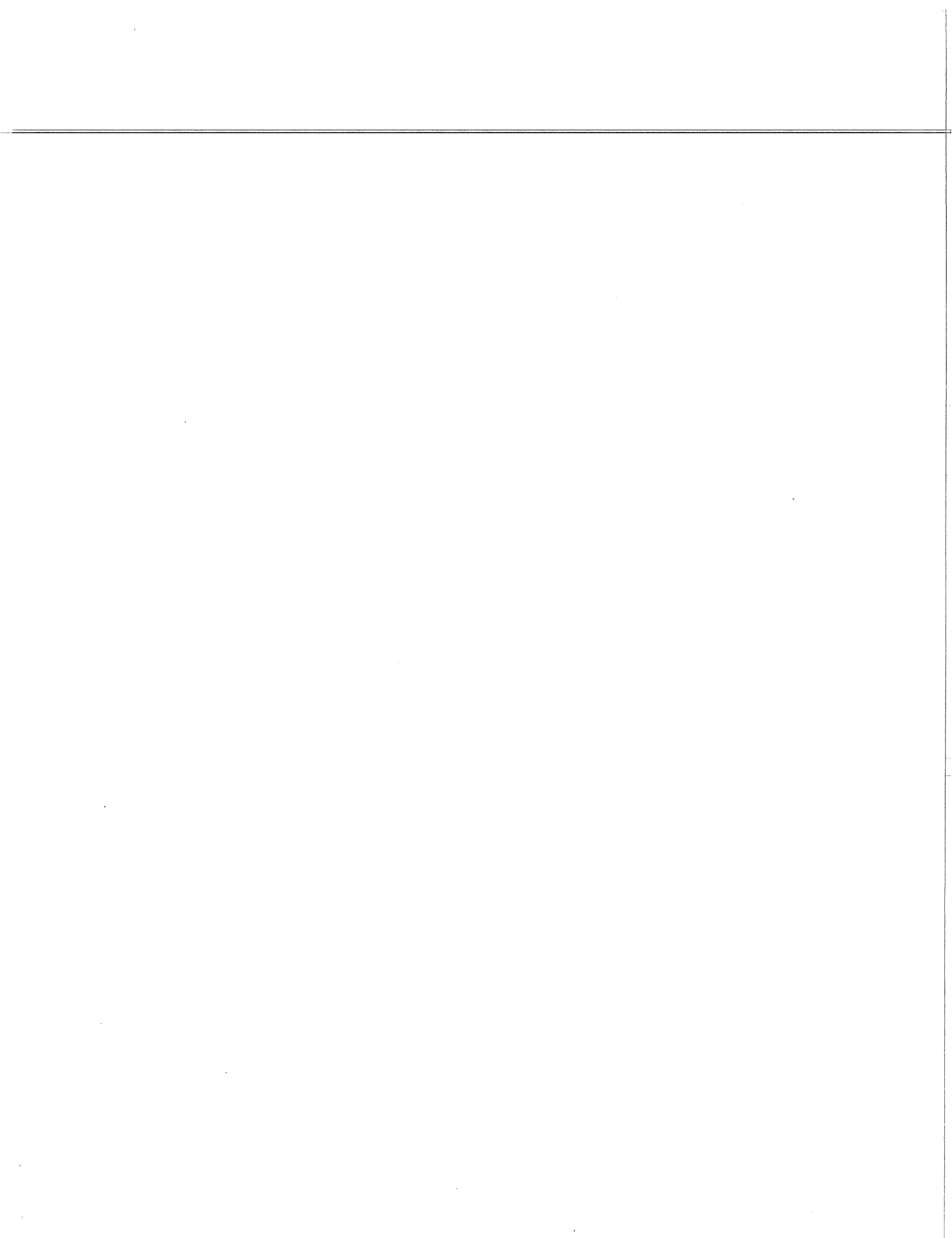
PRIVATE PROSECUTIONS

AN IMPORTANT PRECEDENT
FOR CHANGING THE CIVIL
COURT'S LAW OF STANDING

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February, 1972

CELA PUBLICATIONS:
Canadian Environmental Law Association; Estrin, David
CELA publication no. 6; Private Prosecutions: An
important precedent for changing the civil court's law of
RN 11139



PRIVATE PROSECUTIONS

THE STATE OF THE LAW

Whenever a provincial or federal statute (or a regulation or by-law made under the authority of the statute) provides that certain conduct (or inaction) is an offence, then the general rule of Canadian law provides that any person may bring proceedings to have offenders prosecuted in the criminal courts.

That is, any person who has "reasonable and probable grounds" for the belief in the guilt of another person (by reason of the latter person having violated the terms of a statute, etc.) may swear a statement of his belief before a Justice of the Peace and prosecute the alleged offender, just as the police lay charges for breach of the criminal code or provincial highway traffic acts, and bring the alleged offender to court wherein the accused, if found guilty, may be fined or imprisoned. The same person can, if he desires, act personally as prosecutor in court, or can hire a lawyer to act on his behalf. In some cases the local crown attorney may prosecute on behalf of the informant (the complainant).

To those unaware of these provisions of the law, the following facts may be even more revealing:

(1) Every citizen has as much power and authority to lay and prosecute charges as does the police or government officials charged with administering acts.

(2) Every citizen has an equal ability with the police to obtain a search warrant and to thereunder enter upon private property to obtain evidence of an alleged offence and to remove such evidence for use at trial.

(3) Subject to the intervention of the Crown Attorney acting on behalf of the provincial Attorney General, a private person can carry through all its stages a prosecution for any offence - even a murder charge.

(4) The citizen who wishes to prosecute need not have suffered any special harm or have a special interest in the outcome of the case. Unlike the law of standing in civil actions which allows only those who have suffered some special loss to sue for harm caused to the public, any person can commence a prosecution, provided only that he has reasonable grounds for belief in the guilt of that other person.

The following quotation from Lord Devlin's book, The Criminal Prosecution in England (London, 1960) at p. 16 is of relevance.

Subject to the powers of the Attorney-General, any citizen is at liberty to prosecute, although he usually prefers to complain to the police and leave it to them. There are a few unofficial prosecutions, usually brought by a business concern which for some reason or other wishes to keep the proceedings in its own hands. I use the word 'unofficial'; it is the best I can think of, since to call such prosecutions 'private' would be misleading: the great majority of prosecutions are in theory private. It is true that the proceedings are in the name of the Queen, but then in any civil action it is the Queen who issues the writ of summons and in whose name the attendance of the defendant is commanded; in each case the Crown is acting at the request or upon the information of an individual. Again, every police prosecution is in theory a private prosecution; the information is laid by the police officer in charge of the case, but in so doing he is acting not by virtue of his office but as a private citizen interested in the maintenance of law and order.

Of course, the taking of a private prosecution is not quite as simple as outlined here, and there are several procedural steps that must be understood in detail so that the prosecution is not hindered or fouled up by some unwilling official or process server. In addition to such procedural problems, which can admittedly stop a private person from prosecuting, the right to prosecute under any statute may be removed by a provision in the statute limiting that right to certain officials. In addition, the Crown Attorney, as mentioned above, can always, in his discretion, take over or stop a private prosecution.

PRIVATE PROSECUTIONS AND THE CIVIL LAW OF STANDING

As Lord Devlin points out in the passage quoted above, although a private

informer invokes the criminal law, the prosecution is carried on in the name of the Queen. He then points out:

but then in any civil action it is the Queen who issues the writ of summons and in whose name the attendance of the defendant is commanded.

At least in those provinces whose method of getting cases before civil courts use writs in which the Queen commands the defendant to appear and answer to the claim of the plaintiff (as in Ontario) can there be any logical reason for not allowing any person to invoke the remedies provided by the civil courts, for injunction or declaratory relief even when the person invoking the remedy has suffered no personal harm? If private prosecutions have value, and over many decades it is submitted they have been used to overcome cases of abuse wherein the "public authorities" have failed to act, then why should not any person similarly have the ability to invoke the civil courts for remedies in situations wherein harm is being caused to the public generally, for example when it is alleged a government department is acting beyond the powers given to it in a statute?

The law relating to private prosecutions has many safeguards to prevent abuse by persons who out of spite or idiosyncrasy would go out and prosecute any and everyone. Present civil rules relating to the award of costs, and the existing tort of abusive proceedings could both deter and compensate for those not invoking the civil process without bona fide cause.

In conclusion, if there is merit in the present state of the law relating to private prosecutions, which has not been a radical development but one that has emerged over many decades and safeguarded the rights of many in that time, then the present laws of civil standing must be closely examined and overhauled so as to make the civil as well as the criminal courts a useful tool in the process of protecting the environmental rights of Canadians.

If the Minister of the Environment hauls off and slugs me or runs into me with his car, I can prosecute him for assault or dangerous driving, even criminal negligence, and he could go to jail. But if he grants developers in Banff National Park wide concessions that will be contrary to preserving the park for the future generations of Canadians, I as a private person have no status to ask the court to rule on whether the Minister is acting contrary to law.

The status and importance of the private informant in criminal proceedings must be applied in the civil courts.