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ONTARIO COURT (PROVINCIAL DIVISION)

HER MAJESTY THE QUEEN

v.

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RONALD AND COURT ARMSTRONG

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R E A S O N S F O R J U D G M E N T

BEFORE HIS WORSHIP JUSTICE OF THE PEACE D.J. GIGNAC  
ON FEBRUARY 23, 1998, AT PARRY SOUND, ONTARIO

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CHARGES: s.8-1 B.C.A.  
s.67 P.A. x 2

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APPEARANCES:

D. HOLMES, ESQ.

COUNSEL FOR THE CROWN

P. HARTE, ESQ.

COUNSEL FOR THE DEFENDANTS

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1.  
REASONS FOR JUDGMENT  
GIGNAC, J.P.

R E A S O N S F O R J U D G M E N T

GIGNAC, J.P. (ORALLY):

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THE CROWN WITNESS, RAY HACHIGAN, OF THE TOWNSHIP OF THE ARCHIPELAGO, CHIEF BUILDING OFFICIAL, GAVE EVIDENCE THAT THE REGISTERED OWNER OF BOB'S AND ROPER ISLANDS WAS RONALD ST. CLAIR ARMSTRONG. ON MAY 27TH, 1997, MR. HACHIGAN VISUALLY INSPECTED THE ISLANDS IN QUESTION AND FOUND A FLOATING COTTAGE. THERE HAD BEEN NO PERMIT ISSUED FOR THE BUILDING. BOTH ISLANDS WERE TOO SMALL FOR STRUCTURES AND ARE ZONED AS NATURAL STATE AS BOTH ISLANDS ARE LESS THAN AN ACRE. DURING THE MONTH OF MAY, 1997, A LARGE COTTAGE, FLOATING, WAS AT THE LOCATION. A FLOATING COTTAGE WAS NOT THERE IN THE FALL OF 1996. ON MAY 27TH, 1997, AT 9:30 A.M., MR. HACHIGAN DID A VISUAL INSPECTION AND TOOK MEASUREMENTS. THE MEASUREMENTS WERE TWENTY-TWO POINT FOUR FEET BY TWENTY-EIGHT POINT FOUR FEET. THERE WAS A RAMP ATTACHED TO THE COTTAGE AND ANCHORED TO THE ISLAND WITH A LARGE CHAIN. THE WHEELHOUSE HAD NO ATTACHMENTS TO THE 25 HORSEPOWER MOTOR. THERE WERE NO STEERING CABLES. AND HE NEVER RECEIVED AN APPLICATION FOR A PERMIT. THE COAST GUARD WAS ASKED TO ATTEND CONCERNING REGISTRATION NUMBERS ISSUED BY THEM. THERE WAS NO BUILDING PERMIT APPLIED FOR.

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UNDER CROSS EXAMINATION IT WAS LEARNED THAT THE

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REASONS FOR JUDGMENT  
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FLOATING COTTAGE WAS A DWELLING UNDER THE BUILDING CODE ACT. THERE WAS NO GAS TANK, NO STEERING CABLE. IN JUNE, THERE WAS STEERING AND A MOTOR. ROPER AND BOB'S ISLANDS HAD BEEN DESIGNATED NATURAL STATE. STATED THE STRUCTURE TO BE A FLOATING COTTAGE, WHICH HAD DOORS, WINDOWS, FURNITURE. HE DID NOT ENTER THE DWELLING.

DANIEL BLACKWELL WAS AN EXPERT WITNESS, CALLED BY THE CROWN, WHO WORKS FOR THE DEPARTMENT OF TRANSPORT AND INSPECTS SHIPS OF ALL SIZES, UNDER THE CANADA SHIPPING ACT. HIS OPINION WAS THAT THE STRUCTURE WAS NOT A VESSEL. IF IT WAS A VESSEL, IT COULD NOT BE LICENSED. IT WAS A DOCK WITH A BUILDING ON IT. LICENSE NUMBERS THAT HAD BEEN ISSUED, WILL BE REMOVED AND MADE INVALID.

JOHN JACKSON, AN EXPERT WITNESS EMPLOYED AS A LAND USE PLANNER, KNOWS ROPER AND BOB'S ISLANDS. HAD SEEN THE STRUCTURE AND DESCRIBED IT AS A COTTAGE ON A FLOATING DOCK. AND, IN HIS OPINION, WAS NOT LEGAL. A BUILDING PERMIT COULD NOT BE ISSUED FOR THESE TWO ISLANDS.

RONALD ARMSTRONG, THE DEFENDANT, HAS AN AGREEMENT WITH COURT ARMSTRONG RE THE USE OF THE ISLAND. THEY HAD DETERMINED A HOUSEBOAT WOULDN'T VIOLATE THE REGULATIONS, PRIOR TO BUILDING THE HOUSEBOAT. JUNE 3RD, CALLED A PERSON, IN COLLINGWOOD, WITH THE MINISTRY OF

3.  
REASONS FOR JUDGMENT  
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TRANSPORT. ASKED FOR AN INSPECTION TO TELL IF IT WAS A VESSEL. WAS TOLD THERE WAS NO INSPECTION REQUIRED.

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UNDER CROSS EXAMINATION, HE THOUGHT THAT THE HOUSEBOAT COULD BE ANCHORED IN GEORGIAN BAY WATERS, EVEN THOUGH THE CHIEF BUILDING INSPECTOR SAID IT WASN'T LEGAL AND DIDN'T COMPLY WITH CONSTRUCTION STANDARDS FOR SMALL VESSELS.

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SHANE EVOY, A MARINE OPERATOR, KNOWS ABOUT THE ARMSTRONG HOUSEBOAT. IT HAD RUNNING LIGHTS, A MOTOR AND KNEW THE BOAT HAD BEEN OPERATED UNDER ITS OWN POWER. HE DEALT WITH IT IN THE FALL OF 1997 AND SPRING OF 1997. WAS ON IT IN MAY 1997 AND UNFASTENED IT FROM THE DOCK AND THE GANGWAY.

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MICHAEL McCONNELL, A DEFENSE WITNESS, KNOWS THE ISLANDS IN QUESTION. HAS CAMPED AND STAYED ON HOUSEBOATS AT THE ISLAND. THERE HAD BEEN THREE HOUSEBOATS THERE OVER THE YEARS. HACHIGAN HAD VISITED THE ISLAND AND SAID HE HAD NO CONCERNS.

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UNDER CROSS EXAMINATION IT WAS FOUND TO BE THE SUMMER OF 1992 OR 1993 THAT HE WAS THERE. HE WASN'T THE OWNER AND DIDN'T HAVE TO REGISTER A COMPLAINT WITH ME, HE'S SPEAKING OF MR. HACHIGAN.

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COURT ARMSTRONG HAD WRITTEN AGREEMENT WITH FATHER, RONALD ST. CLAIR ARMSTRONG, OCCUPYING

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REASONS FOR JUDGMENT  
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THE ISLAND. HAD THREE DIFFERENT HOUSEBOATS  
OVER THE YEARS AND MOORED THEM AT THE ISLAND.  
RECEIVED NO COMPLAINTS. RECEIVED A LETTER RE  
CAMPING PLATFORM, A DOCK, A TENT, OUTHOUSE AND  
STORAGE BOX. AFTER THE COMPLAINT, HE REMOVED  
THEM. HE HIRED THORKILDSEN BUILDERS AND GAVE  
THEM PLANS TO BUILD A HOUSEBOAT AND PAID  
\$27,000.00 FOR THE BOAT. HE GOT A VESSEL  
LICENSE THROUGH THE MINISTRY OF TRANSPORT AND  
THOUGHT THE HOUSEBOAT WAS PERMITTED.

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UNDER CROSS EXAMINATION IT WAS LEARNED THAT IN  
MAY 1997 IT WAS TOWED TO THE ISLAND, STILL  
UNDER CONSTRUCTION AND WASN'T COMPLETED. NO  
CABLES ON THE MOTOR OR FOR STEERING.

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THE DECISION OF THIS COURT, CONCERNING CHARGE  
NUMBER ONE, UNDER SECTION 8, SUBSECTION 1, THE  
BUILDING CODE ACT, IS THAT A FLOATING COTTAGE  
WAS BUILT BY COURT ARMSTRONG AND RONALD ST.  
CLAIR ARMSTRONG WITHOUT OBTAINING A BUILDING  
PERMIT. THIS COURT FINDS BOTH DEFENDANTS  
GUILTY ON THIS COUNT.

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COUNT NUMBER TWO, OF UNLAWFULLY ERECTING OR  
CAUSING TO BE ERECTED WITHIN A NATURAL STATE  
ZONE A STRUCTURE OR BUILDING NOT PERMITTED BY  
THE TOWNSHIP ZONING BY-LAW, SECTION 67 OF THE  
PLANNING ACT, THE COURT FINDS BOTH DEFENDANTS  
GUILTY AS CHARGED.

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COUNT NUMBER THREE, OF UNLAWFULLY USING LAND IN

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REASONS FOR JUDGMENT  
GIGNAC, J.P.

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A NATURAL STATE ZONE FOR A PURPOSE NOT PERMITTED BY THE TOWNSHIP ZONING BY-LAW, SECTION 67 OF THE PLANNING ACT, THE COURT FINDS BOTH DEFENDANTS GUILTY AS CHARGED.

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THIS IS TO CERTIFY THAT  
THE FOREGOING IS A TRUE AND  
ACCURATE TRANSCRIPTION FROM  
RECORDINGS MADE HEREIN, TO THE  
BEST OF MY SKILL AND ABILITY.

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J. G. BUSCHLEN,  
CERTIFIED COURT REPORTER.

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W A R N I N G

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