

Property Rights

property rights in Section 7 of the Charter of Rights and Freedoms.

This is a very important concept and one which most Canadians believe is already theirs within the Constitution. When I talk to people at public meetings they are very much surprised that they do not have this right. The overwhelming majority want to ensure that such a right is entrenched in the Constitution quickly.

Of course, there are many precedents of countries establishing the right to own property as a basic right. Indeed, the United Nations has established such a right. In our common law history, this goes back to the Magna Carta in 1215 and was reconfirmed in 1627 in the English Bill of Rights. It was one of the early amendments to the U.S. Constitution and has been a fundamental right in the United States for well over a century.

In 1948, Canada implicitly recognized the right by signing the United Nations Universal Declaration of Human Rights. Article XVII of that Declaration reads:

- (1) Everyone has the right to own property as well as in association with others.
- (2) No one shall be arbitrarily deprived of his property.

As I said, many other countries have formally recognized the right to own property in their Constitution. These include the United States, Australia, West Germany, Italy, Finland, and Sweden. Many national organizations, including the Canadian Bar Association, have stressed the need to add property rights to the Canadian Charter of Rights. Other organizations include the Canadian Chamber of Commerce and the Canadian Real Estate Association.

Canadians have been polled on this issue. In addition to my personal experience, a national Gallup poll shows that 81 per cent of Canadians feel that it is either very or fairly important to them that this right be added to our Constitution.

Some people say that we already have property rights in the Canadian Bill of Rights. That is true. The Canadian Bill of Rights, proposed by Prime Minister Diefenbaker, was an important landmark.

However, the Bill of Rights is simply a statement of general principle. It does not in itself confer or create real rights. The Charter of Rights which this motion is seeking to amend indeed overrides all other laws in the country, subject to reasonable limitations.

Indeed, property rights were almost in the Charter of Rights in 1981. On Tuesday, January 20, 1981, the Conservative Party introduced an amendment seeking the inclusion of property rights in the Charter. On Friday, January 23, the then Solicitor General, in his capacity as Acting Minister of Justice for the Government, accepted the amendment on behalf of the then Liberal Government. However, that Sunday evening, the Leader of the New Democratic Party (Mr. Broadbent), having conferred with his caucus and provincial

counterparts in Saskatchewan, informed Canadians on national TV that the NDP would withdraw its support for the Constitution if property rights were to be included.

The following Tuesday, Prime Minister Trudeau told Parliament that the property rights amendment had to be dropped. I can understand the NDP opposing property rights since it appears to be part of their national platform to expropriate property without reasonable compensation.

Mr. Benjamin: Go to hell! You have got to be kidding. If you believe that, you believe in the Easter bunny.

Mr. McCrossan: There are certainly sections in their national platform about nationalizing banks.

Mr. Benjamin: That is an insult. It is not without compensation.

Mr. McCrossan: It certainly is there. Furthermore, if they do believe in the principle of expropriation with reasonable compensation, they should be the first to be up to support this motion, because the only thing that this charter privilege conveys is indeed that absolute right to have reasonable and full compensation for property.

The Hon. Member for Winnipeg North (Mr. Orlikow) said in his speech that no one questions the right to own property in this country. The point is that Parliament itself has questioned the right to own property in this country, on several occasions.

I am sure all Members are aware of how property has been expropriated without proper compensation in establishing national parks. Certainly there has been a case in the media within the last few weeks about a person in the Maritimes who has been holding out for proper compensation because an Act of Parliament deprived him of his property without proper compensation.

The National Energy Program was an Act of Parliament, supported by the NDP, which expropriated property in the gas and oil sector in the North and in Hibernia without proper compensation. The point is that without charter protection, Parliament itself can and has acted, supported by the NDP, to expropriate property without compensation.

The Hon. Member for Winnipeg North suggested that somehow it will not be possible to extend a runway or carry out the necessary expropriation for a municipal or provincial highway. That is simply wrong. Everyone knows that the Charter of Rights and Freedoms states:

The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

I do not think there is any doubt that any court would rule that the Government had the right to expropriate where there was a legitimate government need. The question is one of compensation when the property is expropriated, and whether Parliament itself can legislate to expropriate without proper compensation.