

can be exercised without warning and led one irate citizen to say, "It is as though every public servant carries the Great Seal".

While all recognize the necessity to expropriate for public good, this is a trust for the public benefit and public benefit cannot be served unless the public is convinced that individuals' rights are respected. There must be a rational relationship between the individual and his government. With the informed public of today, anxious to participate in political issues and increasingly sensitive to its legal rights, nothing less will do.

For a comparison with our laws on the forcible taking of land, I shall refer to the recognition of basic principles in other jurisdictions. In France, no one can be compelled to give up his property except for public utility and in consideration of a just indemnity previously paid. In the United States, Denmark, Australia and India there are constitutional guarantees of just compensation.

Our federal statute, on the other hand, allows expropriation by the simple registration of a plan in the land registry office without notice and without payment. The Bill of Rights as interpreted by our courts is not applicable to prevent it. This gap in the law, this breach in what we all regard as our inviolable right, led the Hon. J. C. McRuer to restate a criticism made by the Hon. Joseph Thorson while president of the Exchequer Court in 1955:

I have frequently called attention to these provisions of the law and stated that Canada has the most arbitrary system of expropriation of land in the whole of the civilized world. I am not aware of any other country in the civilized world that exercises its rights of eminent domain in the arbitrary manner that Canada does. And unfortunately, the example set by Canada has infected several of the Canadian provinces in which a similar system of expropriation has been adopted.

In default of leadership by parliament, the provinces allowed their expropriation laws to remain basically unchanged and out of date until about 1960. Since then, British Columbia, Alberta, Saskatchewan, Manitoba Ontario and Quebec have been studying the deficiencies of their laws and have taken steps to bring them up to date, having been influenced no doubt by the revisions in England, Australia, New Zealand and some parts of the United States.

It is urgent that we take a fresh look and restate the principles of expropriation in light of today's needs and in line with contemporary methods of business, as foreign jurisdictions have done. Surely we can be confident that if we express accurately and soundly a

### *Expropriation Act*

concept that is fair to the individual and fair to government, and so take a giant step forward, the provinces will follow our example. This could lead to uniform expropriation codes in Canada.

It is inherent in modern thinking that each person is entitled to freedom of speech, freedom of religion and quiet enjoyment of his property. It is therefore incomprehensible that governments should have the power to deprive a man of his home or livelihood without notice and with nothing more than the filing of a document. It is not surprising that when it occurs the owner regards this appropriation with fear and resents the indignity of such abrupt intrusion into his private rights. With such feelings of injury and thought of unfair advantage he instinctively hates and fights the government.

What can we do about this? The taking of private property against the will of the owner is so serious an infringement of his rights there should be, except in cases of emergency, notice of a pre-expropriation hearing which, along with his right to fair compensation, should be assured by constitutional authority.

The right to be heard before one's land is taken is fundamental justice and is supported by common sense. The facts disclosed at a preliminary hearing would produce decisions reflecting more consideration for the rights of individuals without sacrificing the public interest. It is fallacious to think that this would cause governments any disadvantage. At worst, officials might be embarrassed for having failed to consider a more suitable alternative.

In one case an expropriation authority took a very valuable experimental orchard in order to build a garbage incinerator. Protests from the owner went unheard. However, after a united outcry from the press, another incinerator site was found at much less cost. A hearing would have avoided this.

We have all told the Canadian people repeatedly that we wish to involve them in politics. What is more natural than a pre-expropriation hearing so that those affected may be heard and submit alternatives, or point out errors in choice of selection and, failing these, adjust the planning of their affairs or businesses. This has been the rule in England for years.

It is gratifying that the Minister of Transport (Mr. Hellyer), who recently announced plans relating to the possible enlargement of the Toronto international airport at Malton,