

## "A PROPOSED STATUTE LONG OVERDUE"

PARTIAL HANSARD RECORD - DEBATE IN ONTARIO LEGISLATURE RE: BILL 57

LEGISLATIVE ASSEMBLY OF ONTARIO  
Thursday 19 October 2006

PRIVATE MEMBERS' BILL 57  
LAND RIGHTS AND  
RESPONSIBILITIES ACT, 2006

Mr. Barrett moved second reading of the following bill:

Bill 57, An Act to amend the Expropriations Act and the Human Rights Code with respect to land rights and responsibilities

The Deputy Speaker (Mr. Bruce Crozier): Pursuant to standing order 96, Mr. Barrett, you have up to 10 minutes.

Mr. Toby Barrett (Haldimand-Norfolk-Brant): It's with great pleasure that I rise in this Legislature today to speak to the proposed Land Rights and Responsibilities Act, 2006.

Years ago, my great-grandfather Theobald Butler Barrett sat on his front porch, shotgun in hand, to prevent the railway from coming through his property. He lost. He was forced to move his house back 200 feet to make room for the tracks. My father lives in that house now.

In the 1960s, my grandfather Theobald Butler Barrett and father, Harry B., were surprised to find survey stakes -- these were one inch by one inch by three feet long -- across the front field where my wife and I eventually built our house. For the second time, our family and our neighbours had to fight against the railway coming across our land. That time, we won. These are battles that shouldn't have to be fought, and if props were allowed, I would have brought in those large iron survey stakes. I've been pulling them out for years when I do the fall ploughing.

If we step back and take a look at the direction of our political and judicial systems, it's clear that, in Ontario and Canada, we essentially have rights societies. Just to explain, it means that our political and judicial systems are premised on so-called negative rights, or freedom from various incursions by either government or fellow citizens. The Charter of Rights is a prime example. It gives government a rule book. Government cannot violate our democratic rights. It cannot violate mobility rights, legal rights, language rights, our fundamental freedom. If a government chooses to pass a law violating those rights, the courts step in and say, "With respect, you can't do that. You cannot pass laws violating people's rights." So in that sense we can see a dialogue between the courts and Parliament.

The Canadian Bill of Rights is another example of a document that gives Canadians certain defined rights vis-à-vis government. We all recall that this was introduced by Prime Minister Diefenbaker in 1960. The Bill of Rights was intended as a safeguard against rights intrusions by the federal government.

I'd like to read a relevant passage from the Bill of Rights: "It is hereby recognized and declared that in Canada there have existed and shall continue to exist without discrimination by reason of race, national origin, colour, religion or sex, the following human rights and fundamental freedoms, namely,

"(a) the right of the individual to life, liberty, security of the person and enjoyment of property, and the right not to be deprived thereof except by due process of law."

That's important, in my books. What it says is that, as of 1960, Canadians had the right to enjoy property and to not be deprived of their property except by due process of law. It's something that essentially goes back to the year 1215, when we all recall the Magna Carta was signed.

Sadly, what Diefenbaker giveth, Trudeau taketh away. For whatever reason, Trudeau took away property rights when he drafted the much more powerful Charter of Rights and Freedoms. This is a wrong that Prime Minister Harper indicated during the last federal election debate he'd like to fix. To that end, Bill 57 is a start; it's a bit of a step. If passed, Bill 57 would not solve all problems facing rural property owners, but it will show the rest of the country that Ontario is onside with land rights.

Now, Prime Minister Harper won't be able to strengthen the charter on his own. He'll need to know that provinces, Ontario included, are onside of a strong charter. By passing Bill 57, the Ontario Legislature can initiate a conversation across Canada, a debate about the need to give landowners and tenants stronger rights. So on this journey of a thousand miles, Bill 57 is a first step.

I'd like to outline some of the new rights I'm offering to Ontarians through this bill.

Under the Expropriations Act, an inquiry officer on an inquiry is required to consider the merits of the objectives of the expropriating authority and to add, as parties to an expropriation inquiry, the owners of all lands affected by expropriation. The decision of an approving authority is subject to judicial review.

The amendments to the Human Rights Code recognize, subject to specific limitations at law, the right to peaceful enjoyment of one's land, the moral responsibility to maintain it and the right to freedom from search of one's property and home and from seizure of anything from it. Those rights have long been recognized at common law, as I mentioned, but are largely missing from the Canadian Charter of Rights and Freedoms.

Among the most unfortunate components of a rights society is the perceived imbalance between rights and responsibilities. I've always believed that with rights come responsibilities, something that I felt should be reflected in Ontario law. To that end, I propose to balance land rights with land responsibilities by adding the following text to the Human Rights Code: "In addition to whatever duties are specified by law, every person has the moral responsibility to ensure that his or her land is maintained to a presentable standard in keeping with such factors as the legal uses to which the land is put and the character of the community in which the land is located."

As lawmakers, it's important to make laws that benefit all of Ontario. We shouldn't pick and choose whose interests we intend to champion. That's why I feel I've gone out of my way to make no distinction between tenants and landowners when it comes to government's obligation to respect.

When it comes time to vote on Bill 57, all of us in this House will be showing where we stand on a number of important issues. By supporting Bill 57, MPPs can show that they're on the side of giving tenants the right to peacefully enjoy their home without intrusion. By supporting Bill 57, MPPs can show their commitment to giving private landowners the right to appeal when their land is under attack. By supporting Bill 57, MPPs can show where they stand on basic human rights. Opposing this legislation, in my view, means opposing basic rights documents like the 1960 Canadian Bill of Rights.

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I would like to thank the number of people whose insight and ideas were instrumental in helping me to draft this much-needed legislation. My first crack at property rights legislation in this House was 11 years ago. At that time, I got a great deal of assistance, and continue to do, so from the Ontario Real Estate Association.

As well, I want to acknowledge the help of Jim White and Bob Fowler. They're with OPERA, the Ontario Property and Environmental Rights Alliance. They've given me a wealth of information and support over the past 11 years, as recently as a phone call last night. They're members of a group, OPERA, whose mission is "to protect and entrench in law the rights and responsibilities of private landowners against arbitrary restrictions and decisions of government."

I'll also mention OLA, the Ontario Landowners Association. They tell us what they consider to be "the government's plan and strategy to attack rural landowners and their economy," a plan that is "taking our land -- for their use."

Sometimes the government does need to expropriate land, and in those circumstances it should first state its case, give the landowner a fair chance to appeal, and then, if the expropriation is still deemed worthy, buy the land.