

Land Rights and Responsibilities Act, 2006

EXPLANATORY NOTE

Mr. Toby Barrett (Haldimand-Norfolk-Brant): This bill amends the *Expropriations Act* and the *Human Rights Code* to enhance the protection that Ontario law gives to owners of land and persons with respect to their homes.

Under the *Expropriation 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 the 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 but are largely missing from the *Canadian Charter of Rights and Freedoms*.

Bill

2006

**An Act to amend the Expropriations Act and the
Human Rights Code with respect to land rights and responsibilities**

Note: This Act amends or repeals more than one Act. For the legislative history of these Acts, see [Public Statutes – Detailed Legislative History](http://www.e-laws.gov.on.ca) on www.e-laws.gov.on.ca.

Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Expropriations Act

1. (1) Section 7 of the *Expropriations Act* is amended by adding the following subsection:

Merits of objectives

(5.1) In the inquiry, in addition to the duties described in subsection (5), the inquiry officer shall consider the merits of the objectives of the expropriating authority.

(2) Clause 7 (9) (a) of the Act is amended by striking out “may” and substituting “shall”.

***Comments:**

- 1. Canadian courts have long recognized that land use regulation is not an expropriation since it does not involve taking title to the properties affected. Therefore no compensation is payable to property owners whose land use is regulated. This Bill cannot change that. Rather this subsection makes those owners parties to the inquiry so that they can get a hearing.**
- 2. The new subsection 7 (9.1) that Bill 11 of 1995 added to the Act does not appear to be necessary. Clause 7 (9) (b) of the Act already requires the inquiry officer to give every party to the inquiry an opportunity to present evidence and argument and to examine and cross-examine witnesses, either personally or by counsel or agent. At common law, once there is a right to a hearing, the hearing would have to be full and fair. For example, the inquiry officer here could not curtail the inquiry unreasonably.**

(3) Section 8 of the Act is amended by adding the following subsection:

Judicial review

(4) For the purposes of the *Judicial Review Procedure Act*, the approving authority’s decision constitutes the exercise of a statutory power of decision.

HUMAN RIGHTS CODE

2. (1) The preamble to the *Human Rights Code* is amended by adding the following paragraph after the second paragraph:

And Whereas it is public policy in Ontario to recognize that the right to own private land is a fundamental element of economic freedom and provides a key incentive for economic growth and prosperity;

***Comment:**

There is some debate over whether it is possible at law to amend a preamble of an Act after enactment. Our office feels that there is a good argument in favour. Certainly it strengthens the bill to do so.

(2) The Act is amended by adding the following Part:

**PART I.1
LAND RIGHTS**

Rights and responsibilities

9.1 (1) Every person has a right to the peaceful enjoyment and free disposition of his or her land, except to the extent provided by law.

Moral responsibility

(2) 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.

Respect for private land and home

9.2 No one may enter onto another person's land or into another person's home, whether or not the person is the owner of the home, or take anything from the land or home without the person's express or implied consent, except to the extent provided by law.

***Comments:**

- 1. It is not clear what was covered by the section in the previous draft on the inviolability of a person's home. Its assumed that the present section is what was meant.**
- 2. This section applies even if the person is not owner of the home, e.g. is a tenant.**

COMMENCEMENT AND SHORT TITLE

Commencement

3. This Act comes into force on the day it receives Royal Assent.

Short title

4. The short title of this Act is the *Land Rights and Responsibilities Act, 2006*.

Would you support a law to protect land rights?

Ten years ago when people sent me to Queens Park I had the honour of being the first MPP in the Mike Harris government to introduce a Private Members Bill. At that time I took on an issue that impacts landowners across this province by drafting the *Property Rights Statute Law Amendment Act*. And while this bill got the votes, it was not enacted.

Many continue to decry the fact that Canada remains one of the few countries without property rights. Today Ontario is tightening a “greenbelt” around private property and imposing ever increasing red tape and regulation on landowners. I feel, now, the need for the protection of rights of landowners is greater than ever and, thus, I am willing to take another ‘swing at the cat’.

In the past, attempts to pass property rights law in the Parliament of Canada and the Ontario Legislature have failed because opponents focus on non-landowner rights even though these are already reasonably well protected. To avoid this pitfall, I am now adopting the more specific term of “land” rights.

There is historical precedent for land or property rights in Canada. The right to enjoy property was acknowledged by the Government of Canada in signing the Universal Declaration of Human Rights in 1948. As well, the right not to be deprived of property was included in the Canadian Bill of Rights in 1960, and in legislation in Alberta, Quebec, Saskatchewan and the Yukon. But in 1982, the Canadian Constitution and the Charter of Rights and Freedoms, signed the death-knell for property rights in Canada. The right to enjoy property is not included. The Charter overrides the Bill of Rights and all other legislation.

This Charter remains the key hurdle to the permanent protection of land or property rights in this or any other province. As legal counsel has advised me in helping to draw up my private member's bill, if property rights are not guaranteed in the Charter, any mere legislative attempts to protect them can be overridden by parliament. It's for this reason that I am hopeful my “land-rights” bill contributes to reinvigorated debate and the delivery on the promise of federal legislation to restore property rights to the province of Ontario and the Dominion of Canada.

Landowners have limited protection under common law. This protection of land is only true in relation to actions by individuals. The common laws has two limitations. First, it can only be utilized by taking the offender to court, which is obviously beyond the capability of many individuals. Second, common law can be automatically overridden by provincial or federal parliaments. These protections - limited as they are - ignore the fact that often it is not fellow landowners' that impact private land but the actions of government itself!

The need for land rights in our Constitution is obvious to me. And while land rights would not prevent governments from expropriating land, it would ensure that when a taking occurred, it would be justified at a public hearing and the owner compensated. Here in Ontario, legislated expropriation without compensation is becoming the norm in state planning. Taking from the few to facilitate the desires of the many is unjust, undemocratic, and must be reigned in. If not, continued political action across Ontario's hinterland can be anticipated.

Mr. Toby Barrett (Haldimand-Norfolk-Brant):