CONTRACT LAND RIGHTS

ONTARIO PROPERTY AND ENVIRONMENTAL RIGHTS ALLIANCE
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A CROWN LAND PATENT SYNOPSIS

Like many advocacy groups in Canada, the Ontario Property and Environmental Rights Alliance (OPERA) is concerned about legislation that violates the common law right to own land. Accordingly, we applaud any legitimate effort to broaden public understanding of Crown Land Patents, documents believed to shield private property from central government statutes which manipulate use, mortgage worth and market value of land.

Crown Land Patents were issued in the 1700s and 1800s to record title transfer by Upper Canada authorities of a defined tract of land from the British Crown to pioneer settlers who agreed to clear a measured portion of the land in question and build a house there within a specified period of time. They constitute a defined contract that awards, with stated exemptions, full ownership rights "forever" to the original settler and to his or her immediate heirs and later "assigns" (future owners) as well.

Presentation and issuing authority of these Patents may vary by location and time frame. But their common intent to stimulate settlement of the Ontario land mass by entrenching ownership rights is as clear and irrevocable as, for example, permanent land treaties negotiated in the same period with Aboriginal peoples. In that context, official inaction with respect to years of hostilities arising from native land claims at Caledonia acknowledges, by projection, official recognition of land treaty rights. On the other hand the Ontario government awards no such recognition to similar contract obligations established in Land Patents.

In celebrating introduction of the Niagara Escarpment Development Act in 1973 Ontario's then-current Treasurer remarked that "designating private land for public benefit is a lot cheaper than buying it". Three years later the United Nations, the failed protector of world peace, announced that "private ownership of land contributes to social injustice and management of such assets should therefore be left to government alone".

In these two statements fiscal argument and philosophical excuse for so-called "partial takings" of private property is revealed. Thus Ontario's Greenbelt Act transfers control of 1.8 million acres of land, almost all privately owned, to the provincial government. The Species at Risk Act reduces private owners of land to the status of unpaid wildlife custodians on pain of criminal charges for non-compliance. And the Source Water Protection Act, contrary to defined Land Patent provisions, transfers groundwater rights on private property to the state. These are but three examples of Ontario's many land use enactments that disdain natural justice and ignore the rule of law. Indeed, most of their latest editions incorporate a double-barreled landowner "poison pill" - no appeal against government "taking" of private land and no compensation for resulting equity and/or production losses is allowed. This provision was never included in the Magna Carta, never upheld in Western jurisprudence and certainly never articulated in Crown Land Patents.

Government legislators, inflatable bureaucracies and professional lobbyists seem determined to manipulate capital assets of "landed" citizens. So Ontarians are well advised to apply for a copy of the original Land Patent that applies to their particular freehold from the Peterborough office of the Ministry of Natural Resources. Applicants are advised only a "certified" copy of the document, available on request at slightly higher cost, is considered admissible evidence of Patent existence and intent.

Recent events validate opposition to dilution of private land ownership in Ontario - popular uprisings in many parts of the world that originate with systematic betrayal of citizen rights; enraged public response to three anti-landowner statutes in Alberta that's attracting unprecedented media attention and an Alberta Law Society study that challenges the purpose and legality of those statutes. Despite similar provocation, the latter initiative suggests a level of objective professional attention not seen, but clearly overdue, in Ontario.

Be that as it may, despite growing public interest in Crown Land Patents, the validity of the document as a defense against "partial takings" of private property by government legislation has not been established in Ontario courtrooms. While it has been cited in a few legal proceedings by provincial authorities or aggrieved landowners, there are no recorded instances in which a provincial land use enactment was superseded or amended by the provisions of a Land Patent. Indeed, we are unaware of any Ontario lawyer currently prepared to argue against government land use legislation on the basis of that original landowner contract. .

Nevertheless, before approving local zoning by-laws, whether or not dictated by provincial agencies wishing to transform private assets into a public resource by regulation, municipal councils are urged to recognize Crown Land Patents as an identifiable contract still in effect and proceed accordingly. Further, we strongly recommend increased Ontario press coverage of the current Alberta drama. We also encourage individual landowners to apply for, and thereafter openly display a certified copy of their relevant Land Patent and so direct public attention to the glaring inequities between Aboriginal land treaties and government land contracts with Ontario pioneers and their descendants.