

What Ownership Rights Do We Want?

by

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The concept of property rights is getting a lot more use in rural Ontario than ever before. Having written about this issue for almost 15 years, I am always concerned that people understand which property rights are needed. The problem is that property rights is a generic term which covers at least three types of individual human rights. Property rights involve personal entitlements, intellectual property and the ownership of physical goods especially land.

Personal entitlements include the rights of individuals, some which are supported by the constitution, to services and benefits such as the Old Age Security Pension, employment insurance programs, child support programs, welfare and the right to free primary and secondary education. They are basic financial citizen rights guaranteed by government legislation. These basic rights which accompany citizenship are well entrenched and are not in need of change.

Intellectual property rights include the right to the security of ownership and benefit from copyrights of literature and artistic productions and patents of products, processes and inventions. Intellectual property also includes franchises. This body of law has been well developed to protect the business interests of individuals and corporations.

The third area encompassed by property rights involves real property such as land and movable goods. These rights, which are vested in the landowner, not the land itself, are relatively poorly developed in Canadian law. Deifenbaker included the rights of landowners in his Canadian Bill of Rights, but the Charter of Rights and Freedoms did not. That in itself is a long story.

Canadians have two sources of rights, common law rights based on historical precedence and statutory law based on law enacted by parliament and provincial legislative assemblies. Common law protects individuals from personal damage, trespass on lands and riparian rights as they relate to the shoreline of a watercourse or lake. Common law rights are generally, but not always, effective in providing protection from other citizens, landowners and corporation. They have two disadvantages in that common law can only be implemented by taking the offender to court and common laws can and are regularly overridden by legislation.

There are no limits on what legislation may be enacted except the Constitution. Since property rights relative to land are not included in our constitution, provinces are free to enact any restrictions on others and protections for themselves and the civil service they wish. Once enacted all legislation has the power to eliminate citizens common law benefits.

The context within which landowners rights in Ontario have been ignored is demonstrated by the following quotations. Ontario Judge Riddell stated in 1908, the prohibition “thou shall not steal” has no legal force upon the sovereign body (the provincial government) and there would be no necessity for compensation to be given. He went on to state that “ the Legislature within its jurisdiction can do anything that is not naturally impossible and is restrained by no rule human or divine”.

The bureaucrats, planners, environmentalists and politicians begin by breaking the tenth Commandment “Thou shall not covet” then move on to the seventh “Thou shall not steal” and it is all totally legal. The Supreme Court of Canada, last year, confirmed that if the law clearly stated the intention was to take property then compensation was not required.

In 1973, during second reading of the Niagara Escarpment Planning and Development Act, the then Treasurer of Ontario, the Honourable John White stated, *“The question has been asked about acquiring, by purchase, all of the lands. In fact, in my view and the view of my colleagues, this is completely unnecessary. With the strong planning framework which the government now accepts, the purchase of all this land is simply not essential, we can conserve through planning designation for the benefit of all our people”*. All the people except the Escarpment land owners.

This is a very significant statement of Ontario government philosophy which has not changed much since that time, regardless of which party was in power. Bob Rae, former premier of Ontario, as quoted from the April 1994 Financial Post said, *“There are some things I prefer not to remember. Property law, for example, is a system of concepts better forgotten”*.

When the Ontario Property and Environmental Rights Alliance (OPERA) approached the Harris government about enacting Property Rights legislation, they told us “it was too complicated to enact property rights legislation.” Since we did not ask specifically for landowners’ rights, they were probably correct but had we done so, the reply would likely have been the same. Governments do not want to be restricted in their powers.

The philosophy that landowners have no rights is strongly entrenched in the bureaucracy and supported by many environmentalist non-government organizations.(NGOs). It simply has been interpreted to mean, *“We don’t have to buy it because we have the power to designate it anyway we want, regardless of the landowners interest”*. The result is that the government *“doesn’t buy what it can steal”*. Especially from farmers, but seldom from developers, conservation authorities or environmentalist NGOs.

We need landowners’ rights that protect us against trespass and takings by government which reduce the uses and thus the value of our lands, unless we are compensated. If the public good is enhanced, the private landowner should be compensated. Farmers and rural taxpayers will have to bear the cost of Source Water Protection whether they experience any gain or not. In many cases, their land uses and thus values, will be decreased for the benefit of the public. We will all have our property taxes increased by downloading to pay for the administration of the plans designed by the Conservation Authorities. If we have to make a gift we should at least be able to choose the charity.

Let us begin clearly explaining which property rights are inadequate and our need for landowners’ rights which will protect us from trespassers and government takings. The other two types, personal entitlements and intellectual property rights are well entrenched in law. Let us focus on what we do not have but rightly deserve – landowners’ rights.