

ONTARIO PROPERTY AND ENVIRONMENTAL RIGHTS ALLIANCE

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Date: October 1, 2007

Re: Legislated Property Rights

CC: OPERA Members and Supporters

The Ontario Property and Environmental Rights Alliance (O.P.E.R.A.), a coalition of landowner organizations launched in 1994, notes with interest Mr. Rob MacIsaac's commentary "Debate Needed on Enshrining Property Rights" published September 15th in the Hamilton Spectator.

We heartily agree with Mr. MacIsaac that the issue of constitutional property rights in Ontario deserves attention. However, the generic term "property" covers personal entitlements and intellectual property already protected in legislation, as well as physical assets such as privately owned land, which is not. This definitive anomaly allows politicians to champion property rights knowing any ensuing debate is sure to expire in legalistic wrangling about statutory language and terms of reference. We look forward to a clear statement from Mr. MacIsaac that such debate must focus on land ownership only and that he personally opposes unilateral government "takings" of private land by regulation without compensation.

As to invoking a Canadian sense of fairness to prevent governments from forcing people off their land, a defense of last resort espoused by Mr. MacIsaac, we need only consult the Greenbelt Act and the "strengthened" Species at Risk Act.

The former refuses any appeal and denies any compensation against Ministerial orders that can permanently affect use, title, mortgage worth and market value of privately owned "green belted" land. The latter, based on property surveillance by provincial agencies and professional lobbyists, subordinates private land, particularly rural land, to the alleged best interests of allegedly endangered plant, animal, bird, aquatic and bacterial species. In our view, these Ontario examples of extortion by statute would make the Mafia blush. At best, they do not encourage farmers and other rural residents to stay on their land. At worst, they reveal cynical disregard, if not open contempt, for the principles of natural justice and civil law. Owners of land thus manipulated and marginalized wait in vain for the "sense of fairness" prescribed by Mr. MacIsaac.

As he rightly observes, when it comes to property (land ownership) rights, politicians decide public policy. Left unsaid is the equally valid truism that the devil is in the details and it is less accountable bureaucrats who write related policy regulations and supervise their enforcement.

The British North America Act and Canada's 1867 Constitution authorized each province and territory in this country to enact property rights for their own jurisdiction. In the past 140 years, Ontario politicians, steadfastly ignoring that documented license, have never mustered enough vision and wisdom to legislate those rights.

Instead, since the end of World War II, senior legal appointees within the provincial government have openly advised against statutory property rights and executives of left-leaning lobby groups preaching more state control of private land now lead government policy tribunals. Small wonder Mr. MacIsaac reminds us that, unencumbered by court challenges, fearless public servants "saved" the Niagara Escarpment. No mention of a then-current Ontario cabinet minister who, at the opening celebration of Escarpment rule 30 years ago, observed that regulating private land for public benefit was much cheaper than buying or leasing it. Here lies the philosophical essence of duplicitous strategies that have since marked Ontario land use policy.

Ownership of land by private citizens is a Biblical icon, its legislative origins go back to the Magna Carta, leading philosophers and renowned writers consistently defend it, and it is a cornerstone principle of most societies on Planet Earth. Nonetheless, in Ontario, back room politics and special interest agendas combine to demean private land ownership as a social injustice, a barrier to state control of life and property and a significant threat to the world's environment. Which may account for the smoldering resentment and open hostility that now greets many provincial land use decrees wherever a piece of Ontario topography is the largest, if not the only, asset its lawful owners have.

As Chair of the Greenbelt Task Force, Mr. MacIsaac endorsed the Ontario government decision to seize control of almost 2 million acres of land, much of it privately owned. Moreover, at none of the Greenbelt plenary sessions we attended did he ever mention rights of any kind for those hundreds of private landowners whose social and economic prospects were summarily modified in that massive re-distribution of wealth.

R.A. (Bob) Fowler, OPERA Secretary