

AND JUSTICE FOR ALL!!

FINANCIAL POST – August, 2011

Alberta passes draconian laws abolishing property rights

Venezuela's dictator, Hugo Chavez, was in the news this week for brashly announcing an expropriation of the mineral rights of the citizens of his country. We don't seize private property that way in our democracy. We seize it silently and in plain sight, as seen in the province of Alberta, which so deftly passed stealth legislation two years ago that most Albertans are only now discovering the government's audacious takeover of their property rights. The stealth occurred through a suite of four cleverly worded laws passed under the radar in 2009 and 2010. Their effect is to place all economic power in the hands of Cabinet, usurping the role of the legislature and negating the role of the courts.

“These laws — which have just been used to tear up some two dozen oil sands leases — are without precedent in either Canada or the Western democracies,” states Keith Wilson, an Edmonton-area lawyer who recognized their implication a year ago and has been criss-crossing the province ever since to argue for their repeal. “The Alberta Cabinet can do virtually anything it now wants to do — it can tear up any contract that it had made without any recourse by the party on the other side. That contract could be a farmer's water license or grazing lease, a real estate company's development rights, a forest company or a mining company lease, anything.”

What recourse does the farmer or company have if it objects? None. The laws extinguish any right any party has to the courts to remedy the expropriation of their property. How much compensation is the government required to provide for the expropriated property? None, although the government may, on a purely voluntary basis, provide compensation if it wishes. In other democracies, expropriated parties can negotiate with the government for fair compensation and they can go to court if they feel the government's offer is unfair. In Alberta, the expropriated party can appeal to no court. It is a supplicant, powerless to do anything but plead for mercy, or offer political contributions in exchange for a settlement closer to the expropriated property's fair market value.

These sweeping laws, which grant Cabinet the right to make “law on any matter within the legislative authority of the Legislature,” are constitutional, harkening back to what's known as the Henry VIII clause, passed in the 16th century to give that monarch emergency powers. The province of Alberta feels it needs comparable powers today because of an overriding modern-day need — for a “paradigm shift” to a sustainable economy that will counter global warming and allow for an “Outcome Based Cumulate Effects Management System.” The era of private-sector rights is over, the province explains. The private-sector now needs a “social license to operate.”

How could this legislation have passed, with nary any public debate? Part of the answer lies in the high-minded language of the legislation, which spoke to the province's need to “give direction and provide leadership in identifying the objectives of the Province of Alberta, including economic, environmental and social objectives” and “to create legislation and policy that enable sustainable development by taking account of and responding to the cumulative effect of human endeavor and other events.”

Most politicians and most members of the public were lulled. Those who weren't lulled — Alberta's multinationals and other big-business interests whose lawyers alerted them to the draconian legislation — decided to stay silent, for fear of retribution from the province. “They were cowed, pure and simple,” Wilson explains. “At the same time, they couldn't believe that any government, in Alberta of all places, would actually start seizing their property without compensation.”

Business is no longer staying silent, particularly when the province announced it would be rescinding dozens of oil sands and mineral leases that it had earlier entered into with large companies, such as Imperial Oil and Athabasca, as well as smaller operators. Electricity consumers, too, have gone public, because the government's new powers allow it to dramatically overbuild the provincial power grid without regulatory approvals following public input. The proposed network of transmission lines isn't needed to meet economic goals — they will be tripling the cost of delivering power — and it isn't needed to meet the demands of consumers — no conceivable electricity growth rate in the province could justify this level of overbuilding. But the network is needed to meet global-warming goals.

The province needs to vastly expand its transmission network, the province explains, because “many sources of renewable or low-emission power are located far from where electricity is used. There are hydroelectric resources in the northern area of the province, wind and solar in the south, co-generation in Fort McMurray and biomass in the northwest.” That it is ruinously expensive to bring that renewable power long distances to market via unneeded transmission lines matters little in the face of the planners' needs to meet global-warming targets. To meet another global-warming target, involving the storage of carbon dioxide, Alberta has blithely expropriated without compensation province-wide subsurface storage rights.

Alberta law now allows the Cabinet to “manage whatever is necessary to achieve or maintain an objective or policy, including managing all or part of the cause of an effect or those matters that affect or that might affect the economy, social objectives, the environment, human health or safety, a species or any element of any of them.” The Alberta Cabinet has given itself the most sweeping central planning powers in the Western world, tyrannical powers that would leave a mere Hugo Chavez dumbstruck.