

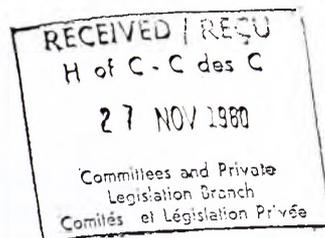


The Canadian Real Estate Association
L'Association Canadienne De L'Immeuble

99 DUNCAN MILL ROAD, DON MILLS, (TORONTO) ONT. M3B 1Z2 (416) 445-9910

November 25, 1980

Joint Clerks,
Special Joint Committee on the
Constitution of Canada,
Postal Box 1044,
South Block,
Parliament Buildings,
Ottawa, Ontario.
K1A 0A7.



Attention: Honourable Members of the Special
Joint Committee on the Constitution
of Canada

Dear Sir Madam:

Upon examination of the proposed resolution respecting the Constitution of Canada, the Canada Act and the Constitution Act, 1980, The Canadian Real Estate Association notes with some concern the absence of a provision in the Canadian Charter of Rights and Freedoms respecting the right of an individual to enjoy property. Our Association views this as a serious omission.

As you are no doubt aware, the Canadian Bill of Rights at present provides that, in Canada, there has always existed, and shall continue to exist, the right of an individual to the enjoyment of property and the right not to be deprived thereof except by due process of law.

In view of the protection afforded property rights in this regard in the Canadian Bill of Rights and in the Constitution of the United States and the Constitution of the Commonwealth of Australia and the constitutions of many other nations, it is our submission that the proposed Charter of Rights and Freedoms should be amended to at least include the above described fundamental property rights contained in the Canadian Bill of Rights and we also submit that the Charter of Rights and Freedoms should confirm the principle of international law which provides a right to just compensation upon the expropriation of property for any public use. The Canadian Real Estate Association, therefore, submits

that section 7 of the Constitution Act, 1980, should be amended to read:

Everyone has the right of life, liberty,
security of the person and enjoyment of
property, and has the right not to be
deprived thereof except by due process
of law and, in the case of property,
except upon the payment of just
compensation.

On behalf of the 55,000 members of The Canadian Real Estate
Association, we urge you to make these recommended alterations to
the proposed Charter of Rights and Freedoms prior to its enactment.

We are yours sincerely,

THE CANADIAN REAL ESTATE
ASSOCIATION


Eric Charman
President



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The Canadian Real Estate Association L'Association Canadienne De L'Immeuble

99 DUNCAN MILL ROAD, DON MILLS, (TORONTO) ONT. M3B 1Z2 (416) 443-9910

EXECUTIVE OFFICE

*Sub.
circulé*

January 30, 1981

Joint Clerks
Special Joint Committee on the
Constitution of Canada
Postal Box 1044
South Block
Parliament Buildings
Ottawa, Ontario
K1A 0A7



Attention: Honourable Members of the
Special Joint Committee on the
Constitution of Canada

Dear Sir/Madam:

Re: The proposed Charter of Rights and Freedoms

On Monday, the 25th day of November, 1980, we submitted a brief to you and the Right Honourable Pierre Trudeau, on "The Protection of Property Rights and the Proposed Canadian Charter of Rights and Freedoms" in which we advocated that section 7 of the Constitution Act, 1980 (the "Act") be amended to read:

Everyone has the right to life, liberty, security of the person and enjoyment of property, and has the right not to be deprived thereof except by due process of law and, in the case of property, except upon the payment of just compensation.

Following our submission, on January 12, 1981, the Minister of Justice, Jean Chretien, tabled amendments to the proposed Canadian Charter of Rights and Freedoms (the "Charter") before the Special Joint Committee of the House of Commons and Senate which is at present, considering the Government's

constitutional package. We have examined these amendments, and we note that Sections 2 and 7 of the Act have not been amended to provide Canadian citizens with a specific right to enjoy property. Section 24 of the Act, (s. 25(b) of the amendments) which preserves existing rights, is therefore the only section of the Act which might provide the average citizen with this right.

During the week of January 21, 1981, the Progressive Conservatives proposed a further amendment to s. 7 of the Act, which read as follows:

Everyone has the right to life, liberty, security of the person and enjoyment of property and the right not to be deprived thereof except in accordance with the principles of natural justice.

This amendment was supported by the Liberals until the matter was put to a vote on January 26, 1981. At that time, the Liberals withdrew their support and voted against the amendment in the face of opposition from the NDP and the provinces of Saskatchewan and Prince Edward Island.

According to the Globe and Mail (Monday, January 26, 1981) the NDP feared that the amendment would remove a government's right to nationalize industries such as potash in Saskatchewan or asbestos in Quebec. Saskatchewan and Prince Edward Island objected to the amendment because the entrenchment of a right to enjoy property would prevent the provinces from passing legislation, inhibiting the purchase of land by foreigners. Saskatchewan and Prince Edward Island have already passed such legislation and passage of the Conservatives' amendment might have resulted in their legislation being declared unconstitutional at some future date.

There is merit in the provincial criticism of the wording of the Conservatives' amendment quoted above. In certain situations, it may be in the public interest for governments to restrict ownership of property to Canadians or certain groups of Canadians. The Conservatives' amendment might therefore be amended to allay the provinces' concern but to continue to provide Canadian citizens with a right to enjoy their own property without fear of unwarranted loss of property. Accordingly, it is our urgent recommendation that s. 7 of the Act be amended to read:

Everyone has the right to life, liberty and security of the person and the right not to be deprived of property except in accordance with the principles of natural justice and upon the payment of just compensation.

If s. 7 of the Act is worded in the manner suggested, the provinces will be able to control foreign or absentee ownership of scarce farmland, or enact zoning by-laws or legislation providing environmental protection because control over the acquisition of property will not be immune from discrimination through government regulation. However, an individual will be entitled to enjoy his property once legally acquired unless the taking is effected in accordance with the rules of natural justice and on payment of a fair price for his property. This amendment, like the Conservatives' amendment, would also allow governments to nationalize industries provided they comply with the rules of natural justice and pay a fair price for the property being expropriated.

Mr. Broadbent's criticism of the Conservatives' amendment must be directed at the cost and time required to provide hearings for individuals whose property is about to be expropriated because their amendment clearly does not prevent the Government from expropriating property as Mr. Broadbent has suggested.

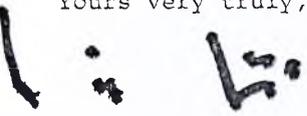
Government itself was originally the product of a collective need for the protection of the individual and property. The right to enjoy property is therefore a basic fundamental right which has long served as the foundation of our legal system. An individual should not be deprived of his property without receiving notice of a government's intention to expropriate. An individual should be notified of the reasons for the decision to expropriate and should be afforded an opportunity to dispute the government's decision. A government should not be entitled to suddenly deprive a person of the product of his labour without compensating him for his loss. It is just and equitable to allow an individual an opportunity to be heard in this situation but Mr. Broadbent views such procedure as costly and time consuming. Democracy itself is costly and time consuming relative to other forms of government but it is representative of certain values which society considers worthy of the cost, values which should never become the victim of convenience, values which include the principles of natural justice.

We therefore strongly urge that the right to enjoy property be afforded protection by the Charter. Section 24 of the Act (s. 25(b) of the amendments) is clearly ineffective in this regard, as evidenced by the debate which has recently taken place in Ottawa.

The amendment proposed by this Association accommodates the NDP and the provinces of Saskatchewan and Prince Edward Island by allowing rules to restrict acquisition of property but affording proper needed protection for all Canadians.

We therefore urge you to adopt this amendment in its entirety.

Yours very truly,

A handwritten signature in dark ink, appearing to read 'Eric Charman', with a stylized flourish at the end.

Eric Charman
President