

SUBMISSION TO THE SPECIAL COMMITTEE  
OF THE SENATE AND HOUSE OF COMMONS  
ON CONSTITUTIONAL PROPOSALS

by

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I am disappointed that I will not have the opportunity of appearing before you as I understand that you are not hearing any further briefs presented in person but I understand that you are still receiving written submissions. I am therefore writing on behalf of Realty Owners of Canada, a federally incorporated, non-profit corporation formed to represent real estate owners in dealings with all levels of government in Canada. My instructions are to raise the question as to why the right to own and enjoy property is not included in the Canadian Charter of Rights and Freedoms contained in the proposals for change in the Constitution. I am aware that this issue has also been raised before you by the Canadian Bar Association and doubtless by other organizations.

The right of an individual to the use and enjoyment of property is recognized as part of the law of Canada at the present time. It might be argued that Section 24 of the proposed charter does provide that property rights are preserved in that it states that the guarantee of rights contained in the charter, "shall not be construed as denying the existence of any other rights or freedoms that exist in Canada." If that is, indeed, the intention, then why not be specific in dealing with a subject that is so important to the economy?

The Canadian Bill of Rights, passed by the Federal Parliament in 1960, provides at the outset that the individual shall have the right to life, liberty and security of the person "and enjoyment of property and the right not to be deprived thereof without due process of law." The Constitutional Amendment Bill which came before parliament in June 1978 contains as one of the fundamental rights and freedoms the following provision:

"The right of the individual to the use and enjoyment of property and the right not to be deprived thereof except in accordance with law."

If the right to property is omitted in the present proposed resolution some judicial tribunal in the future might well conclude that the omission by today's parliament was intentional and construe the new act accordingly. I therefore ask you as a parliamentary committee to clarify the situation by including in the proposed new charter a section similar to the one which I have just quoted from the previous bill. If it was not considered advisable to exclude the express provision in June 1978 then there should be no reason to exclude it now.

I will go further and say that the provision of the law in respect of private property should be strengthened by adding the words, "and with just compensation". Under the Fifth Amendment of the Constitution of the United States it is provided that no person shall be deprived of life, liberty or property without due process of law nor shall private property be taken for public use without just compensation. There is no reason why a similar provision should not exist in Canada because any person whose property is expropriated should be fully compensated and justice requires that this should be done. It is also in the interest of a strong economy that property rights should be preserved. Too many examples exist today of countries

where property rights are not formally recognized. These non-capitalistic countries can be identified by their deteriorating economies and the resultant suffering of their people. The value of private property in Canada runs into hundreds of billions of dollars and since it is the private sector that affords employment to the majority of Canadians it is in the national interest that the use of private property be protected in the Constitution.

Respectfully submitted,



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