

Property rights essential for a free and democratic society

In Alberta we all need to review this simple statement. Contentious land bills such as Bill 19 and the amended version Bill 23 – *Projects Land Assembly Act*, Bill 24 – *Carbon Capture and Storage Act*, and Bill 36 – *Alberta Land Stewardship Act* have all served to shine a spotlight on the importance of property rights.

The Alberta Government has experienced such a backlash from these land bills that several ministers are now covering the province with a Property Task Force- “asking for Albertans input on property rights and to find out what property rights mean to Albertans.” Before we talk about Albertans views of property we should all be clear on what property rights mean at law.

The 1867 Federal Constitution Act did not entrench property rights. The 1960 Federal Bill of Rights recognizes the right of the individual to enjoy property and not to be deprived except by due process of law. This only applies to Federal, NOT provincial laws. The 1982 Federal Charter of Rights does not include the right to property or to compensation for a taking.

However, we do get property rights through “common law” which consists of past court rulings or precedents and “statute law” which is the Acts and regulations passed by Federal and Provincial Legislature. In the document *Regulation of Property Use and Regulatory Takings in Alberta*, this is termed – a social consensus. In the past, ruling Governments have understood and respected property rights and the result is legislation that provides for the very foundation of our market driven economy. For example, when you sell cattle you know your cattle are your property and it is understood you will be compensated by the buyer. Previous court precedents and statutes that have been developed over time all facilitate this transaction.

It is also understood that when Government requires property from an individual it is also required to pay compensation. This is called a regulatory taking, and all provinces have some form of an Expropriation Act which is used in these cases. Of particular note is a regulatory taking must be a TOTAL TAKING in order to receive compensation from government.

Given this existing social consensus of common law property, the Alberta Government still decided to use the Carbon Capture and Storage Act to confiscate the pore spaces from your land title. This was clearly a regulatory taking of Albertans property, yet Government chose not compensate.

Zoning of land by Government has not been viewed as a regulatory taking, thus there is no provision for compensation. Bill 36, the Alberta Land Stewardship Act is really about land planning and although it does not use the term zoning, there are certainly provisions for restrictions in land use. These partial restrictions are commonly referred to as partial takings. From a land owners perspective a partial taking may sometimes deny the property owner any

viable economic use of the property, which really results in a taking by Government without compensation.

Since Canadians have no constitutional property rights, the Property Task Force is touring the province trying to gauge how strong this “social consensus” of common law and statute law really is. Will property owners rise up and bring the Alberta Government back to these property rights principles or will Albertans acquiesce to this new form of socialism?

In 2006 several MLA’s encouraged some concerned citizens to form the Alberta Property Rights Initiative. The Initiative is focused on two specific areas – help entrench property rights law both at a Federal and Provincial level and help to legislate the *Property Rights Preservation Bill*.

The *Property Rights Preservation Bill* specifically addresses both regulatory takings and partial takings. It was adapted from similar legislation that has now been passed by many US states, which ran into the same land planning issues Alberta is now experiencing. Instead of eroding common law property rights as we have seen in Bill 36, the proposed legislation would help strengthen rights in an attempt to balance society’s wishes with property owners’ rights.

Many MLA’s are fearful of this type of legislation citing concerns that Government would have to pay large compensation to property owners. The proposed legislation would actually do the opposite, helping to protect taxpayers. An edited excerpt from the bill explains the assessment or “check and balances” as follows:

Assess whether the government action may result in a taking.

Identify the purpose of the action.

Explain why the action is needed and why no alternative is available.

Estimate the potential cost to government and source of payment.

Certify that the benefits of the Government action exceed the estimated compensation costs.

Alberta Property Rights Initiative encourages Government and the Property Task Force to go beyond the assessment of what common law property rights means in today’s terms and to entrench property rights for all Albertans. Let’s truly make Alberta a free and democratic society.

For further information on property rights and the Property Rights Preservation bill please go to www.apri.ca.