

KEY-

SECTION 8 - OMISSION

Def. ENJOYMENT OF PROPERTY AND THE RIGHT TO NOT BE DEPRIVED OF PROPERTY EXCEPT BY DUE PROCESS OF LAW

sect (95)

ANY LAW THAT IS
INCONSISTANT
INOPERATIVE AND OF
NO FORCE OR EFFECT

NO COURTS

EQUAL OPPORTUNITIES

~~SECT 16~~ sect 31.

equal opportunities
political imprisonment SECT
(2)

Memo from . . .

DR. RUTH GORMAN

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equalization

furthering economic
development
to

PROMOTE OPPORTUNITIES

Loss of 'important' rights feared

By Ruth Gorman

(Dr. Gorman is a Calgary lawyer and writer.)

If the new constitution becomes law, you as an individual will have lost the most important rights you have. They are the rights which distinguish a democracy from a dictatorship.

The first right is the individual's guarantee of the enjoyment of his property without fear of confiscation by the government.

The second is the individual's right to have access to courts that are independent of government interference, and where he can go to get his rights protected from the government.

The third great right is the individual's freedom from being imprisoned by the government for mere political opposition.

Most countries lose these rights when tanks rumble across their borders; you are losing yours by a few pages of print. The actual constitution is only 27 pages long.

It's written in both English and French, so the English version is only 13 1/2 unlucky pages long.

On these few pages are outlined the laws that will be binding on your future, and that will deprive you of rights you now have.

Awkward word

An individual's right to property was first asserted in Magna Carta, and has been steadily reaffirmed in Canada's courts and statute law up to now. It was reconfirmed in Diefenbaker's Canadian Charter of Rights, and in the United Nations Charter of Human Rights.

The appropriate place for it in Trudeau's constitution would have been in Section 4(2) on page 14. There, they copied Diefenbaker's charter word for word until they got to property rights, and then they just did not put them in. Nor are they anywhere else in the constitution.

You may think that past laws will still guarantee your property rights. That's wrong. Built into this constitution is a section which makes any law "inconsistent" with this charter "inoperative and of no effect." See Section 24, page 24: 68.

Inconsistent is an awkward and unusual word to use, but look it up. It means contradictory or incompatible. To have a right and to not have a right is legally inconsistent. So your rights under past laws that are not included in this constitution are overridden. *He goes further Rescues his discretionary choice to now the supreme law of Naive public Canada*

But to merely lose a right to property does not necessarily mean that property can then just be taken from you, unless another person or the government has been specifically given the right to take what you own.

Again, hidden away in this constitution the central government has given itself that right. Section 31(2) & (b) gives it the right to do what it pleases under the so-called "equalization" provision.

Equalization has until now been a manner by which the provinces of Canada shared revenue to ensure reasonable public services to all Canadians at approximately equal tax levels. It is based on the provinces' agreement and on actual proveable facts and figures.

Now the right is to be given exclusively to the federal government, which can redistribute provincial revenue without the consent of provincial legislatures. The government does not have to prove the necessity of doing what it does with statistics or facts. Ottawa can take from one province (or even person) and give to another, including itself, if it believes such action will promote "equal opportunities" or further economic development that reduces "disparity of opportunities."

Opportunities are not a factual, proveable reality. They are just guesses about the future. The new

constitution ought to read that property can be "equalized" at Ottawa's will, but that would have alerted an unsuspecting public.

But you may well say that couldn't happen in Canada. Elected members of Parliament would never take rights or property from one Canadian or one province and give it to another. Such thinking is dangerously naive.

Look at the last election, the 18-cent election, as it is called. Trudeau bought Ontario's vote by promising the voters there cheap oil at Alberta's expense.

In the same election, Trudeau promised Quebecers Canada-wide bilingualism in all the federal civil service and Crown corporations such as the CNR, Air Canada, and so on.

Albertans will be forced to pay the cost of these services that they don't even use. And it is estimated that in Alberta alone 40,000 people could lose their jobs if the provisions of the new constitution laid out in Section 16 (1 & 2), page 20 are enforced.

Premier Davis of Ontario, a Conservative, warned that his province's Liberals would be upset if those laws affected their people, so Ontario has been given an exemption from the bilingualism requirement. (Claude) Ryan, Quebec's Liberal leader, announced that Quebecers would support Ontario's exemption provided that they were ensured jobs in the rest of Canada.

'Terrible situation'

The West is given no exemptions. The central government does not need its support as long as Ontario and Quebec are happy.

Even now, Westerners are an ineffective minority, lacking the votes to protect their interests. Imagine what will happen to the property of yourselves, your co-ops and companies, and, of course, your provinces once this constitution is in place and the guarantee of property

Quebec has only 72 votes to Ontario's 92 and both are

...d under a changed constitution

rights is gone. You will face a terrible situation.

Not only property rights are omitted from the constitution. By omission you will also lose the ancient democratic right of trial before courts independent of government interference.

Invoked closure

Since the courts' structure is not described at all, again under Section 25 that power of control goes to the central government.

Eventually your courts could degenerate into tools enforcing the government's will on you, as they do now in Russia and China. Their power to protect the individual will be gone.

The vital right to freedom from political imprisonment is not gone by omission, but is incorporated directly in the constitution, Section 4(2) on page 14.

The War Measures Act is made part of the constitution. Under that authority, if the government wishes, you can be sent to prison for mere political agitation. The government doesn't even have to wait until you make an actual treasonable move. If they even "apprehend" insurrection, they can act.

Apprehension is defined in dictionaries as a state of mind, a thought or feeling as opposed to a reality. Apprehension could be created by placard-carriers, strongly-voiced political opinions or even strikes.

If you do become a political prisoner, don't hope for a quick trial. Habeas corpus, the ancient guarantee of a quick trial, is gone and replaced by a new law, Section 11 (b), page 18. The government may now decide what is a "reasonable" time to bring you to trial.

Nor can you count on good treatment in jail. Section 12, page 18, forbids "cruel and unusual treatment," but it is the government which defines those vague terms. A daily beating over the head is not considered too cruel, and is certainly not unusual in many countries.

Even if the voters become upset over government actions, such as arbitrary imprisonment on political grounds, they may not be able to help you. Section 4 (2) allows the government to put off elections indefinitely if two-thirds of Parliament agrees with their "apprehension" that there could be insurrection.

The legislation protecting women, Indians and other minorities is weakened, not strengthened, by this constitution. In particular, Section 15 (2) opens the possibility of discrimination against them.

This provision ends the principle of equality before the law, and allows discrimination if the government decides a group is "disadvantaged." An all-male Parliament might decide that males are disadvantaged. They alone decide, and the vagueness of the word allows them to do what they wish.

You can understand now why men experienced in government but no longer interested in politics, such as former Alberta premier Manning and former Conservative leader Stanfield have tried desperately to warn you against this constitution.

You can see why Trudeau prevented western members of Parliament from questioning his constitution, but instead invoked closure of the debate, with armed guards present.

Why change it?

You can appreciate Lougheed's refusal to speak at the parliamentary hearing on the constitution. Like the others, he would be limited to suggesting amendments, when a democratic citizen would prefer to see this dangerous constitution thrown out altogether.

For 115 years we've enjoyed good democratic government and rights. Why should we part with this system now?

England, Australia and New Zealand have no entrenched constitutions and have preserved democ-

cracy far longer and more effectively than most countries that do. Dictatorships and semi-dictatorships across Africa and Asia, as well as Russia, have passed modern constitutions full of fine phrases, but their citizens are helpless nevertheless.

Trudeau is forcing his wishes on us, trying to make the British Parliament incorporate his ideas into a radical amendment of the BNA Act. If the British will not co-operate, you can expect a referendum in Canada. We've been told it's ready to print. Trudeau has warned that "You will be forced to choose."

Westerners hurt

The loss of the vital rights of democracy will be a disaster for all Canadians. But Western Canadians will suffer much worse.

The threat of becoming central Canada's colony is causing protest meetings across the West already, and forcing people to think about the alternative of independence.

Our ancestors came to this country because it was free. Our fathers, brothers, and sons fought for that freedom in two wars, and many died. Westerners now must make another stand for their freedoms.

And you must do it now. By the amending formula incorporated in the constitution, westerners will not be able to change it.

Our population is too small and will remain so for generations to come. Your grandchildren will be saddled with this tragic burden unless you can stop it from becoming law in the first place.

Read it for yourself. Talk to your lawyer. Think about it. Get your friends involved . . . Above all, care!

(Herald Forum welcomes your comment. Typewritten submissions of up to 800 words are invited on any topic of public interest. All submissions are subject to editing. Address them to: Herald Forum, The Calgary Herald, 206 7th Ave. S.W., Calgary, T2P 0W8.)

opposition

Subsect the West always smaller than Ontario who will control Alberta

You can understand why the P.A. 7 Feb 1981

LOSS OF VITAL RIGHTS FEARED UNDER A NEW CONSTITUTION

BY DR. RUTH GORMAN

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