

What's Yours is Ours, Part 1: Property rights in Canada are in decline

The Constitution doesn't guarantee property rights. Canadians clearly suffer from the omission

By **Peter Shawn Taylor**, [Special to Financial Post](#) | Published January 22, 2026 | 6 minute read

Why do governments exist? According to 17th-century English philosopher John Locke, the state's purpose comes down to one thing: protecting your stuff. "The great and chief end ... of Mens ... putting themselves under Government, is the Preservation of their Property," Locke wrote in 1690.

By this most basic measure of competence, Canadian governments are failing miserably — nowhere more clearly than in Richmond, B.C., where a [recent court ruling](#) has upended the security of fee simple tenure. With aboriginal title now declared to be a "senior and prior interest" to fee simple, local homeowners are panicking. No less than the Wall Street Journal recently asked: "Do Property Rights Still Exist in British Columbia?"

Yet it's not as if Canadian governments were doing a great job of fulfilling Locke's prime directive before this ruling. It's merely the latest and most glaring example of the devastating decline of Canadian property rights. As governments increasingly embrace communitarian or social-democratic principles, people's ability to control what happens to their land and possessions is steadily being eroded.

Where does the blame for this lie? A good place to start is the Canadian Charter of Rights and Freedoms, that alleged protector of all our fundamental rights.

Scan the constitutions of the world's liberal democracies and you generally find a list of specific freedoms guaranteed to all citizens: freedom of speech, religious belief, association and assembly and, in most places, both the right to own property, as well as protection against its unlawful seizure. But not in Canada. Our Charter is silent on property rights. "It certainly makes us an outlier," says University of Saskatchewan constitutional lawyer Dwight Newman in an interview.

[Among the 38 OECD nations](#), only Canada and [New Zealand](#) lack explicit constitutional protection for property rights. This omission is a relatively recent development. In 1960 [prime minister John Diefenbaker's](#) Bill of Rights enshrined in federal legislation the "right of the individual to life, liberty, security of the person and enjoyment of property, and the right not to be deprived thereof except by due process of law." Such overt protection disappeared in 1982 with the advent of the Charter.

As Newman recounts, when the Charter was being debated, property rights were not a top-of-mind issue. “The political focus of the day was on equality rather than liberty,” he says. Plus, several premiers were concerned that a constitutional safeguard for property rights would erode their ability to enact statist policies, such as limiting land purchases by non-Islanders in P.E.I. and nationalizing the resource sector in Saskatchewan.

Although then-prime minister Pierre Trudeau generally favoured including property rights, they weren’t a hill he was prepared to die on. In the face of provincial opposition, he tossed them overboard to ensure the rest of his Charter passed muster.

At the same time, a series of minor mishaps and coincidences conspired against property rights. For example, as negotiations reached their climax, Saskatchewan premier Allan Blakeney was apparently wavering in his objections. But during a crucial weekend in 1981, he was holidaying in Hawaii and difficult to reach. Trudeau had promised to phone him to discuss property rights but his car got a flat tire and he never made contact. According to Newman’s sources, Blakeney’s view hardened after that missed call.

Another curiosity is that Section 33 of the Charter, a.k.a. the “notwithstanding clause,” might well have assuaged the premiers’ worries about property rights by providing an escape hatch. But it wasn’t conceived until November 1981 — after property rights had already been removed. “Had the premiers been able to look at the whole final text, then property rights might have seemed less worrisome,” adds Newman.

Whether political fashion or random happenstance is the reason our Constitution doesn’t protect their property rights, Canadians clearly suffer from the omission.

“Property is one of the basic ideas of western liberal democracy. It is also fundamental to our economic system,” says Bruce Parry, executive director of the think-tank Rights Probe. Without explicit constitutional limits, he warns, Canadian governments “can take your land and give you nothing, if that’s what they decide they want to do.” And that’s exactly what many governments do.

Most provinces have given themselves the power to seize private property through “civil forfeitures” and keep the proceeds under the guise of fighting crime. But because forfeiture is based on civil rather than criminal law, there’s no requirement a person be found definitively guilty of anything. The mere fact property was tangentially involved in some criminal act is often sufficient.

The full scope of a government’s ability to take away a Canadian citizen’s legally-held property was revealed during the 2022 Freedom Convoy protests. Once the (Justin) Trudeau government invoked the Emergencies Act it immediately set about freezing protesters’ bank accounts and seizing their financial assets — acts that only later were declared unlawful.

A similarly authoritarian attitude pervades a variety of other government policies, most notably in housing. Rather than allowing the market to function through the normal interaction of supply and demand, governments at all levels seek to block the rights of property owners. Rent control prevents the charging of market rates. “Renoviction” bylaws prohibit owners from renovating apartments they own, subordinating their rights to those of their tenants. Inclusionary zoning forces property-owners to build below-market apartments against their wishes. Taxes on vacant homes punish anyone who wants to own more than one house. It is not an exaggeration to say that housing policy in Canada today consists mainly of governments inventing new ways to take away the rights of property-owners.

The 2025 federal budget offers further evidence of Ottawa’s disdain for property rights. A proposal for a high-speed rail line through Ontario and Quebec exempts the plan from the federal Expropriation Act. Any land needed for this boondoggle-in-the-making can be seized without the need for a market-value offer. It also blocks private owners from doing any work on their land for up to four years if the state expresses interest in it.

Another even more obscure section of the 2025 budget amends Canada’s copyright law so that artists are entitled to a portion of all future resales of their work. Even after selling their paintings or sculptures to an arm’s-length buyer, artists effectively retain a permanent ownership share; it will thus become impossible for anyone ever to fully own a work of art.

“If you can’t do with your own property whatever you want — if it needs to be regulated and inspected and approved and controlled and taxed by government — then we are just pretending we have a full range of property rights,” gripes Pardy.

The lack of pushback by voters in the face of constant government intrusions against their right to own and keep property suggests to Pardy that Canadians have essentially ceded authority over these rights to politicians and the judiciary. For example, he notes, both B.C. and Ottawa have enshrined the United Nations Declaration on the Rights of Indigenous Peoples into provincial and federal legislation, thus bolstering the legal notion of eternal aboriginal title. The two governments’ actions feature prominently in the recent Cowichan ruling that has so devastatingly undermined the rights of local homeowners.

Though the Charter’s flaws have left all Canadians vulnerable, many recent wounds have been self-inflicted. It’s time Canadians paid more attention to their property rights.

