

Legislative
Assembly
of Ontario



Assemblée
législative
de l'Ontario

**Official Report
of Debates
(Hansard)**

T-16

**Journal
des débats
(Hansard)**

T-16

**Standing Committee on
Regulations and Private Bills**

**Comité permanent des
règlements et des projets
de loi d'intérêt privé**

1st Session
42nd Parliament

Wednesday 14 October 2020

1^{re} session
42^e législature

Mercredi 14 octobre 2020

Chair: Deepak Anand
Clerk: Isaiah Thorning

Président : Deepak Anand
Greffier : Isaiah Thorning

DURHAM COMMUNITY LEGAL CLINIC

The Chair (Mr. Deepak Anand): Good morning and welcome back, everybody. I'll now call Mr. Omar Ha-Redeye, the executive director of the Durham Community Legal Clinic. Welcome, sir. Please say your name, and you have seven minutes for your presentation. You may begin now.

Mr. Omar Ha-Redeye: Hello. My name is Omar Ha-Redeye and I am the executive director of the Durham Community Legal Clinic. We are a community legal clinic which focuses on the interests and legal issues of low-income Ontarians, as well as law reform and general systemic legal issues.

I want to thank you for the opportunity to speak about the significance of the Magna Carta and how it might be interpreted, and perhaps even celebrated, by historically marginalized and low-income Ontarians. I hope to do so with particular consideration for access to justice, the rule of law, and the creation of a free and democratic society.

The Magna Carta is perhaps an unusual thing to celebrate, from a legal perspective. It is more popular, among common law jurisdictions, among those who would support, for example, a republic rather than a constitutional monarchy, and is therefore a more obvious document to celebrate in the American context rather than in Canada or even the UK.

In the UK today, the Magna Carta has minimal legal effect—there are only three or four clauses that are relevant there—and in Canada, the legal significance of it is even more negligible still. The reasons for this are largely grounded in the Magna Carta's history. Just months after it was signed on June 15, 1215, it was denounced by Pope Innocent III in a letter dated August 24. Under threat of excommunication, it was deemed “null and void of all validity for ever.”

Of course, we know that's not what happened to Magna Carta. It was soon reissued after King John's death by Henry III's regents on November 12, 1216. But it was already a different Magna Carta, with only 37 clauses instead of the original 63. That might be significant, because the original 1215 Magna Carta had a number of provisions today that we would perhaps find troubling. There were two clauses that were explicitly anti-Semitic in their nature, for example, and a third one which we can assume did refer to the Jewish populations of England at the time.

There is also, of course, the context here of a number of barons forcibly gathering with their armies nearby at Runnymede, placing the king under duress to perhaps force him to give concessions. It's not what we would conceive today of being the way in which we change the law or the way in which we govern ourselves.

For many of these reasons, Canadian courts have in fact explicitly rejected the Magna Carta as a source of law, and there is a long-standing concern that it has been routinely misused by litigants who are disruptive to the justice system. To put this differently, there are a number of Canadians across Canada who are clogging up our court systems right now as we speak, invoking the Magna Carta

as a legal source and a legal authority, when it has absolutely no authority in the manner in which they're presenting it. These disruptive activities cost taxpayers a significant amount of resources, as these unsubstantiated legal arguments are deliberately intended to tie up the court's resources.

So does that mean that the Magna Carta is entirely irredeemable as a symbol worth celebrating in Ontario? Hardly not. The important emphasis here is in the manner of its commemoration and the meanings that are imbued behind such symbols.

I would like to point to a few examples of how we can perhaps use the Magna Carta today as a symbol of the values that we currently cherish here in Ontario. What the Magna Carta really does symbolize or signify, from my perspective, is the fact that the rule of law should be the dominant manner, or the main manner, in which we govern ourselves in our society.

What that means is that we should refrain from routinely relying on massive omnibus bills that would perhaps retroactively invalidate very significant investigations into things like police conduct. We should be concerned about governments that perhaps prohibit donations to political parties by corporations and trade unions, if the intent really is to prevent big money from influencing elections, especially if millions of dollars are then used in politically guided ads as a means to influence our democracy. We might be concerned when we have government ministers forcing public servants to work overtime on the weekends, for example, in order to do advertising videos or political videos that advance their own personal interests.

In other words, what the Magna Carta can and should mean for us today is a government that's elected on a promise of accountability and transparency, and works to ensure that there are proper balances in our democratic system. That is a Magna Carta that we certainly can and should celebrate and cherish in Ontario. If that is the purpose of having a Magna Carta Day, it is certainly one that we would support and we would encourage all Ontarians to stand behind. Thank you.

The Chair (Mr. Deepak Anand): Thank you so much, Omar. There will be two rounds of questions, starting with the government. You have seven and a half minutes, followed by the official opposition, who will have seven and a half minutes, and then the independent members for four and a half minutes. Starting with the government side, would anyone like to take the lead? I see MPP Barrett.

Mr. Toby Barrett: Yes, thank you, Chair. Am I coming through okay? Yes? Can people hear me?

The Chair (Mr. Deepak Anand): Yes.

Mr. Toby Barrett: Okay, thank you. I'm out in the country; sometimes things don't work very well.

0940

I appreciate the presentation. Very briefly: I hear what you're saying with respect to how, over eight centuries later, much of the Magna Carta maybe isn't relevant in our modern society. I'm sure things I'm talking about today may not have much relevance 805 years from now either;

I don't know as far as the rest of the people on the committee.

You made mention—I think you used the word that it's an “inspiration.” I found that when I was first elected—I'm afraid that was 25 years ago—the very first week I was in the Legislature, I had to do a private member's bill, and I had no idea what that was. I was able, with some help, to pull together a private member's bill, the same kind of legislation we're debating today, to restore property rights to the province of Ontario.

I always recall the Canadian Bill of Rights in my grandfather's kitchen. In the Canadian Bill of Rights, property rights were enshrined in that document. I can't remember whether that was—I guess that was actual legislation; I'm not sure. And then the Charter of Rights and Freedoms came forward and property rights were not included, for whatever reason. We know even back, obviously, in the days of the Magna Carta, those deliberations and politics were involved. Archbishop Langton presented it on behalf of the church, and then you indicated the Pope was against it. Who knows; there may have been some internal politics there. I will mention that in my riding, we have the village of Langton, which is named after Archbishop Langton, but I don't want to sidetrack myself.

I think what was very important for me—I'm not a lawyer, but for 25 years, I have attempted to restore property rights in the province of Ontario. I don't know the law inside out, but for me, the Magna Carta was that inspiration, because I knew vaguely that somewhere along the line the Magna Carta enshrined property rights, or had a statement that would prevent the King's men from entering a peasant's home perhaps; I don't know the wording.

So I think what is so very, very important—I use that as an example—is that the Magna Carta is a symbol or, as you had indicated, a statement of values. I just wondered if you wanted to comment on that and, secondly, any chance of ever getting property rights back in the province of Ontario.

Mr. Omar Ha-Redeye: I will try to answer both of those questions. What I can say is that you're right that property rights were not included in the charter. It's worth mentioning the charter—I thank you for bringing it up—because that truly is the great charter of our country.

That charter, which doesn't have property rights, was evaluated by the Supreme Court of Canada in a case called Gosselin. The dissent in that case looked at whether or not there should be property rights. The concern there might be—you know, property rights is a double-edged sword—that inserting things like property rights, especially on a constitutional basis, would also then give people a right in law to perhaps a basic income, to affordable housing, to all types of other social benefits which many people are pushing for in our society, but which we may not want to constitutionally entrench. So there is a distinction there, and I think we have to be careful. The Charter of Rights and Freedoms was in fact a great compromise, akin to the Magna Carta in some ways, and that compromise did consider those potential implications.

You also brought up the Canadian Bill of Rights, a very, very important precursor to the Charter of Rights and Freedoms that came later. There were some deficiencies with that Canadian Bill of Rights; in particular, it didn't have constitutional status. Justice Rand, one of the judges at the Supreme Court of Canada who was reviewing the Bill of Rights, went on to become the founding dean of Western Law school, where I went to law school.

The concern there was that when it isn't of a constitutional nature, what we could potentially do is fall into the same ills and evils, if you will, that we saw in World War II, where property rights, as you brought up, were abandoned, where people were taken from their homes and put into camps here in Canada based on, for example, Japanese origin.

We find some of those analogies also with the Magna Carta. You mentioned property rights there. Those property rights weren't for everybody. It was a feudalistic society, so there was a number of barons, the very rich and wealthy elite, who were looking to protect their interests and not the interests of all of the people in England at that time.

I mentioned the specific clauses that relate to the Jewish people in the Magna Carta, and it's specifically in that context where property rights are concerning, because the barons were fighting against the ability of the king to use Jewish people, who were used in conjunction with tax collection and those types of activities, to seize their assets. And so, it was a very, very anti-Semitic notion of property rights that emerged in 1215, which very fortunately did fall by the wayside. It didn't mean that anti-Semitism ended in England, by any means, in the medieval era, but it is very, very important to keep in mind that the context in which the Magna Carta emerged was not one that reflects the egalitarian rights and the inclusive nature of the society that we live in today.

The Chair (Mr. Deepak Anand): You have about 45 seconds left. Does anyone else want to ask anything from the government side? Seeing none, I would like to move to the official opposition. MPP Jamie West would like to start.

Mr. Jamie West: Before I start, I just want to congratulate MPP McKenna. Earlier, when asked for my comments, I had no concerns, so I didn't ask any questions. But I want to congratulate you on your bill. I've been spending a lot of time with MPP Gélinas, from Nickel Belt. I told her about having this committee meeting, and she had nothing but great things to say about MPP Julia Munro.

I also want to thank Mr. Omar Ha-Redeye. I apologize if I mispronounced your last name. I really appreciate the history. I think the Magna Carta is one of those things that, for most of us in the general public, we know the term but don't really know the history. It's really interesting to hear the history in it.

Mr. Ha-Redeye, you talked about some legal challenges that clog up the system. You talked about a couple of concerns you have. I don't want to put words in your mouth, but I'll just summarize it as potential abuse of

government power. That's not directly what you said, but just to summarize what you said. Do you have any concerns with the symbolic gesture of a Magna Carta Day?

Mr. Omar Ha-Redeye: Symbols are very much that: They are what we decide to imbue in them. I think this was the reason why I sought the opportunity to come to speak to the committee, because it provides for a more contextual analysis of what the Magna Carta might be.

What I can also add, MPP West, is a little bit of context perhaps for your riding. In a northern riding where there is a large Indigenous population as well, the Magna Carta perhaps has some significance in that context. There are some legal decisions, older Supreme Court of Canada decisions, that refer to the Magna Carta potentially coming to our shores, as the early English colonists also came here to these shores and the flag being carried with the Magna Carta to these shores, and that perhaps changed. It perhaps changed in 1763, with the Paris treaty, following the Seven Years' War, also known as the French and Indian War. That was what it was referred to as even though the second part of that, the "Indian" in that "French and Indian War," didn't really benefit much from that war at all. I think that's important to keep in mind as well. The Magna Carta, even as it was understood and implemented in Canada at that time, was not as inclusive as we would have liked it to be.

The treaty, though, or the proclamation, was revoked, if you will, because it had the intention of assimilating. It had the attention of assimilating all of the French populations by force—a very different perception perhaps than what we understand of our inclusive and multicultural society today. That was done through the Quebec Act of 1774. That preserved the French civil, religious and cultural traditions of the French populations that were in what is now Canada today.

I think there is something here related to the story of the Magna Carta, and it is a very complicated and lengthy story, where we can find some of those threads and connect it to values that we have today, and then when we're celebrating something like the Magna Carta, like all things that we celebrate, it will have different meanings for different people.

0950

Mr. Jamie West: Okay. I want to share my time with MPP Lindo, but I just have one short question. It's just in terms of amendments. On Friday, when we talk about amendments, do you see anything that should be amended within this bill that we should consider, or changes to the wording or anything like that?

Mr. Omar Ha-Redeye: It's a very simple bill so there's not a lot of wording here to amend, but to the extent that those types of considerations were relevant, I think it's helpful—it is always helpful—to make reference to what really is our "great charter," which is the Charter of Rights and Freedoms.

Again, the Magna Carta does have some potential, as I've alluded to, for us to celebrate and to use in a symbolic manner, but there are other symbols that are of enormous significance in our society, in particular the Canadian Charter of Rights and Freedoms, and I would love to see

something like that also referenced in the context of the Magna Carta, because then all of these issues that we're bringing up here in terms of Indigenous rights and Indigenous issues, anti-Semitism, only men who have money having the rights there in the Magna Carta, with the barons who were at Runnymede—all of those types of issues then become contextualized by the principles that we find in the charter and the constitutional rights that are in the charter. Really, what differentiates the charter is its constitutional status.

Mr. Jamie West: Chair, I'll hand it off to MPP Lindo.

The Chair (Mr. Deepak Anand): MPP Lindo, you have approximately two minutes and 40 seconds.

Ms. Laura Mae Lindo: No worries. Thank you so much, Chair. Thank you, again, for the presentation. I also just wanted to say congratulations to MPP McKenna for getting this bill to this stage. It has been wonderful to hear that history.

I'm with you. I think we have a lot of symbolic commemorations, and it's so important to find spaces and ways to bring the history, a historical context, to it, but then also live the newness of what that history has become. What I was wondering is if you could speak a little bit about—you had mentioned in passing that something like the omnibus bill, for instance, actually runs counter to some of the stuff that we'd be able to celebrate within this. I'm wondering if you can give us some guidance on ways that we can live the good parts of the Magna Carta, and maybe touching on the omnibus bill might be one space to do that. So over to you.

Mr. Omar Ha-Redeye: I think the constant there of the Magna Carta is that we shouldn't have a rule by fiat, right? There should be some discussions; there should be consultation; there should be debates. Quite frankly, that's what our Legislature does. It is very difficult to have meaningful debates, especially if there are very important issues that need to be explored, if there's an omnibus bill that has, perhaps, some very significant changes to society.

But I can perhaps go further than that, and again, I thank MPP Barrett for bringing up the Canadian Charter of Rights and Freedoms. The charter is a very, very important document, as I've now said a few times, and one of the best ways, in my opinion, that we can exemplify the values that are there in that Canadian Charter of Rights and Freedoms is for the Legislature to also recognize that in our free and democratic society, they are the authority. It's not the king. The king in our society, or the monarchy in our society, is very symbolic. It's been that way for many years, and in fact, with patriation, there really isn't a formal monarch that rules over Canada.

The power that exists in Canada is through the Legislature. We can go back to *Roncarelli v. Duplessis*, the Supreme Court of Canada case coming out of Quebec, where we did see a politician perhaps misusing their power, or being too forceful in their power, and take some lessons from that in understanding that it's important to have checks and balances. It's also important for the Legislature to recognize that, although there is a "notwithstanding" clause within the charter, it should never, ever be invoked.

The Chair (Mr. Deepak Anand): Thank you, Mr. Ha-Redeye. That finishes your time with the opposition. Thank you for that. Time's up. Over to you, the independent member, MPP Fraser.

Mr. John Fraser: I'll keep my comments brief. Firstly, Mr. Ha-Redeye, thank you very much for a very thoughtful presentation which I think is in the spirit of what this bill is trying to achieve, which is to understand the Magna Carta, and not just its significance but the evolution of the ideas that are in there. As imperfect as they were in the first instance—because, as you said, it was just men who had money who were trying to make an arrangement or a contract between each other—there are principles in there that, as you said, have found their way to things like the charter and the things that we've established in terms of democracy and the rule of law.

I do take the point with your concern over having the proper checks and balances. We have to be careful, when we are changing laws as a part of that evolution, that we ensure that we take the time to fully examine things, or adequately examine things, in a way that's open and transparent. There's always a concern that if you go too quickly, you might create something that is not as good as it could be.

I just want to simply thank you very much for your presentation. It's definitely food for thought for all of us on the committee. I'll leave it at that.

The Chair (Mr. Deepak Anand): Thank you, MPP Fraser. Mr. Ha-Redeye, would you like to comment or say anything on this?

Mr. Omar Ha-Redeye: Sure. I mean, I can go back and perhaps elaborate a little bit more about the way that the Magna Carta can be relevant in our Ontario context. I'll point to clauses 39 and 40 of the Magna Carta, which are some of the few elements of the Magna Carta that are with us today in terms of British law, not necessarily Canadian law, which relate to the right to a trial by jury. That's important for our legal system.

I know there's a lot of discussion right now about the roles of juries in our system. I can point to Alexander Hamilton's statements in the Federalist Papers, where he said that the jury is "a barrier to the tyranny of popular magistrates in a popular government," so the fact is that there are balances even within our legal system from the general populace.

The history of juries themselves, though, is fascinating, because it's very unclear as to where they actually came from. There isn't a very solid foundation for them either in the Norman tradition or the Anglo-Saxon tradition. There is some scholastic speculation that it actually came to England via Norman Sicily, believe it or not, and so they were North African values and legal systems that made their way all the way to England, into what now became the common law and the jury system that we have here today.

What I like to do when I look at the common law, when I look at any of our legal principles, is to recognize that our history was always multi-ethnic, multi-linguistic, multi-religious. That was the nature of trade. That was the nature of our society. Unfortunately, what happened was that during the colonial era, there was a revisionist attempt to remove a lot of those other influences, a lot of those other personalities that exist in history, and so part of what we should be doing when we're commemorating something that is many, many hundreds of years old is to try to once again reinject some of those other influences, some of those other voices and some of those other cultures, personalities and nations that were very much part of the fabric of what is now Ontario today.

The Chair (Mr. Deepak Anand): Thank you so much. I think that with that, I'd like to return to the government, back to the government, for the second round of questions, if anyone from the government side would like to ask anything. Seeing none, moving on to the second round for the opposition, if you would like to ask anything. Seeing none—okay. Finally, to MPP Fraser, if you would like to ask or say anything. No? Okay. Great. Thank you so much.

Thank you, Mr. Ha-Redeye, for your presentation. I appreciated you taking time and talking on this bill.

Thank you, everyone. That concludes our business today. As a reminder, the deadline for filing written submissions is 6:30 p.m. today. I'd like to say thank you to all the members for joining us today, and thank you to the staff from Hansard, broadcast and recording, and legislative research for joining us remotely on this committee meeting.

The committee is now adjourned until 9 a.m. on Friday, October 16, 2020. See you then at that time. Thank you so much.

The committee adjourned at 1000.