

Witnesses were unable to provide the Committee with examples of the way that entrenchment of property rights might have a beneficial effect on the environment.³⁶

3.27 Many witnesses felt that property rights are already adequately protected in Canada by existing legislation. The witness from the West Coast Environmental Law Association advised us that, at common law,

*... the courts already interpret statutes in such a way as to give the benefit of any interpretation doubts to the holders of private property.*³⁷

Similarly Mr. Muldoon, of Pollution Probe, suggested that

*I think it's fair to say that property rights are probably one of the oldest, most established, and certainly one of the more complex regimes of our law.*³⁸

3.28 Several witnesses were concerned that, if property rights are to be entrenched, there should be explicit wording in the provision to ensure that such rights do not affect the ability of governments to protect the environment. Others felt that, if property rights were entrenched, it "becomes essential that counterbalancing environmental rights must also be entrenched."³⁹

3.29 The Committee is aware that, in the larger context of the constitutional debate, other concerns are being expressed about the property rights proposal. The Committee, like our witnesses, focused only on the potential implications for the environment. Members held sharply different opinions concerning the potential consequences for the environment of the proposal to amend the Canadian Charter of Rights and Freedoms to guarantee property rights. One view was that environmental protection is already adequately guaranteed by Section 1 of the Charter, by case law, and by the potential for using the "notwithstanding" clause. This opinion held that the inclusion of property rights in the Charter presents no threat to the environment. Some other members of the Committee did not share this conviction. They took the view that there is good reason to believe that efforts to maintain or enhance the quality of the environment, or to promote sustainable development, could be impugned or substantially obstructed by the entrenchment of property rights, and that therefore this proposal should be withdrawn. Several members also expressed the view that property rights in Canada are already adequately safeguarded by legislation and case law, and that no obvious need for a constitutional amendment has been demonstrated.

Recommendation 15:

The Committee recommends that, if any amendment were made to the Canadian Charter of Rights and Freedoms to guarantee property rights, it be clearly stated in the wording of the guarantee that maintenance and enhancement of the quality of the environment and the promotion of sustainable development shall take precedence.

³⁶ The witness from the Sierra Club (Ms. Elizabeth May) did express the belief that "in some instances ... a Charter-entrenched property right might help to protect the environment". However, she opposed inclusion of the property right (or environmental rights) in the Charter, on the grounds that entrenching property rights would lead to "great confusion, a bonanza for lawyers". (Issue 17, p. 33).

³⁷ Issue 13, p. 48.

³⁸ Issue 17, p. 9.

³⁹ Issue 12, p. 8.