

*Constitution Act, 1982*

erty is deeply rooted in our traditions. When the Progressive Conservative Party introduced a motion in Parliament in 1983 to entrench property rights in the Constitution, the Hon. Member for Richmond South Delta (Mr. Siddon), now the Minister of State for Science and Technology in the present Government, spoke very eloquently to the motion. He said, and I am quoting from page 24999 of *Hansard* for April 29, 1983, that:

If we go back in history we find that—the right to own and enjoy property is fundamental to Canadian history—It goes back to the time of King John, the Magna Carta and the constant struggle through history, which went hand in hand with the evolution of the parliamentary system, and with the evolution of property rights and individual rights as a means of escape from monarchism, feudalism and the baronial entitlements, previous systems under which some citizens had many more rights, powers and privileges than others.

Today, Mr. Speaker, the concept of property is the basis of the economic life of our country. It is of fundamental importance to our social institutions and to our everyday lives. The protection and regulation of property rights is a pervasive and essential ingredient of our law. But we should clearly understand what we mean when we speak of property, because the concept of property is quite broad.

Our laws recognize a wide range of property interests. We may own real property or land, or personal property such as an automobile or a book but, as we know, there are also less tangible types of property, an easement over someone's land or a mortgage on someone's property. Equally, the right to be paid a debt or a share in a company is a form of property. Then there is what has been called "intellectual property". An example is a patent, the right to manufacture and use a particular invention. Other examples are rights in names or trademarks. Yet another example is copyrights, exclusive rights to make copies of books, pictures, designs or movies. The goodwill in a company is a form of property that is protected at law. And more recently the individual's right to personality has been recognized, the right to control the commercial exploitation of one's image or reputation. The point I am making, Mr. Speaker, is that we have to understand just how broad a concept the notion of property is.

While we often use the word "property" to refer to the fact of owning something such as land or an automobile, we also mean the rights and powers relating to these things. We mean the right to possess, use, enjoy and dispose of these objects to the exclusion of everyone else. While simple ownership may in some cases give us pleasure, we want to be able to use and enjoy our property. We want to be able to farm our land, to build on it, to use it to contribute to our own economic and social well-being and that of this country of Canada. Property rights are much broader than the simple right to own property.

With such a broad concept of property it is not surprising that the law touches upon property rights in so many respects. Governments regulate the process of acquiring and disposing of property. They create schemes for the orderly acquisition and disposition of interests in real and personal property. Governments also regulate the use of property. Zoning and land use regulations allow us to plan the development of our communities. Environmental laws control land use and allow

us to preserve our natural heritage and prevent pollution. We tax the use of property and, indeed, we are required to pay taxes with money, a form of property.

An absolutist conception of property was at the root of matrimonial property regimes based on the notion that partners to a marriage shared everything except each other's property, a concept upheld in the Murdoch case in the Supreme Court of Canada. It is a concept which I feel very few people in the House would agree with. Enlightened legislatures have acted in family law reform legislation to ensure a more modern appreciation of property interests in a marriage relationship and thereby have protected the interests of women in particular.

As in other controls in the commons interest, these protections are rational and represent a necessary balance. In my opinion, the protection of property in the Constitution can only take place in the context of an assurance that these modern developments will not be brought down by interests that are narrow and self-centred. And I say this, Mr. Speaker, not to undermine the concept of constitutional protection for the enjoyment of property, but to show that there are important concerns that must be resolved in any proposal of a constitutional character. That is why I feel that Private Members' Hour is an entirely inappropriate forum for discussing this matter.

There are many important societal interests that require the Government to regulate the ownership and use of property. Several provinces are concerned about the effect that entrenching property rights might have on their ability to enact other laws. Only two provinces, British Columbia and New Brunswick, have passed resolutions supporting the entrenchment of property rights in the Constitution. To date, to my knowledge, no other province has acted. They remain concerned about the consequences of entrenching property rights.

The amendment of the Constitution to entrench property rights is not a unilateral process. Amending the Canadian Charter of Rights and Freedoms to entrench property rights requires resolutions of the legislative assemblies of seven provinces with at least 50 per cent of the population, as well as resolutions of the Senate and House of Commons. No government acting alone can entrench property rights. Rather, we need a consensus between the federal Government and the provinces. The Prime Minister (Mr. Mulroney) has referred to a new era and spirit of co-operation and conciliation between the provinces and the federal Government. Building a consensus, particularly on matters of constitutional reform, requires a judicious approach. The federal Government is in a position to employ its considerable authority and prestige to reach a consensus on the matter of the entrenchment of property rights because we have a four-year mandate.

Acting precipitously runs the risk of provoking a dissenting province to opt out of a constitutional amendment as it is allowed to do by Section 38 of the Constitution Act, 1982. Hon. Members will appreciate that if a constitutional amendment is adopted, a province which disagrees may avoid accept-