Species at risk — and ranchers, too

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What with Shawinigate, and Canadian Alliance spies, and riots in Quebec City, the media have been paying almost no attention to Parliament. But Parliament is still at work considering legislation. One of the most significant items on the agenda is Bill C-5, the Species at Risk Act (SARA), which was introduced at the beginning of February.

SARA has a long history. Predecessor bills died on the order paper in 1997 and 2000 when Jean Chrétien opted for early election dates. But early elections were just political euthanasia for these bills; they died because they were so controversial.

One of the most contentious issues was whether to pay compensation to owners whose land might be designated as critical habitat for endangered species. Following the example of the United States Endangered Species Act, the predecessors of SARA did not provide for such compensation.

The lack of compensation was based not only on the American example but also on the legal distinction between expropriation and regulation. Anglo-American law has evolved in the direction of requiring compensation at market value for expropriation (i.e., loss of title) but paying no compensation at all for losses caused by regulation.

In many situations, this distinction makes good sense. Regulation of land use is often a way of preventing one landowner from diminishing the value of someone else's land. The cost of complying with regulations such as noise abatement or effluent restriction is justly borne by the landowner rather than by the public Treasury, because the owner should have no right to impose costs on others. Regulation in such cases is part of the state's universal protection of all property rights.

Other forms of regulation, however, such as endangered-species legislation, go far beyond protecting general property rights to conscript private property in the service of a politically selected version of the "public interest." In these cases, owners should be compensated for the loss in land value imposed upon them. It is a matter not only of doing justice to individual owners but also of forcing government to recognize the opportunity cost of mobilizing land in a cause such as the preservation of endangered species.

David Anderson, the Minister of the Environment, asked the British Columbia resource economist Peter Pearse to study the matter. In a report filed late last year, Dr. Pearse recommended compensating owners of land designated as critical habitat, subject to two conditions: (1) the owner should absorb the first 10% of loss, to avoid uneconomical disputes over small amounts of money; and (2) the owner should be compensated for 50% of the loss beyond the first 10%. Together, these two principles would reimburse owners for a maximum of 45% of their loss.

Mr. Anderson has now inserted a vague compensation provision into Bill C-5. The Minister will not commit himself on the details, but he has said he likes the approach recommended by Dr. Pearse.

Western ranchers are particularly concerned with this issue. They own large amounts of grassland and parkland, much of which is still in a semi-natural condition. They have to be worried that, say, a stream running through their range, furnishing water for their cattle, might be declared critical habitat for an endangered species of minnow or frog or dragon fly. Because of their extensive landholdings, ranchers are perhaps more likely to be affected, but a similar scenario could threaten any landowner.

Ranchers and SARA watchers are somewhat encouraged, but still not satisfied, by the government's acceptance of the Pearse approach to compensation. Why, they ask, should they have to swallow 55% of losses that could easily run into many thousands or even millions of dollars? Their question is valid. If we, the Canadian people, want our government to protect plants and animals, we should pay for it as a people, not inflict most of the expense on those who happen to own the land designated as critical habitat for species at risk.

The government deserves credit for accepting the principle of compensation, but it needs to go one step further. One approach would be to pay the landowner 80% or 90% of demonstrable losses for a finite period of time, with a provision for periodic review. Species preservation is a dynamic enterprise. In 10 or 20 years, lots of things can happen. A species may recover its numbers, so that it can be taken off the endangered list; or further research may show it was never endangered in the first place; or all efforts may have failed so the cause has to be declared hopeless. In all those outcomes, the owner's land could be returned to its original use, and compensation could be discontinued.

However it is done, landowners deserve a better deal from SARA than they have yet been promised. •

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