

Giving nature its constitutional rights

It's time to give full constitutional protections to the environment, like Ecuador has just done.

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by [Chris Benjamin](#)

Last summer Ecuador passed a new constitution granting rights to nature. "Nature, or Pachamama, where life is reproduced and exists, has the right to exist, persist, maintain and regenerate its vital cycles, structure, functions and its processes in evolution," the constitution states.

A few countries have granted rights to animals. More than 100 have recognized a healthy environment as a human right. About a dozen American municipalities have adopted laws recognizing legal rights for nature.

But nature with its own constitutional rights? That's new. It may seem abstract to the point of meaninglessness---another example of humans trying to apply their imperfect systems to nature's perfect ones. But rights have always been our attempt to make abstract values concrete in law. Which makes me wonder: If Canadians are such big nature lovers, why don't trees have legal standing in this country?

It's nearly impossible to prosecute under Canadian environmental law, unless a human happens to lose money because of pollution. The sunken ship Shovel Master, with its 70,000 litres of underwater diesel off Yarmouth, is an example. Until the diesel leaches into the ecosystem, kills the fish, and fishers can prove they lost income over it, the public can do nothing about it.

When it comes to having a strong environmental legal framework in place, Nova Scotia is at the bottom of a large barrel, underneath Upper Canada. Tamara Lorincz, executive director of the Nova Scotia Environment Network, is working with her members to push us over some of the other provinces to join Ontario and Quebec, as well as the Yukon and Northwest Territories. Those provinces and territories have made a healthy environment a human right.

"In Ontario they have an environmental commissioner, an environmental tribunal process and an environmental bill of rights," Lorincz says. She feels that an environmental bill of rights, the first step in legally protecting the environment, should result from the coming provincial election.

"With an environmental bill of rights, citizens can bring complaints directly; they have access to the review tribunal, the right to notice, to appeal and to standing," she says. "Here we have very limited channels to complain. We have to go through freedom of information requests to find out where project proposals stand." Ontario has a comprehensive public database of environmentally significant proposals, and an annual arms-length State of the Environment report.

Should Lorincz get her provincial wishes, Canada will still lag behind much of the world. Environmentalists across the country have been pushing all parties to enact environmental rights legislation without success.

John Swaigen, a pioneering Canadian environmental lawyer, worked closely with the NDP to draft a constitutional amendment giving rights to nature during the last federal election. But, he says, "I never did hear what the outcome was." The election before last, the Green Party proposed giving Canadians the "right to a clean and healthy environment." But the issue was never seriously debated.

Swaigen sees little difference between "rights to nature" and "human rights to a healthy environment" approaches in practical terms, but says "nature can't speak for itself, so the difficulty with giving it rights is humans with anthropocentric views speak for it. But I'd like to see both in place."

Margo Venton, a Vancouver lawyer with Ecojustice, feels that Canada is philosophically a long way from giving rights to nature. "Canada does not endorse the right to a healthy environment internationally, and has argued against human rights to clean drinking water," Venton says. "There is no legal right here to stop the government from grey-brown environmental performances"---grey-brown being the opposite of green. That's why Ecojustice released a model Environmental Bill of Rights and sent it to all parties last June. Every opposition party responded favourably, but none ran a platform on it. The government didn't respond.

Rick Smith, executive director of Environmental Defence in Toronto, feels that granting legal status to nature is inevitable. "In the march of human history popular conceptions of who and what should have rights have broadened," he says. "We've gone from adult white property owners to adding other groups: kids, women, non-whites, people who don't own land."

But will having rights give the natural world a chance? Latin American environmental policy is inspiring, but its environmental record is not. Margo Venton says that legal rights are no sustainability guarantee, but they are an important step. "Where rights exist courts have overturned cases to the betterment of people and the environment. The power of provisions for the environment is to set a standard of conduct below which governments can't fall."

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