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**L'INSTITUT CANADIEN DU DROIT ET DE LA POLITIQUE DE L'ENVIRONNEMENT**

**A Strategic Approach to Environmental Issues  
at the Federal Level in Canada:**

**A Discussion Paper**

Prepared by:

**Mark S. Winfield, Ph.D.  
Director of Research**

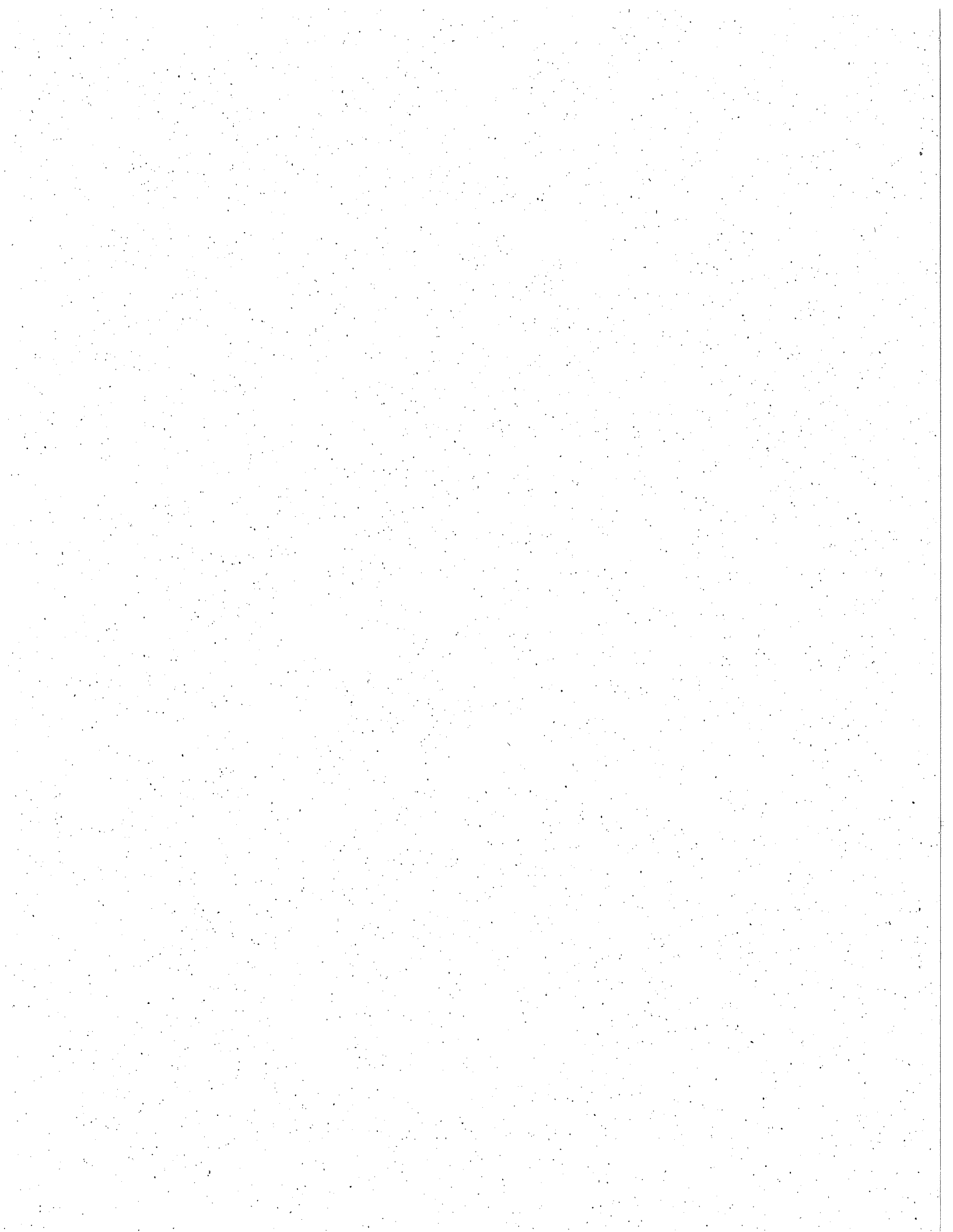
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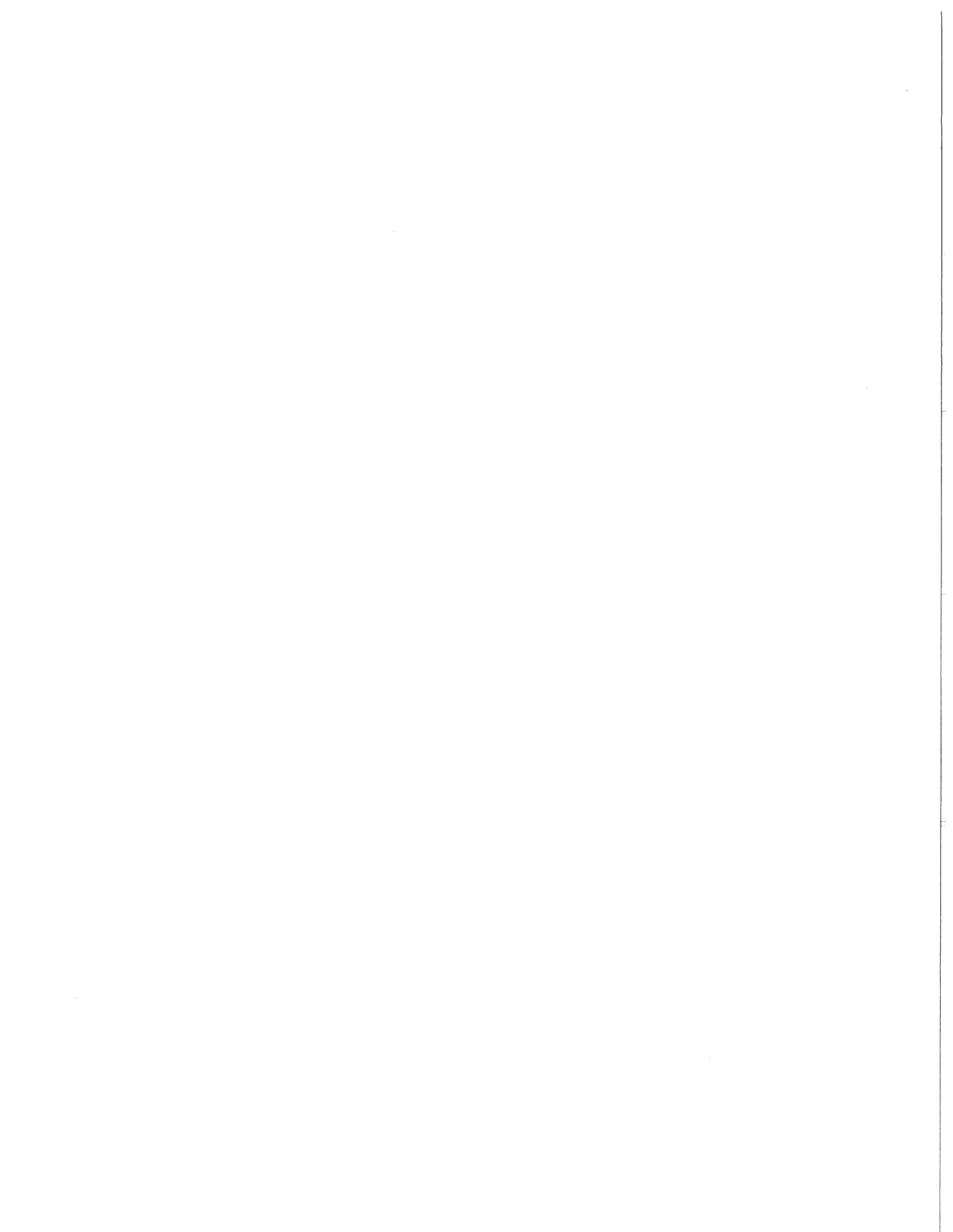
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**I. THE CURRENT SITUATION**

The situation with respect to the role of the federal government in protecting Canada's environment is perhaps the worst that has been seen since the creation of Environment Canada in 1970. The current government appears to see environmental protection as a barrier and problem from the perspectives of its core economic, national unity, and trade liberalization agendas. Despite the promise of the 'Sustainable Development' chapter of the 1993 Liberal 'Red Book' platform, the environment found itself at the wrong end of each of these major themes of the government's first term.<sup>1</sup>

This pattern has continued and been deepened in the first year of the government's second term. The government has failed to take any substantive positive action on environmental protection since the June 1997 election. Indeed, as the new Minister of the Environment, Christine Stewart's first significant action was to weaken the ban on the use of lead shot, first initiated by Sheila Copps during her term as environment minister.<sup>2</sup> Some hints of a potentially more active federal role emerged around the development of Canada's position on the proposed greenhouse gas reduction Protocol under the United Nations Convention on Climate Change. However, these appear to have subsided in the face of intense provincial opposition.<sup>3</sup>

Furthermore, in signing the January 1998 environmental 'harmonization' agreement with her provincial and territorial colleagues,<sup>4</sup> the federal Minister of the Environment has effectively committed herself to withdraw the federal government from its substantive roles in protecting Canada's environment. This was despite the Supreme Court of Canada's September 1998 decision upholding central provisions of the *Canadian Environmental Protection Act* (CEPA) as valid exercises of Parliament's constitutional jurisdiction<sup>5</sup> and

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<sup>1</sup>.This paper is a revised version of an earlier draft. It reflects discussions which occurred at the June 6, 1998 Canadian Environmental Strategy Workshop. The workshop took place with funding support from the International Development Research Centre and the W.J. McConnell Family Foundation.

the December 1997 recommendation of the House of Commons Standing Committee on Environment and Sustainable Development that the federal government not proceed with the initiative.<sup>6</sup>

Over the past two years it has been increasingly clear that the federal government's efforts to withdraw from its substantive and leadership functions in the environmental field have been driven from the centre. In fact, Ministers Copps and Marchi, both senior members of the Liberal caucus and the cabinet, made substantial efforts to resist the pressures for devolution. However, both were eventually transferred out of the environmental portfolio, principally for this reason.<sup>7</sup> In addition, it has become apparent that the key senior officials appointed to the Department of the Environment have arrived with mandates from the Privy Council Office to pursue the harmonization agenda.<sup>8</sup>

The implications of the federal government's withdrawal from its environmental protection responsibilities for the health and well-being of Canadians are serious. The effective removal of federal standards and the loss of federal inspectors is likely to facilitate the further weakening of environmental laws and institutions at the provincial and territorial level, and contribute to the downward competition in environmental standards which has emerged among the provinces over the past few years.<sup>9</sup> It also raises serious questions about Canada's ability to fulfil its international environmental obligations.

The degree to which environmental devolution has been endorsed as a strategy by the key central agencies of the government implies that a substantive change in the government's direction seems unlikely to occur while the current prime minister is in office. However, a change in the leadership of the government party appears likely to take place in the year 2000, some time before the next federal election.

In the meantime, it can be expected that those within the government who favour devolution of the federal government's environmental responsibilities will look to use the *Canadian Environmental Protection Act* (CEPA) and *Canadian Environmental Assessment Act* (CEAA) review processes, and the reintroduction of proposed amendments to the *Fisheries Act*, as opportunities to cement the 'harmonized' model into law. This is reflected in amendments which were made to the CEPA reform bill between its first introduction as Bill C-74 in December 1996 and its re-introduction as Bill C-32 in March 1998.<sup>10</sup> Similar provisions can be expected to be contained in the proposed *Canadian Endangered Species Act* if it is re-introduced.<sup>11</sup>

Once the constraints on federal government action contained in the 'harmonization' accord are incorporated into the federal framework legislation, they will be virtually impossible to remove. Doing so would require an enormous expenditure of political capital with the provinces by a future federal government. In the absence of an overwhelming and clear electoral mandate for such an effort, the options of a future, more environmentally oriented federal governments, will be severely constrained.

## **II. FACTORS THAT MAY AFFECT THE FEDERAL GOVERNMENT'S ENVIRONMENTAL DIRECTION**

Three factors appear to have the greatest potential to change the current direction of the federal government on environmental matters.

### **1) Public Opinion**

The first, and potentially most significant factor, is public opinion. Very high, but latent, levels of public support for a strong federal role in the protection of Canada's environment continue to be evident in public opinion research.<sup>12</sup> Furthermore, a number of leading public opinion researchers have noted a rise in public interest in the environment over 6-8 months.<sup>13</sup> This increase in public attention appears to have been prompted by the December 1997 climate change protocol negotiations in Kyoto, Japan. However, the growth in public interest seems to be continuing, and may mark the beginning of a re-emergence of environmental protection as a major public issue.

Recent surveys also show strong evidence that the public expects the government to protect public goods, such as the environment.<sup>14</sup> In addition, there are clear indications that the public expects this action to be through the establishment and enforcement of more stringent environmental laws.<sup>15</sup> This has been interpreted by public opinion researchers as a rejection of the current governmental agenda of relying on voluntary programs and other alternatives to environmental legislation.<sup>16</sup>

The transformation of the present, but latent, public concern for the environment into a more active, top-of-mind environmental concern could have an impact on the current government, particularly as the Prime Minister approaches retirement and considers his long-term legacy. There is also the potential, given the present government's extremely weak record, that the environment could be positioned as an area where a new prime minister would want to pursue new initiatives as a way of distancing him or herself from the previous administration.

A strengthened focus on the environment from the Parliamentary opposition parties might also encourage movement in these directions, particularly given the government's narrow majority. The fact that the government lost the bulk of its seats in the 1997 election to the N.D.P. and Progressive Conservatives should also be considered. Both of these parties are potential sources of credible attacks on the government's environmental record, and are seeking ways to differentiate themselves from the current official opposition party. The latter is unlikely to pursue environmental issues in a constructive manner.

The potential for significant movement in the level of public interest in environmental issues at the federal level may be enhanced by the apparent rise in the level of media attention over the past few months. This also began with the Kyoto climate

change negotiations. The extensive coverage has continued with the signing of the environmental 'harmonization' agreement in January 1998, the release of reports by both the House of Commons Standing Committee on Environment and Sustainable Development on environmental law enforcement,<sup>17</sup> and the Commissioner of Environment and Sustainable Development,<sup>18</sup> in May 1998, the debates over the regulation of the sulphur content of gasoline by the federal government,<sup>19</sup> and the government's July 1998 withdrawal of its ban on the import and sale of the fuel additive MMT.<sup>20</sup>

However, as the level of environmental activity by the federal government declines, events which draw media attention may become less frequent. The lack of full-time environment reporters in Ottawa also remains a serious problem. A more active approach may be required to bring media attention to environmental events in which the federal government is a participant, especially on the international stage.

Efforts to generate 'news' about environmental issues at the federal level may be required as well. Events like the "Taste of Canada" buffet hosted by the Toxics and Biotechnology Caucuses of the Canadian Environmental Network in Toronto in April 1997, could be used for this purpose.<sup>21</sup> On the basis of recent experience in Ontario, these efforts need to focus on demonstrating the reality and implications of the environmental challenges facing the country, the failure of both the federal government's reliance on provincial action and voluntary industry measures to deal with these problems, and the need for direct interventions by the government of Canada.

## 2) International Obligations

Canada's international environmental obligations are a second potentially important source of pressure for a more active role on the part of the federal government. International law clearly establishes the responsibility of the federal government for the implementation of international obligations into which Canada enters.<sup>22</sup> While international environmental commitments are difficult to enforce legally, failure to fulfil international obligations carries considerable moral and political weight domestically and in the international community.<sup>23</sup> A recent public opinion survey, for example, indicated that protecting the environment was the leading reason why Canadians wanted their government to wield greater influence abroad.<sup>24</sup>

Canada is already a party to a number of major international environmental agreements which cannot be implemented without the substantive participation of the federal government. These include the *Basel Convention on the Transboundary Movement of Hazardous Wastes*, the *Montreal Protocol on Ozone Protection*, the *Convention on Biological Diversity*, the *Convention on Climate Change*, the *United Nations Economic Commission on Europe Convention on Long-Range Transport of Air Pollution*, the *Great Lakes Water Quality Agreement* and the *North American Agreement*



### *on Environmental Cooperation.*

The potential for international considerations to move the federal government towards a more active environmental role was evident in the government's efforts to prepare a position for the December 1997 climate change protocol negotiations in Kyoto, Japan. In the course of these discussions, the federal government was forced to abandon the negotiating position it had agreed to with the provinces and territories when it became apparent that it was inadequate from the perspective of other delegations to the negotiations.

The experience of Canadian environmental non-governmental organizations with the development of negotiating positions on specific international initiatives indicates that it is possible to move the Canadian government towards accepting stronger obligations than it may necessarily desire. A number of major negotiations are currently taking place in Montreal, including the development of the Protocol on Biosafety under the Convention on Biological Diversity, and the World Health Organization (WHO)/United Nations Environment Program (UNEP) Convention on Persistent Organic Pollutants (POPs). This provides further opportunities for strong interventions by Canadian non-governmental organizations. Considerable resources and effort are required, however, to maintain the level of engagement necessary to affect these processes.

It is also important to note that the current government has worked aggressively to limit the scope of potential future international environmental commitments and, more broadly, to subsume future multilateral environmental agreements (MEA's) under the rules of the international trade regime.<sup>25</sup> This has been evident in the government's approach to the World Trade Organization's Trade and Environment Committee, the Multilateral Agreement on Investment, and the Free Trade Area of the Americas initiative.

### **3) Pressures from Other Levels of Government**

A third potential source of pressures on the federal government to play a more active environmental role would be progressive provincial governments, seeking protection from downward competition by other provinces in terms of environmental standards. A meaningful federal environmental presence limits the potential for such dynamics by providing a minimum level of protection below which no jurisdiction is permitted to descend.

In the past, the Liberal and NDP governments in Ontario and, until recently, the NDP government in British Columbia, had pressed the federal government to play a more active environmental role for this reason.<sup>26</sup> Although there are no environmentally progressive provincial governments currently in power, this could change in provinces like Ontario or Nova Scotia at some point over the next few years.

### III. POSSIBLE DIRECTIONS FORWARD

There are two potential approaches to the current situation.

#### 1) Wait Out the Issue Cycle

One possible approach would be to view the current situation as a trough in the regular cycles of public, media and governmental interest in environmental matters, similar to that which occurred in the late 1970's and early 1980's. This would suggest an approach of seeking to limit damage to environmental laws and institutions during the low point in the cycle, and waiting for a rise in concern over environmental issues to permit forward movement on a more positive agenda.

However, certain aspects of current situation seem qualitatively different from previous troughs in the issue attention cycle and may require a more active response. Some changes in the operating environment of the federal government appear likely to be very difficult to reverse. These include the constraints on the government's scope of action which are being imposed through changes in the international trade regime, of which Canada has been an active promoter.

In addition, the federal government, if it stays on its current course, seems likely to dismantle much of its institutional capacity to deal with environmental issues and to surrender its authority in the field, certainly de facto, if not de jure, to the provinces unless significant interventions are made. The continuation of this trend, along with the incorporation of the move towards devolution into the key federal environmental statutes, would make the re-establishment of a more active federal role in environmental matters in the future extremely challenging, even if the political will to do so existed.

#### 2) Re-Mobilize the Latent Constituency of Support for Federal Environmental Action

An alternative approach would be to focus on a strategy of active measures to re-mobilize the latent domestic public constituency of support for federal action to protect the environment. This is essentially the approach which has been adopted by a number of environmental organizations to address the current situation in Ontario.<sup>27</sup>

A strategy of this type is based on a number of key elements. These include:

- \* research and communications activities focused on demonstrating the reality and significance of environmental problems within the jurisdiction, particularly through concrete, illustrative examples, and the use of evidence from both the relevant government(s) themselves, and independent, authoritative bodies.<sup>28</sup> This tends to be a greater challenge at the federal level than with provincial governments,

given the less direct role that the federal government plays in environmental protection. Specific examples, however, have been successfully highlighted in the past.<sup>29</sup> The engagement of non-traditional environmental constituencies, such as health care professionals, public health organizations, aboriginal and faith communities in activities around these problems may be a particularly useful approach in this regard;

- \* research and communications activities highlighting the extent of the government's failure to take the required actions in relation to identified problems. Actions which are likely to make problems worse deserve particular attention,<sup>30</sup> as do efforts to avoid responsibility for taking action by relying on voluntary measures, or on actions by provincial governments; and
- \* the development and presentation of credible alternative courses of action for government. Movement beyond calls for a return to the *status quo ante* are particularly important. A critical element of this effort would be to highlight the point that despite the changes in the international environment, governments still can and do make choices about public policy at the micro and macro levels, and that they are not, as they sometimes claim, completely helpless victims of globalization.

An approach along these lines is needed if we intend to continue work on domestic issues at the federal level. Such a strategy will need to include short, medium and long-term goals and objectives.

### *Short-term Goals and Objectives*

The primary short-term goal of a federal strategy should be to prevent the incorporation of the environmental 'harmonization' agenda into the federal environmental legislative framework, particularly CEPA, CEAA, *Fisheries Act*, and the proposed *Canadian Endangered Species Protection Act* (CESPA). This is critically important from the perspective of leaving available the potential for action by a more environmentally-oriented government in the future.

A CEPA reform Bill, which incorporates important elements of the harmonization Accord, passed second reading in the House of Commons in April 1998. A statutory review of CEAA is scheduled for this year, while amendments to the *Fisheries Act* to devolve habitat protection functions to the provinces, which died on the Order Paper with the April 1997 federal election call, can be expected to re-appear at some point in the near future.

Preventing the amendment of the federal framework legislation in this way will require substantial effort and coordination. The forces within the federal government

which favour devolution are likely to press intensively for its incorporation into federal legislation. This is particularly true in light of Quebec's statements that it was unwilling to sign the harmonization agreement until its key elements were adopted into federal law.<sup>31</sup>

On the other hand, the legislation required to implement the 'harmonized' model will have to pass through the House of Commons Standing Committee on Environment and Sustainable Development in the case of CEPA, CESP and CEAA, and the Standing Committee on Fisheries and Oceans in the case of the *Fisheries Act*. Both Committees have demonstrated a willingness to deviate from the government's direction over the past few months.<sup>32</sup> The government's narrow majority in the House of Commons, and the evident unhappiness within some significant elements of the government caucus and party over the government's direction<sup>33</sup> may also be important factors in the upcoming debates.

In the event that the relevant provisions cannot be deleted from the Bills in question, and their passage cannot be prevented, it will be necessary to seek amendments to establish review and accountability mechanisms to deal with situations where federal responsibilities are devolved to other levels of governments. Such provisions could include detailed reporting and access to information requirements, mandatory sunset clauses for administrative or equivalency agreements, and provisions to permit 'citizen' suits and private prosecutions to enforce federal standards where they exist.

These efforts will require the development and tabling of briefs on each Bill as it enters the Parliamentary process, the development of contacts with the relevant Standing Committees of the House of Commons, and the raising of the public profile of the Bills. Bill C-32, the CEPA reform Bill, may be the most immediate priority in this context, as it is now before the House of Commons Standing Committee on Environment and Sustainable Development. In the event that the harmonization amendments contained in the Bill can be removed, it may set a precedent for the other Bills expected to come forward. Alternatively, the passage of the CEPA reform Bill in its current form would likely open the door for incorporation of harmonization amendments to other federal legislation.

### *Medium-Term Goals and Objectives*

Short-term efforts to prevent the incorporation of the harmonization agenda into key pieces of legislation need to be part of a larger strategy on federal issues. There is little point in delaying movement on specific pieces of legislation unless the delay is in anticipation of a more receptive atmosphere for positive environmental action in the future.

Rather, steps need to be taken to bring about the articulation, adoption and

implementation of a positive federal environmental agenda. Three areas were identified at the June 1998 Federal Environment Strategy Workshop<sup>34</sup> as key foci for such an effort. These were:

- \* domestic law and policy. The specific objectives identified for work in this area include: the mobilization of public concern for the environment into an effective political factor; challenging the claims regarding the perceived benefits of devolution and de-regulation; and the establishment and enforcement of meaningful national standards in areas such as toxic substances, biotechnology and biodiversity conservation;
- \* taxation, budget and finance. The objectives identified in this area included: the use of federal taxation and spending powers to promote environmentally sustainable development; the removal of subsidies/incentives for unsustainable development; the reconstruction of federal capacity in key areas, such as environmental law enforcement, environmental monitoring and science, and environmental standard setting; challenging current views regarding the relationship between employment, economic growth, and the weakening of environmental protection requirements; and strengthening the credibility of alternative approaches. These efforts should seek to emphasize that choices can be, and are being made, with respect to the government's taxation and fiscal policies at the micro and macro levels which can have positive or negative effects on environmental, social and economic sustainability;
- \* international environmental relations. The objectives identified in this area included: the re-establishment of a positive leadership role for Canada in the development of new Multilateral Environmental Agreements (MEA's); the containment of Canada's role in trade negotiations in seeking to limit scope of domestic environmental standards and future MEA's; and the implementation of existing international commitments, particularly in relation to biodiversity conservation and climate change.

### *Medium-Term Activities*

#### *a) Domestic Role*

##### *Harmonization Accord Two Year Review.*

The major concession made to the parliamentary, non-governmental and aboriginal critics of the CCME harmonization process was the agreement by the Ministers of the Environment to a two-year, rather than five-year, review of the Accord and its future. The tabling of the CCME's own review and a decision on the future of the 'harmonization' Accord will likely take place at the spring 2000 CCME meeting.

Members of the House of Commons Standing Committee on Environment and Sustainable Development have already identified the two year review as a key event. The Committee seems likely to undertake its own study of the impact of the Accord in the period leading up to the spring 2000 CCME meeting. The Harmonization Working Group of the Canadian Environmental Network has also identified the review as the next critical event in the harmonization process. The review represents the best opportunity available to curtail the initiative in its current form before it becomes irreversibly entrenched.

In order to ensure a meaningful review, a detailed, comprehensive and independent assessment of the implementation of the Accord and sub-agreements and their consequences will be required.<sup>35</sup> A major focus of this effort should be the tracking of provincial performance with respect to delegated federal responsibilities. This should include regional case studies of the impact of federal devolution. These would illustrate the 'real world' implications of the absence of a meaningful federal presence or national standards. Reports of this nature have recently been completed on environmental assessment in Newfoundland and Labrador<sup>36</sup> and on aquaculture in New Brunswick.<sup>37</sup> New Brunswick, Quebec, Ontario and Alberta were identified as potential subjects for more extensive case studies at the June 1998 Federal Strategy Workshop.<sup>38</sup>

This research effort would need to be accompanied by a communications program for the release of the assessment, allowances for participation in a Standing Committee review, and provision for dealing with the spring 2000 CCME meeting.

#### *Interim Report on Harmonization and Devolution*

The development and release of an interim report, on or about the time of the first anniversary of the signing of the harmonization agreement (January 1999), could have a significant impact as well. This should include a review of progress on the CCME initiative to date, and appropriate introductory regional case studies. The delivery of an interim report would also assist efforts to prevent the incorporation of the 'harmonization' agenda into federal legislation before Parliament, which would likely be taking place at the same time.

In addition, such a report could influence both the decision of the House of Commons Standing Committee on Environment and Sustainable Development as to whether to conduct a 2-year review of the 'harmonization' accord, and the design of their review. The publication of a credible interim report could provide the Committee with some confidence with respect to the quality of evidence that might be brought before it for a formal study.

#### *Provincial Track Record Reports*

Reports and evaluations of developments at the provincial level over the next two

years could also make a significant contribution. Such reviews would demonstrate a lack of both will and capacity at the provincial level to take on federal environmental responsibilities. Reports of this nature have recently been completed in Alberta,<sup>39</sup> Quebec,<sup>40</sup> and Ontario.<sup>41</sup> However, reports are being produced on a regular, annual basis only in Ontario.<sup>42</sup> Potential subjects for further reporting activities include Alberta, Quebec and New Brunswick.

b) *Budget, Taxation and Finance*

Many of the federal government's most significant environmental interventions are through its expenditures and tax policies. Unfortunately, these have usually been in the form of subsidies and tax expenditures in support of environmentally unsustainable development.<sup>43</sup> Changes to the federal taxation and expenditure system may provide opportunities to encourage and facilitate the structural shifts in the Canadian economic necessary to deal with large scale environmental problems such as global warming. However, at the same time, the pending elimination of the federal deficit has the potential to result in pressures for increased federal expenditures in support of environmentally unsustainable activities, especially from natural resource extraction industries.

*Alternative Budget Process Participation*

The alternative budget process has emerged as an important exercise which demonstrates the degree to which governments continue to make choices about particular directions in public policy at the macro and micro levels. Traditionally, however, environmental participation in the process has been weak, and the process is in need of an injection of new intellectual energy.

Potential subjects for environmental work in the alternative budget process could include such issues as: energy and climate change; sustainable agriculture and biotechnology; mining and materials use; and the promotion of pollution prevention. The reconstruction of capacity within Environmental Canada for enforcement, monitoring and science, and standard setting, and at the Department of Fisheries and Oceans for habitat protection and freshwater science, are also important objectives.

These activities should be supported by regular presentations to the House of Commons Standing Committee on Finance as part of the Committee's annual pre-budget consultations. The Standing Committee's consideration of the report of the Technical Committee on Business Taxation, which made a number of recommendations regarding environmental taxation,<sup>44</sup> would also provide an opportunity to raise the profile of issues related to the environment and taxation.

Strengthening the capacity of the environmental community in this area would also be an important hedge against the possibility that efforts to limit the impact of the

'harmonization' agenda on federal legislation may not be successful. Regardless of the outcome with respect to federal legislation, the federal government's taxation and expenditure policies will continue to have a significant impact on the protection of the health and environment of Canadians.

c) *International Environmental Relations*

As noted earlier, Multilateral Environmental Agreements are one of the few available ways to move the federal government forward on environmental issues and, more generally, to limit the impact of trade liberalization on the ability of governments to protect the environment. The involvement of the Canadian Institute for Environmental Law and Policy and other members of the CEN Biotechnology Caucus in the development of Canada's position around the proposed Protocol on Biosafety, under the *Convention on Biological Diversity*, indicates that there is some potential to limit the impact of the trade liberalization agenda on Canada's international environmental negotiating positions, and to even advance obligations that are stronger than the Canadian federal government might desire.

The stronger engagement of Canadian environmental organizations in the formulation of Canadian negotiating positions is particularly important given the aggressive approach that Canada has taken to international environmental negotiations over the past few years. During this period, Canada has consistently played a leadership role among the countries seeking to limit the scope of new international environmental agreements. It has also led efforts in international trade negotiations to limit the range of actions which individual countries can take to protect the environment and other public goods beyond internationally agreed standards. Consequently, the adoption of more moderate positions by Canada could significantly affect the overall direction of these negotiations.

Significant resources are required, however, in order for environmental organizations to maintain interventions in the development of Canadian negotiating positions. Capacity is needed to participate in advisory committees on the development of Canadian positions, on the Canadian delegation to the negotiations themselves, and to provide a presence at negotiations off the Canadian delegation. The latter is important as it provides opportunities to it clear to other delegations and the Canadian media when Canadian non-governmental organizations disagree with Canadian government positions. The establishment of stronger alliances with development, human rights, aboriginal, consumers' and other non-environmental non-governmental organizations active at the international level around these issues may also be an important focus.

Important negotiations which Canada seems likely to be involved in over the next 2-3 years include: the World Health Organization (WHO)/United Nations Environment Program (UNEP) Convention on Persistent Organic Pollutants (POPs); the Basel



Convention; the Protocol on Biosafety under the Convention on Biological Diversity; and the implementation of the Kyoto Protocol on Climate Change. The WHO/UNEP POPs initiative may offer particularly significant opportunities for building alliances with non-traditional environmental constituencies, such as health organizations and aboriginal peoples. The POPs initiative is also closely tied to the CEPA review process, as Canada's negotiating position on the proposed Convention seems likely to be defined largely in terms of the toxic substances provisions that are incorporated into the Act.

Canada's role in the negotiations regarding the establishment of a free trade zone in the Americas, discussions at the Trade and Environment Committee of the World Trade Organization, and the continuing evolution of the Organization for Economic Cooperation and Development (OECD) Multilateral Agreement on Investment (MAI) also require close attention.

d) *Annual Reports on Federal Environmental Activities*

In addition to work in the specific areas of domestic law and policy, taxation and finance, and international environmental relations, there is a need for regular and comprehensive reports on the federal government's environmental track record, similar to CIELAP's annual reports on Ontario's environment and the 'Common Sense Revolution.' The Ontario experience has shown this to be essential from the perspectives of accountability and the formulation of alternative policy agendas.<sup>45</sup>

CIELAP's Ontario reports have consistently had a significant impact in the media, and have played a major role in cementing the current government's environmental image in the public mind.<sup>46</sup> These reports have also greatly enhanced the willingness and capacity of the legislative opposition to pursue environmental issues, and have strengthened the effectiveness of those efforts.

There is currently no comparable effort at the federal level. The Office of the Commissioner on Environment and Sustainable Development does have a reporting mandate, and has tabled its first substantive report.<sup>47</sup> The Office is subject to a number of constraints, however, particularly in terms of the degree to which it can challenge the substance of government policy. The Office of the Auditor-General has also provided reports on specific environmental issues over the past few years,<sup>48</sup> although it is not comprehensive in its approach. In addition, in recent years environmental issues covered by audits have tended to be overshadowed by audits of other issues.

*Long-Term Goals and Objectives*

*A New Federal Environmental Agenda*

An overall strategy along the lines of that which is being pursued in Ontario would seek to establish the existence of serious environmental problems, a federal record of failure to address these problems, and the creation of a public expectation of governmental action in the future. The environmental community needs to position itself to play a major role in setting the new agenda once this expectation of action has been established. A detailed expression of what is needed is unlikely to come from opposition parties or from within the government itself.

This implies a need for the articulation of a positive federal environmental policy agenda by the environmental community and allied social movements. Such an exercise has not been undertaken in more than a decade,<sup>49</sup> and is an obvious project for the millennium year. A project of this nature, which is targeted at the Ontario provincial government is currently being carried out by the Canadian Institute for Environmental Law and Policy and the Ontario Environmental Network. The results of this effort are scheduled for public release early in 1999.

#### **IV. CONCLUSIONS**

The next three years will be the most critical period for determining the role of the federal government in protecting Canada's environment of past half century. The will and capacity of the federal government to play a major part in environmental protection is diminishing rapidly, and the federal government has made intergovernmental commitments to continue in this direction. The race to the bottom which is now occurring among provinces highlights the consequences of the federal government's current direction and the need for a significant federal presence to contain this dynamic.

If urgent action is not taken, the possibility of a more active federal government will vanish for the foreseeable future. Steps need to be taken immediately to prevent the devolution of federal environmental authority from being incorporated into the federal legislative framework. In addition, a longer term strategy is required to re-engage the federal government on environmental matters in a constructive manner. Failure to achieve this goal is likely to result in severe costs to the health of Canadians, the integrity of Canada's environment, and Canada's international reputation.

## Endnotes

1. See M. Winfield and A. Mitchell, "New Red Book is short on green ideas," The Toronto Star, May 12, 1997.

2. Environment Canada, Press Release, August 19, 1997.

3. L. Eggertson, "Move to study Kyoto treaty eases worries," The Toronto Star, December 13, 1997; R. Speirs, "Climate change boss fights Ottawa chill," The Toronto Star, June 27, 1998; CP, "Alberta rejects greenhouse gas pact," The Toronto Star, July 14, 1998.

4. The "National Accord on Environmental Harmonization" and Sub-agreements on Canada-Wide Environmental Standards, Inspections and Environmental Assessment, January 1998.

5. *R. v. Hydro Quebec et. al.*, Supreme Court of Canada, September 18, 1997.

6. Standing Committee on Environment and Sustainable Development, Harmonization and Environmental Protection: An Analysis of the Harmonization Initiative of the Canadian Council of Ministers of the Environment (Ottawa: House of Commons, December 1997).

7. Re: Copps, see E. Greenspon and A. Weston-Smith, Double Vision: The Inside Story of the Liberals and Power (Toronto: Doubleday Canada Ltd, 1996).

8. See Environment Canada, Extended EMB Meeting, April 29-30, 1997, Summary Decision Notes, May 7, 1997 pg.1. Document Obtained by the Canadian Environmental Law Association through a freedom of information request.

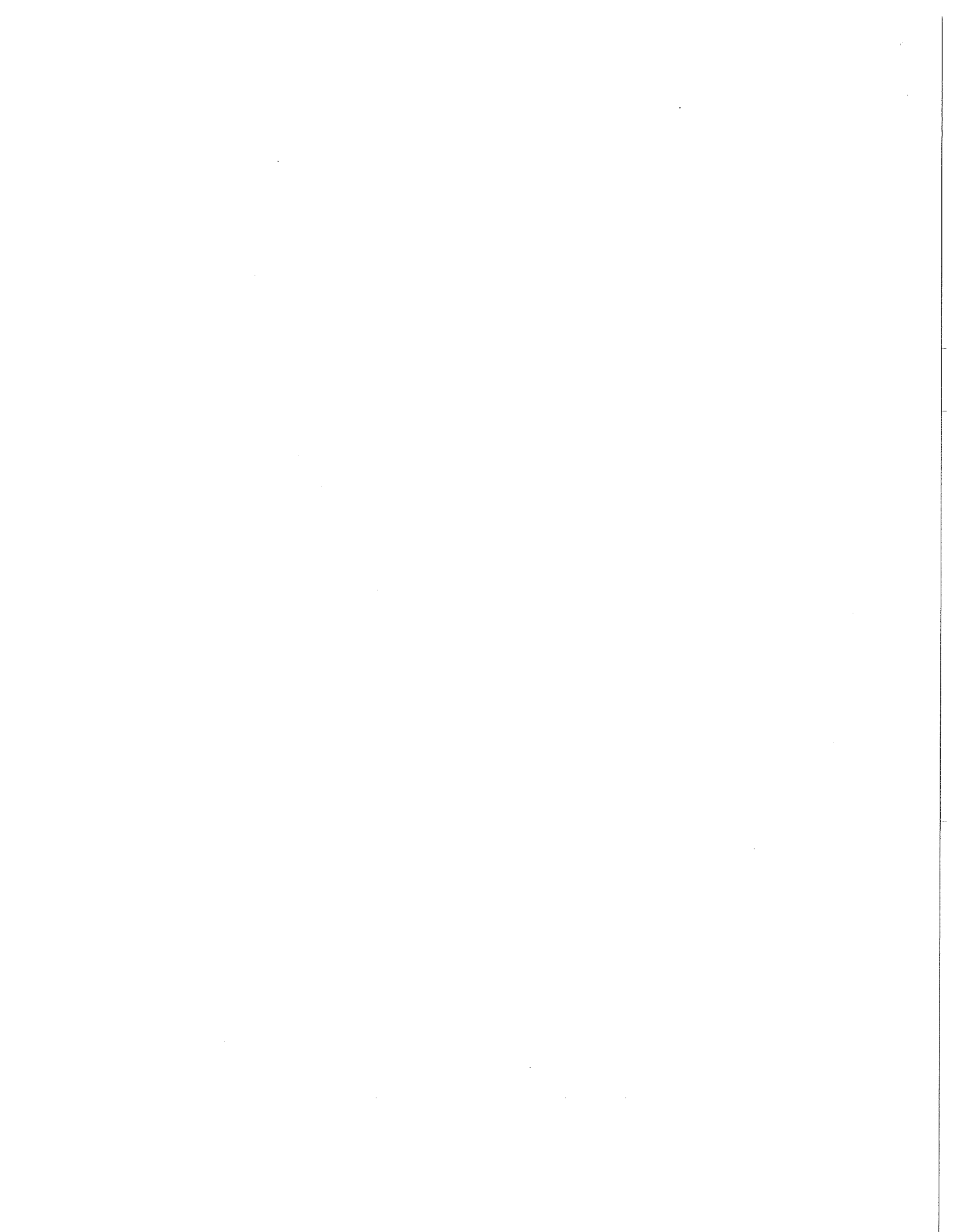
9. Ann Gibbon, "B.C. companies look to Alberta as new home," The Globe and Mail, December 27, 1997.

10. A detailed brief on Bill C-32 is under development by CIELAP and CELA. The key amendments include requirements for consultation with the provinces prior to the federal government taking of virtually any action under the Act, including such activities as gathering information and establishing non-enforceable guidelines and codes of practice.

11. See, for example, P. Comeau, "New endangered species plan unveiled," Canadian Geographic, July/August 1998.

12. See, for example, Ekos Research Associates Inc., Rethinking Government '94: An Overview and Synthesis (Ottawa, 1995); T. Spiers, "Canadians think green, poll reveals," The Ottawa Citizen, February 18, 1998; Ed Greenspon, "Grits keep pressure on PM," The Globe and Mail, March 23, 1998, reporting Pollara results.

13. T. Spiers, "Canadians think green, poll reveals," The Ottawa Citizen, February 18, 1998.



14.P.Knox, "Environmental Issues heating up, poll shows," The Globe and Mail, November 10, 1997.

15.Joseph Hall, "Canadians want laws to be meaner and greener," The Toronto Star, June 5, 1998.

16.Ibid.

17.Standing Committee on Environment and Sustainable Development, Enforcing Canada's Pollution Laws: The Public Interest Must Come First! (Ottawa: House of Commons, May 1998).

18.Commissioner of the Environment and Sustainable Development, Report of the Commissioner of the Environment and Sustainable Development to the House of Commons (Ottawa: Minister of Public Works and Government Services, May 1998).

19.J.Mahoney, "Improve the air, health department tells Ottawa," The Globe and Mail, July 27, 1998.

20.S.McCarthy, "Threat of NAFTA case kills Canada's MMT ban," The Globe and Mail, July 20, 1998.

21.See P.Muldoon and B.Mausberg, A Taste of Canada: An Expose of Toxic Chemicals in your Meals and Bioengineered Food Made in Canada (Toronto: Canadian Environmental Law Association/CEN Toxics and Biotechnology Caucuses, April 1997).

22.Vienna Convention on the Law of Treaties, Art.27.

23.See, for example, R.Speirs, "Chretien is ignoring the crucial deficit," The Toronto Star, June 28, 1998, regarding Prime Minister Chretien's admission before the United Nations General Assembly Special Session on Environment and Development, that Canada had failed to meet the greenhouse gas emission reduction commitments it had made at the June 1992 Conference on Environment and Development (The Earth Summit).

24.G.Gherson, "Canadians activists at heart, new poll finds," The Ottawa Citizen, April 24, 1998.

25.See, for example, A.Griffith, (Counsellor, Canadian Mission, Geneva) Market Access and Environmental Protection: A Negotiator's Point of View, (Ottawa: Department of Foreign Affairs and International Trade, October 1997).

26.See, for example, M.Winfield, "The Ultimate Horizontal Issue: Environmental Policy and Politics in Ontario and Alberta 1970-1994," Canadian Journal of Political Science, March 1994.

27. See Canadian Institute for Environmental Law and Policy, "Towards the Post-Revolutionary Environment: A New Green Agenda for Ontario," proposal to the Joyce Foundation, August 1997.

28. See, for example: M. Winfield, Hazardous Waste Management in Ontario: A Report and Recommendations (Toronto: CIELAP, February 1998); and Our Future; Our Health!: The Consequences of Inaction (Toronto: Ontario Environmental Protection Working Group, June 1998).

29. The 'Taste of Canada' event hosted by the Canadian Environmental Law Association and the Toxics and Biotechnology Caucuses of the Canadian Environmental Network in Toronto in April 1997 was a highly successful example of what can be done to highlight the significance of the federal government's environmental responsibilities in concrete terms.

30. See, for example, M. Winfield and G. Jenish, Ontario's Environment and the 'Common Sense Revolution' A First Year Report; A Second Year Report (Toronto: CIELAP, June 1996; July 1997)

31. "Le Quebec Sursoit a la Signature de l'Entente *D'Harmonization Environnementale du Conseil Canadien des Ministres de l'Environnement*," January 29, 1998.

32. See, for example: Standing Committee on Environment and Sustainable Development, Harmonization and Environmental Protection: An Analysis of the Harmonization Initiative of the Canadian Council of Ministers of the Environment (Ottawa: House of Commons, December 1997); Standing Committee on Environment and Sustainable Development, Enforcing Canada's Pollution Laws; Standing Committee on Fisheries and Oceans, The East Coast Report: Fisheries Management in the Atlantic Provinces (Ottawa: House of Commons, March 1998); and Standing Committee on Fisheries and Oceans, The West Coast Report (Interim) (Ottawa: House of Commons, April 1998).

33. Greenspon, "Grits keep pressure on PM," The Globe and Mail, March 23, 1998.

34. This was hosted by the Canadian Institute for Environmental Law and Policy.

35. The paper might also include discussions of the outcomes of other policy issues which the federal government has sought to deal with through 'harmonized' processes (e.g. Tainted Blood victims).

36. S. Bryant, The Implications of Harmonization for Environmental Assessment in Newfoundland and Labrador (St. John's: Action!Environment, 1997).

37. I. Milewski, J. Harvey and B. Buerkle, After the Gold Rush: Status and Future of Salmon Aquaculture in New Brunswick (Fredericton: Conservation Council of New Brunswick, November 1997).

38. Potential lead organizations for the regional case studies might include: New Brunswick: Conservation Council of New Brunswick; Quebec: Centre Quebecois de la droit de l'environnement; Ontario: Canadian Institute for Environmental Law and Policy (CIELAP) and Canadian Environmental Law Association; and Alberta: Pembina Institute for Appropriate Development.

39. T. Marr-Liang, Downsizing, Deregulation and Regionalization: The Weakening of the Alberta Government's Role in Environmental Protection (Drayton Valley: Pembina Institute for Appropriate Development, March 1997).

40. Bilan Environnemental Du Gouvernement Quebecois (Montreal: Reseau quebecois des groupes ecologistes, February 1997).

41. See: M. Winfield and G. Jenish, Ontario's Environment and the "Common Sense Revolution:" A First Year Report (Toronto: Canadian Institute for Environmental Law and Policy, June 1996); M. Winfield and G. Jenish, Ontario's Environment and the "Common Sense Revolution:" A Second Year Report (Toronto: Canadian Institute for Environmental Law and Policy, July 1997); and M. Winfield and G. Jenish, Ontario's Environment and the "Common Sense Revolution:" A Third Year Report (Toronto: Canadian Institute for Environmental Law and Policy, June 1998).

42. Ibid.

43. See, for example, House of Commons Standing Committee on Environment and Sustainable Development, Keeping a Promise: Towards a Sustainable Budget (Ottawa: House of Commons, December 1995).

44. Report of the Technical Committee on Business Taxation (Ottawa: Department of Finance, 1998), ch.9.

45. These kinds of reports are the closest parallel to the work of the League of Conservation Voters in the U.S. available that is relevant to institutional structure of Canadian governments.

46. B. McAndrew, "Minister on endangered list," The Toronto Star, April 20, 1996; B. McAndrew, "'Green' pact violations tied to Tory cuts: group," The Toronto Star, July 31, 1997; S. Fine, "Canada put on environmental hot seat," The Globe and Mail, July 30, 1997; M. Mittelstaedt, "Environment report savages Queen's Park," The Globe and Mail, June 22, 1998.

47. Office of the Commissioner for Environment and Sustainable Development, Report to the House of Commons, May 1998.

48. See, for example, Report of the Auditor General of Canada to the House of Commons: Chapter 4 Control of the Transboundary Movement of Hazardous Waste (Ottawa: Minister of Public Works and Government Services, 1997).

49.1988 Greenprint for Canada was the previous one.