



CANADIAN INSTITUTE FOR ENVIRONMENTAL LAW & POLICY

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BRIEF TO THE STANDING COMMITTEE ON ENVIRONMENT AND SUSTAINABLE DEVELOPMENT REGARDING THE ESTABLISHMENT OF A FEDERAL ENVIRONMENTAL COMMISSIONER OR AUDITOR-GENERAL

CIELAP Brief 94/4

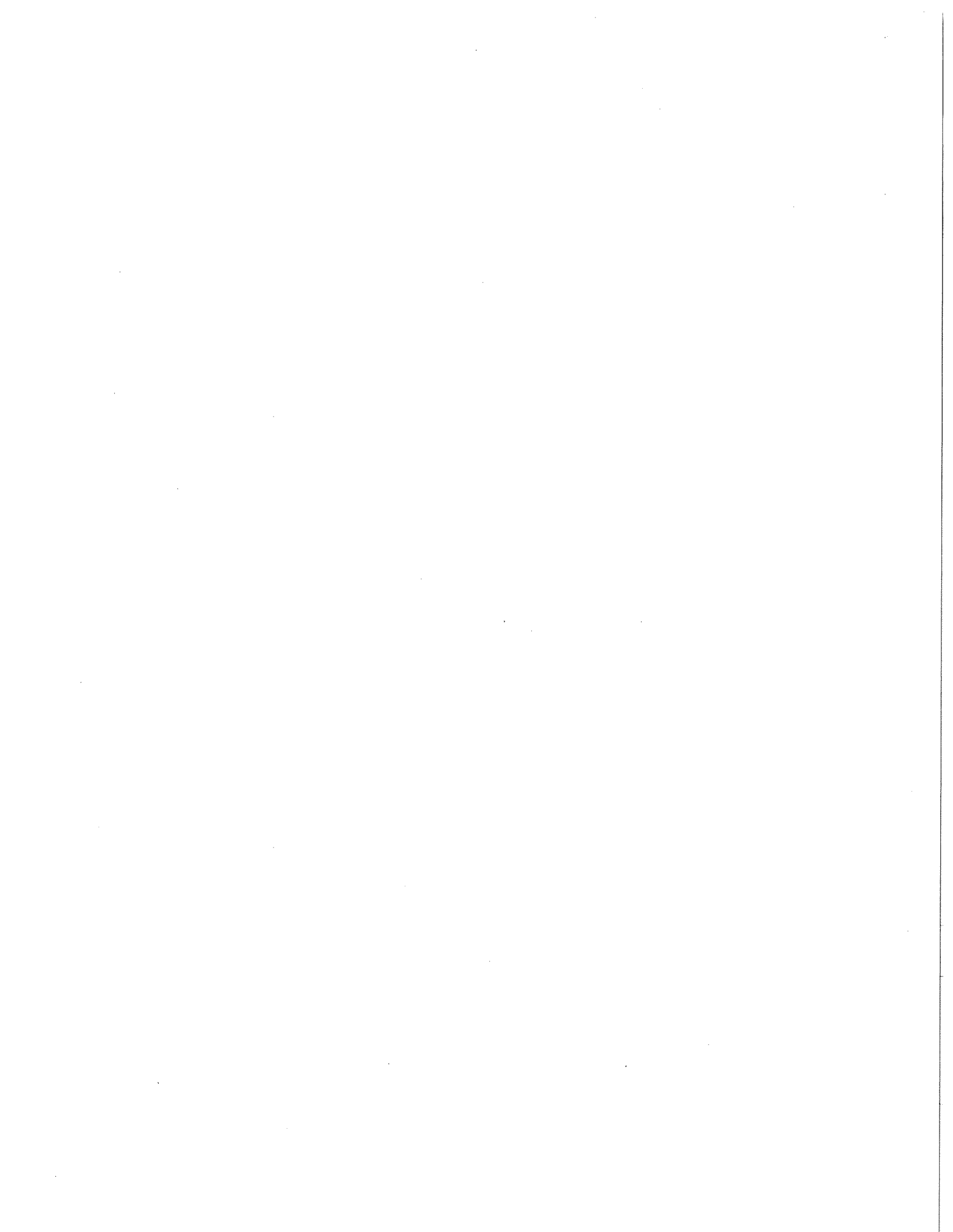
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**BRIEF REGARDING THE ESTABLISHMENT
OF A FEDERAL ENVIRONMENTAL COMMISSIONER OR AUDITOR-GENERAL**

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I. INTRODUCTION

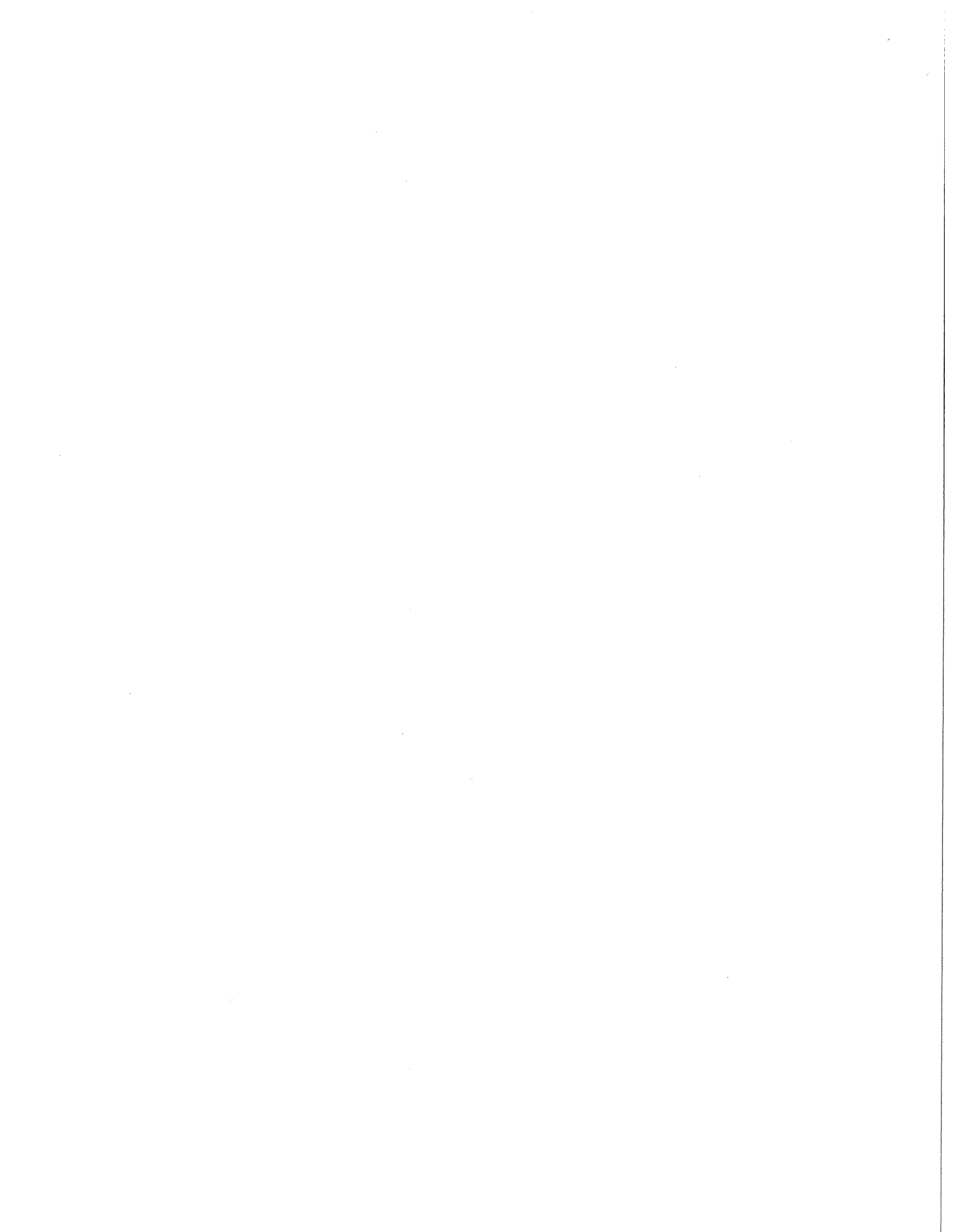
The Canadian Institute for Environmental Law and Policy (CIELAP) was pleased to be invited to submit a brief to the House of Commons Standing Committee on the Environment and Sustainable Development regarding the establishment of the office of a federal Environmental Commissioner or Auditor-General, although the very short time-frame provided limited the depth of analysis which we are able to provide.

CIELAP's predecessor, the Canadian Environmental Law Research Foundation (CELRF) first raised the possibility of the creation of a federal environmental ombudsman in 1984.¹ In the meantime, CIELAP has been heavily involved in the development of the Ontario Environmental Bill of Rights. Over the past three years, it has given particular attention to the mandate of the Office of the Environmental Commissioner established by the Ontario legislation.² Copies of CIELAP's submissions to the Ontario Environmental Bill of Rights Task Force and the Standing Committee on General Government of the Ontario Legislature regarding the Environmental Bill of Rights are enclosed for the information of members of the House of Commons committee.

II. SCOPE AND MANDATE OF THE OFFICE OF ENVIRONMENTAL COMMISSIONER

The Institute is pleased to see that the establishment of the Office of an Environmental Commissioner or Auditor-General has been given high priority by the federal government. CIELAP is of the view that the federal government should establish an Office of the Environmental Commissioner and that the office should be a dynamic institution which seeks to enhance political and bureaucratic accountability for environmental decision-making throughout the government of Canada.

In this context, it is critical that the Office of Environmental Commissioner be an agent of Parliament, and be completely independent of any executive department of government. It is important that the Commissioner not be perceived or operate as an extension of the general government bureaucracy. Such an outcome is widely regarded as being central to the failure of provincial ombudspersons' offices to achieve their stated objectives of improved bureaucratic accountability. In addition, the mandate of the



Commissioner's office should not be narrowly focussed on the auditing of internal government management practices. Such a structure would have little public impact and likely be of limited effectiveness.

Rather, we believe that the Environmental Commissioner should be granted a broad mandate to conduct an ongoing independent external review of the effect of the programs and policies of all federal agencies on the environment and sustainable development. This view is reinforced by the results of the experience within Canada of an agency with such a mandate, namely the Alberta Environment Conservation Authority, which existed between 1970 and 1977.³ The Authority is widely regarded as having been an extremely effective body which enhanced political accountability for environmental decision-making and functioned as "a dynamic institution for public participation in environmental matters."⁴

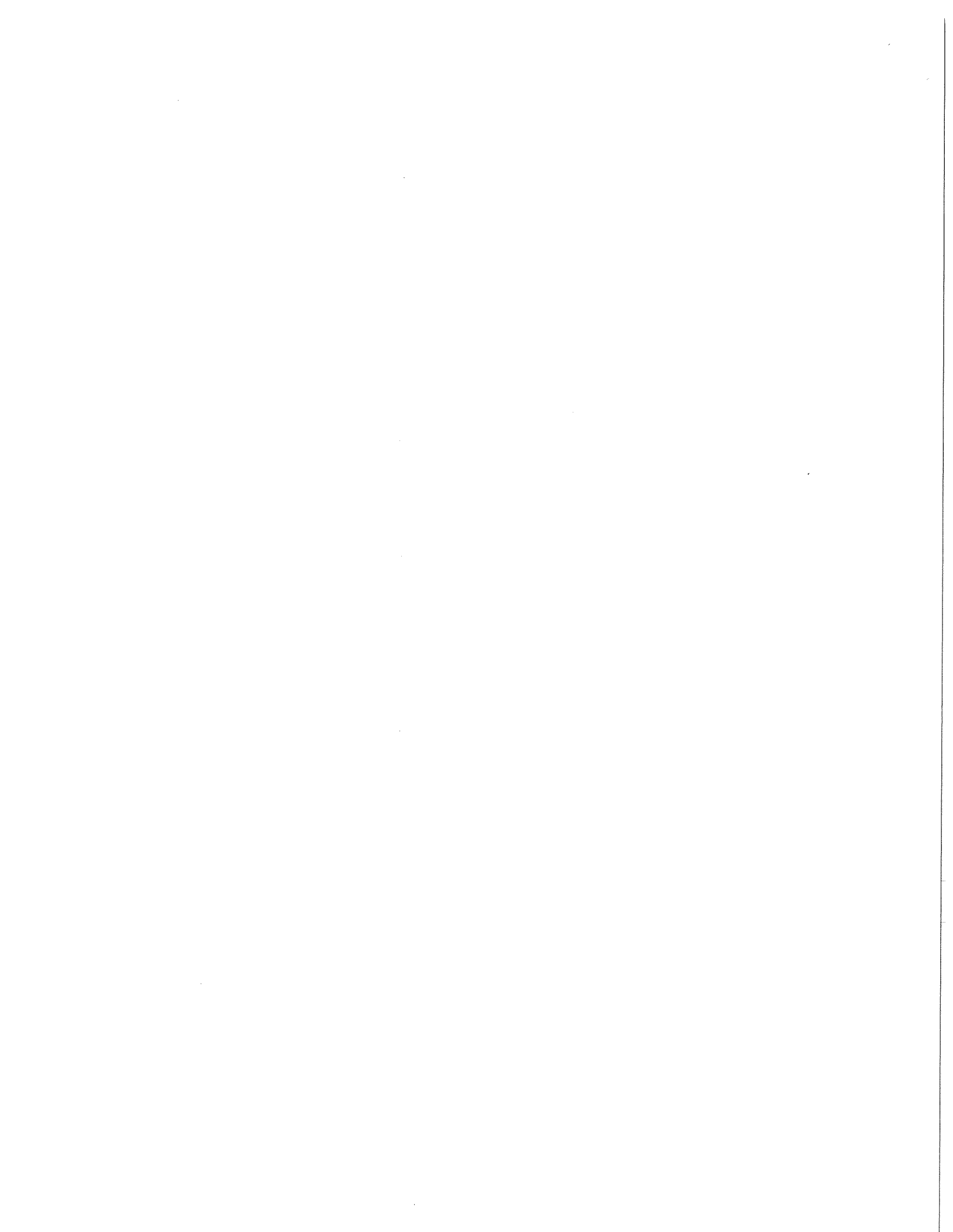
We have enclosed a copy of the Alberta Environment Conservation Act, which established the Authority, and two commentaries on the Authority's activities, as part of this submission for the Committee's information.

Following the model of the Environment Conservation Authority the Canadian Environmental Commissioner's Office should be provided with a mandate to conduct an ongoing review of the policies and programs of the government of Canada and its agencies on matters pertaining to the environment and sustainable development.⁵ This review mandate should encompass all agencies whose activities might affect the environment and sustainable development. This would include not only the Departments of the Environment and of Natural Resources, but also such departments as Agriculture, Industry, International Trade, Heritage, and Finance. The Commissioner's Office should be mandated to provide annual reports and recommendations to Parliament reflecting the results of these reviews.

As a component of this general review function, members of the public should be permitted to request that the Environmental Commissioner review any specific federal policy, program or decision related to the environment and sustainable development, or suggest an inquiry into the need for a new program, policy, regulation or statute. Once a review or inquiry is initiated, the Environmental Commissioner ought to be permitted to invite and receive submissions and briefs from members of the public regarding the subject under review or investigation.

Furthermore, as part of the review or inquiry process, government agencies should be required to provide the Commissioner's Office with any information regarding agency programs, policies, activities or decisions which the Commissioner's Office believes is necessary for it to carry out its studies. The Commissioner's Office ought to be able to include such information in its reports to Parliament.

The Commissioner's Office should be required to provide an annual report to



Parliament regarding the results of its reviews and inquiries. In addition, as is the case with the Ontario Commissioner,⁶ the federal Commissioner should be permitted to make special reports to Parliament at any time that he or she believes that an issue is sufficiently urgent to warrant Parliament's immediate attention.

The federal Environmental Commissioner's Office should be permitted to establish one or more advisory committees consisting of members of the public to assist it identifying areas of federal activity which warrant attention and review by the Office. Such a structure would also reinforce the orientation of the Commissioner's Office as a point of contact between public concerns regarding the environment and the federal government structure, rather than being an inward-looking agency of the government.

III. RESOURCE REQUIREMENTS

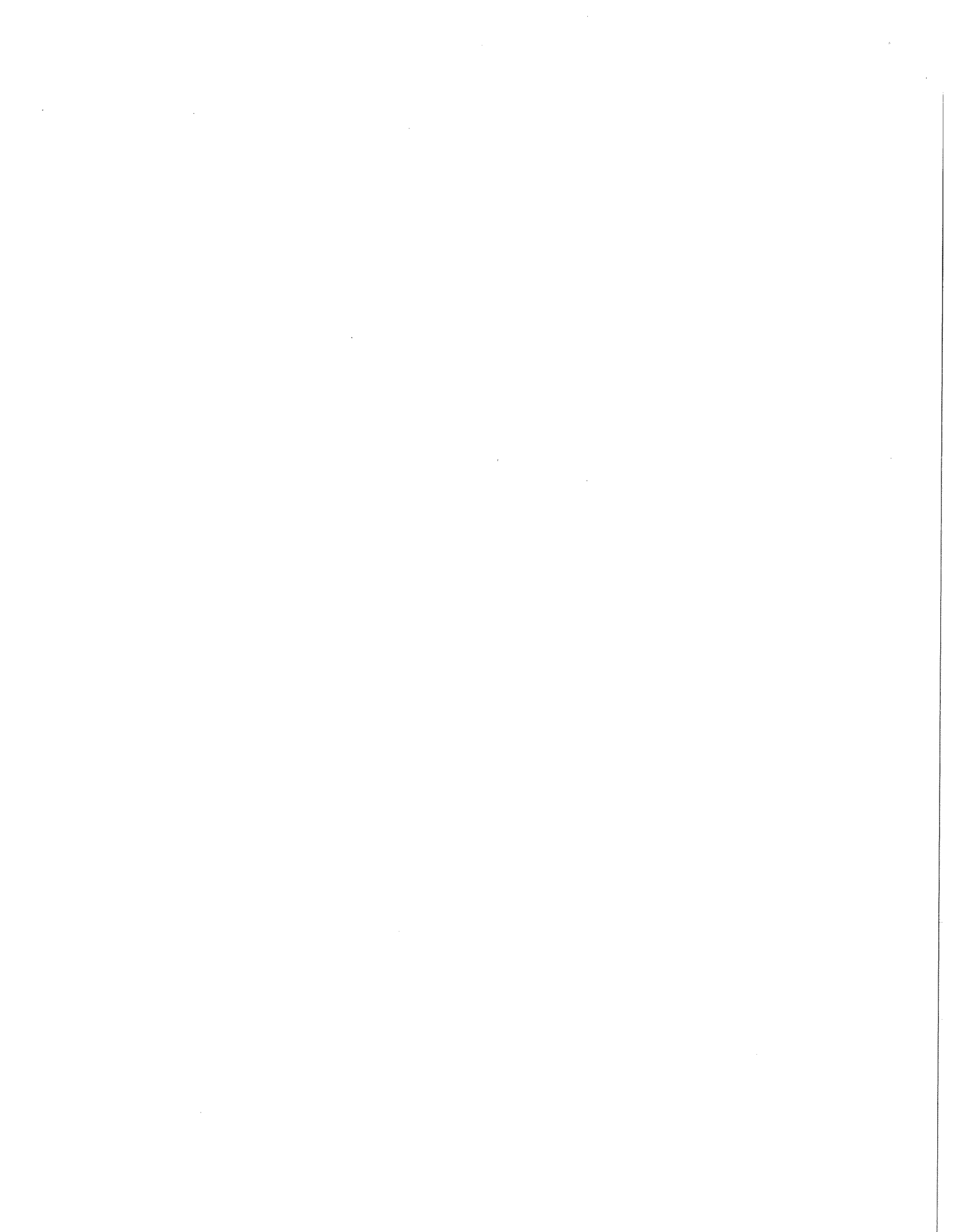
The Office of the Commissioner need not require extensive resources in order to succeed. Indeed, a smaller and more dynamic agency, able to function along the lines of a non-governmental organization, may be preferable to a large bureaucracy. At the same time, the Commissioner's Office will require sufficient professional staff to be able to undertake and present credible reviews of federal programs, policies and decisions, and to respond to suggestions and requests from the public. The Commissioner's Office should also have the mandate and budget to engage, from time to time, persons with relevant expertise to assist it with particular reviews and investigations.

In practice, it would be expected that, following the pattern established by the Office of the Auditor-General, the Commissioner's Office would limit itself to a comprehensive review of the activities of a small number of agencies each year, in addition to responding to requests from members of the public for specific policy, program or decision reviews.

IV. CONCLUSIONS

The establishment of an Office of the Environmental Commissioner for Canada has the potential to enhance the accountability of Canada's environmental decision-makers, and to strengthen federal policies and programs related to the environment and sustainable development. We believe that the Commissioner's Office should be provided with a broad mandate to conduct an ongoing and independent review and evaluation federal policies, programs and decisions as they relate to the environment and sustainable development.

Furthermore, we believe that the Commissioner's Office should be outwardly focussed, and serve as a point of contact between the public and the federal government. It should provide a means by which members of the public can request and



obtain reviews of federal policies, programs and decisions, and be a mechanism for conveying information to the public regarding the effect of federal programs, policies and decisions on the environment and sustainable development. In this way, the Commissioner's Office should complement and support the ongoing activities of the House of Commons Standing Committee on the Environment and Sustainable Development. It is important that the Office not be a narrowly focussed body, oriented towards reviewing internal government management practices.

CIELAP welcomed the opportunity to contribute to the Committee's deliberations regarding the creation of an Office of the federal Environmental Commissioner or Auditor-General and would be pleased to make a presentation to the Committee on this important matter if it is invited to do so.



ENDNOTES

1. D. Macdonald, Preliminary Analysis of Elements of a Federal Environmental Bill of Rights (Toronto: Canadian Environmental Law Research Foundation, 1984), p. 73.
2. An Act Respecting Environmental Rights in Ontario, Ch. 28, S.O. 1993, Part III.
3. See An Act Respecting Environment Conservation Ch. 36, S.A. 1970.
4. C.D. Hunt, "Environmental Protection and the Public in the 1970's," Alternatives, Vol. 8., No. 1., p. 38. For further information on the Environment Conservation Authority see: Environment Conservation Authority Annual Reports: 1970-77; P.S. Elder, "the Participatory Environment in Alberta," Alberta Law Review Vol. 12, 1974; and M.S. Winfield, The Ultimate Horizontal Issue: Environmental Politics and Policy in Ontario and Alberta 1971-1992 (Toronto: Unpublished Ph.D. Thesis, Department of Political Science, University of Toronto, 1992), esp, Chs. 2 and 5.
5. See An Act Respecting Environmental Conservation S.A. 1970 s. 7(1).
6. An Act Respecting Environmental Rights in Ontario, s. 58(4).

