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**THE FUTURE ROLE OF THE FEDERAL GOVERNMENT IN
THE PROTECTION OF CANADA'S ENVIRONMENT**

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The Future Role of the Federal Government in the Protection of Canada's Environment

1. Introduction

Over the past year the long-standing debate over the appropriate role of the federal government in the protection of Canada's environment has been brought to a head by a series of major developments. These include the environmental "harmonization" initiative of the Canadian Council of Ministers of the Environment (CCME),¹ the program review associated with the federal government's February 1995 budget,² and the June 1995 tabling of the report of the House of Commons Standing Committee on Environment and Sustainable Development on the *Canadian Environmental Protection Act*, (CEPA)³ and of the government's December 1995 response to the Standing Committee's recommendations.⁴

These events require that Environment Canada articulate its roles and responsibilities in a clear and focused manner, which reflects the needs and aspirations of Canadians. If it fails to do so, Environment Canada may find that other bodies, including provincial governments, and other federal government departments, are prepared to do so for it. Under these circumstances, there is a substantial risk that Environment Canada's role will be defined as no role at all. Such an outcome would be unlikely to serve the environmental interests of present and future generations of Canadians. A strong environmental voice within the federal government is essential to the achievement of an environmentally sustainable future for Canada.

The Challenges

This existential challenge to Environment Canada occurs at a difficult political juncture for the Department. The profile of the environment as a top-of-mind public issue has declined significantly since the late 1980's and early 1990's. At the same time, the program review process has significantly reduced the resources available to the Department to fulfil its responsibilities. Additional reductions in resources in future years remain a possibility.⁵

Furthermore, there are growing pressures from many provinces for a significant devolution of federal authority and responsibilities. These pressures have been reinforced by the close result of the October 30, 1995 Quebec referendum. A number of provincial Premiers, particularly in western Canada, have identified the environment as one of the fields which they regard as a priority for devolution.⁶

These pressures are reinforced by the absence of the strong opposition voices in Parliament which have supported vigorous federal environmental action in the past.

Currently, both the major opposition parties favour the devolution of federal responsibilities in the environmental field.⁷ The situation is further complicated by the weakness of the community of Ottawa-based national environmental non-governmental organizations (ENGO's) in comparison with the situation a few years ago.

There also is growing frustration among non-Ottawa based ENGO's, organized labour and other communities over Environment Canada's increasing focus on promoting "voluntary" environmental initiatives by industry.⁸ This is perceived by many to be a return to the industry-government bipartite bargaining policy-making style⁹ of the past, if not a surrender to the potentially affected industries of governmental responsibility to provide policy leadership.¹⁰

For their part, a number major industrial sectors have expressed strong support for the devolution of federal environmental responsibilities to the provinces through the CCME harmonization initiative.¹¹ In addition, some industrial associations, such as the Mining Association of Canada, have become increasingly direct in their assertions that the major environmental problems in related to their members' activities have been addressed. These claims have been accompanied by demands for the "reform" of federal and provincial environmental requirements as they apply to their industries. There is a particular desire to replace regulatory requirements with self-regulation and "voluntary" programs.¹²

In addition to these external political factors, Environment Canada's efforts to move significant initiatives forward are increasingly under attack within the federal government itself. This has been particularly apparent during the development of the government's response to the House of Commons Environment Committee's report on the CEPA review.¹³ Furthermore, a number of departments, particularly Industry Canada and Natural Resources Canada, are employing the new sustainable development aspects of their mandates to lay claim to a direct role in the development of federal environmental laws, regulations and policies. Unfortunately, these agencies appear to understand their role in this context almost exclusively in terms of representing the interests of their natural resource-based industry clientele within the federal government.

More broadly, the concept of sustainable development appears to be increasingly understood within the federal government as a euphemism for economic growth "as previously understood." Environmental protection and sustainable development are now frequently presented as competing goals in an apparently zero-sum game in federal government policy documents originating from outside of Environment Canada.¹⁴

Regulations intended to protect the environment are now regularly described in government documents as barriers to economic growth. This is especially true in the areas of mining,¹⁵ biotechnology, aquaculture and forestry.¹⁶ Indeed, some articulations of the government's "jobs and growth" agenda focus almost exclusively on environmental deregulation.¹⁷

Efforts to move environmental protection forward through non-regulatory means, such as the use of economic instruments, or even the removal of subsidies, also have been blocked within the federal government. This has been a result of objections from the mining, fossil fuel and chemical industries.¹⁸ Even the Department's ECOLOGO public information program has been compromised significantly as a result of industry pressures.¹⁹

The Opportunities

Notwithstanding these challenges, Environment Canada has a number of major factors at work in its favour. Most important among these is the continuing need for further action to ensure the environmental well-being of present and future generations of Canadians. Significant progress has been made in a number of areas over the past quarter century. The reductions achieved in levels of phosphorous and certain persistent toxic substances in the Great Lakes, provide some examples of such successes.²⁰

However, many other serious environmental problems continue to exist, and new ones are emerging. Industrial point sources of air pollution, for instance, remain a significant problem throughout Canada,²¹ as does the pollution of surface and ground waters from agricultural activities and urban run-off. In addition, new science with respect to the hormonal and other effects of environmental contaminants suggests that more must be done with respect to toxic substances.²² In a wider context, the implications for Canada of global environmental problems, such as climate change, the loss of biological diversity, and the environmental costs associated with current rates of consumption of new material resources,²³ have barely begun to be addressed meaningfully.

Public opinion with respect to the environment appears to reflect the need for additional action by governments. Although the status of the environment has declined as a top-of-mind issue, there continues to be evidence that members of the public place a very strong emphasis on the role of government in the protection of public goods, such as the environment, health and safety of their citizens. Specifically regarding the environment, a public opinion survey published by the Environics Research Group and Synergistics Consulting in September 1995, for example, found that seventy-eight per cent of the respondents said that environmental regulations should be strictly enforced even in times of recession. In comparison, only twenty per cent suggested that enforcement should be made more "flexible" under such circumstances.²⁴

Similarly, in a June 1995 survey by Ekos Research, members of a general population sample placed a "clean environment" second only to "freedom" in a hierarchy of values for the federal government.²⁵ More generally, when the potential roles of government as a protector of public goods and as a promoter of private sector economic interests are juxtaposed directly in public opinion surveys, there tends to be overwhelming support for the public good protection function.²⁶

In addition, in both public opinion research and through more formal consultations on the appropriate environmental role of the federal government, Canadians have consistently expressed very strong support for substantial, or even expanded, federal environmental responsibilities. In an April 1994 survey, for example, sixty-nine per cent indicated a belief that most attention and resources need to be focused at the international and national levels in order to make significant progress towards protecting the environment. By contrast only seven per cent responded that the primary focus should be the provincial level.²⁷

Similar sentiments regarding the need for a strong federal environmental role were reflected in the hearings conducted by the House of Commons Standing Committee on the Environment on the environment and the constitution in early 1992.²⁸ The constitutional consultations leading to the Charlottetown Accord,²⁹ and the 1994-95 hearings by the House of Commons Standing Committee on Environment and Sustainable Development regarding the review of CEPA³⁰ produced similar results.

Furthermore, while the pressures from the parliamentary opposition parties for federal action on environmental matters is significantly weaker than has been the case in the past, there continue to be voices within parliament concerned about the environment. Sustainable development was a central element in the government's 1993 election platform,³¹ and there continues to be significant interest in environmental matters within the government caucus itself. New Democratic Party members also raise environmental issues in the House of Commons whenever possible.

The community of Ottawa-based national ENGO's is smaller than in the late 1980's and early 1990's. However, over the past year ENGO's based outside of Ottawa, working through the Canadian Environment Network (CEN) have demonstrated a capacity to mobilize a nation-wide constituency of organizations, and to reach out beyond the traditional ENGO community to labour, aboriginal, consumers, public health and professional organizations. This has been particularly evident with respect to Bill C-62 (*The Regulatory Efficiency Act*), the CEPA review and the CCME harmonization initiative itself.

As for the jurisdictional capacity of the federal parliament regarding the environment, while the provisions of the constitution establish the provincial legislatures as the primary owners of natural resources within Canada, with much of the responsibility for their protection and management, this jurisdiction is not exclusive.³² Several sources of federal authority over natural resources management and environmental protection can be found in the *Constitution Act* as well.

Among the most important of these are parliament's authority to legislate for the peace, order and good government of Canada (POGG). Parliament's power to make legislation with respect to criminal law, sea coasts and inland fisheries, shipping, interprovincial transportation, navigable waterways, and trade and commerce are also

significant sources of jurisdictional capacity. The federal government's extensive taxation and spending powers provide even further means for it to address environmental issues.³³ In fact, over the past quarter century a consensus has emerged among many scholars that the federal government has a firm constitutional basis for action in the environmental field, and that a strong federal role in environmental protection is necessary.³⁴

Furthermore, what major legislative and policy initiatives have been undertaken by the federal government have had a much wider impact on the behaviour of provincial governments than has been generally recognized. Federal initiatives or, perhaps even more importantly, the potential for unilateral federal action, has prompted provinces into action on a number of occasions over the twenty-five years of Environment Canada's existence.

The passage of the *Environmental Contaminants Act* in 1975, for example, led to specific legislative, regulatory and policy initiatives in Alberta, Ontario, and Quebec.³⁵ In the early-1980's the threat of unilateral federal measures to curb sources of acid rain was instrumental in achieving the 1984 federal-provincial agreement to reduce acid-causing gas emissions by fifty per cent by 1994.³⁶ More recently, in the aftermath of the passage of CEPA, the *Oldman Dam* and *Rafferty-Alameda* Federal Environmental Assessment Review Process (EARP) litigation, and the passage of the *Canadian Environmental Assessment Act* (CEAA), major new environmental protection and environmental assessment legislation has been enacted in every province and territory except Ontario.

The goal of pre-empting future federal interventions appears to have been a major motivating factor in the development of this legislation in a number of provinces.³⁷ Similarly, the development of new provincial regulations governing discharges from pulp and paper mills, and the use, storage, phase-out and disposal of PCB's and ozone depleting substances, coincided closely with the appearance of new federal regulations under CEPA and the *Fisheries Act*.³⁸

It seems unlikely that such prompt and widespread provincial action would have occurred in the absence of the federal initiatives. The very fact that the federal government has the power to act, even if rarely used, is a powerful mechanism to influence provincial behaviour. This is a reflection of well-understood dynamics of policy development and implementation within federal systems of government.³⁹

Finally, despite the impact of the program review process, substantial human and financial resources remain available to Environment Canada. These include a complement of 4300 person-year equivalents and an annual budget of over \$500 million. The critical question before the Department is to establish an appropriate focus for the use of these resources. This must move Canada towards environmental sustainability, and maintain the relevance of the Department's work to Canadians.

2. Environment Canada's Current Response to Program Review

Environment Canada's 1995/96-1997/98 Business Plan outlines how the Department intends to respond to the implications of the program review process. The document makes it clear that the CCME harmonization process is to play a central role in the dealing with the changes required by the program review. The federal functions outlined in the draft CCME agreement appear to reflect the Department's long-term vision of its role.

This model places an increased emphasis on the role of Environment Canada in providing the context for the establishment of national environmental policies, and in facilitating the development of such policies. The Department's functions directly related to the protection of the environment through the development and enforcement of federal environmental protection requirements, and the delivery of services to the public, are to be de-emphasized, or even abandoned.

This direction has prompted expressions of concern from a number of quarters. Some members of the environmental and academic communities have privately described it as a "recipe for institutional suicide." The continued value of Environment Canada's existence, if it pursues such a course, has been questioned publicly in the media as well.⁴⁰ These criticisms are based on a number of considerations.

One of the most serious is that if the Department's activities become more focused on abstract policy issues, and removed from the delivery of environmental protection and other services to the public, it will become increasingly irrelevant to its natural constituency of ENGO's and, more seriously, to the public at large. In effect, the Department would be surrendering the roles which provide it with an external constituency of public support. If the Department can no longer deliver what its public constituencies believe should be its core business, then they will be unlikely to invest their limited time and energy into supporting its activities or initiatives, or for that matter, its continued existence.

In addition, it will become more difficult than ever for the Department to move major initiatives forward within the federal government as the Department's actual operational and program delivery functions become more limited. In a sense, Environment Canada would share many features with the Ministries of State for Science and Technology and for Urban Affairs, which were created at the same time as the Department in the early 1970's. Like the Ministries of State, the restructured Environment Canada, with its focus on background research, but limited regulatory and service delivery functions, appears to be intended to operate in the future largely on the principle that "knowledge is power."

This approach entails a belief that research, consultation, analysis and policy formulation can be successfully carried out by an agency lacking the relevant program

capacity.⁴¹ Rather, such agencies are to coordinate the actions of other departments and agencies in their policy area and provide advice to these bodies and to the cabinet collectively. Fundamentally, their power is to come from their comprehensive knowledge of their policy field and consequent desire of other agencies to seek their counsel.

However, in the absence of any major executive responsibilities related to their mandates, it was difficult for the Ministers of State to gain very much influence or status in cabinet. When these agencies were established it was expected that rational planning within the context of stated objectives would replace power brokerage and horse-trading in cabinet decision-making.⁴² The new Environment Canada, like the Ministries of State, in and of itself would provide the Minister of the Environment with little power, in the conventional sense and, consequently, largely unable to influence policy and planning.⁴³

In their study of the Ministry of State for Science and Technology, Knowledge, Power and Public Policy, Peter Aucoin and Richard French noted that:⁴⁴

"in the Federal government as it operates traditional (sources of) power - program and/or control responsibilities - is required to get access to information, and especially intelligence, upon which policy and planning must be based. Thus Ministries of State have apparently rarely been able to supply their minister with the kind of policy (knowledge) which has proven acceptable to Cabinet (power). Ministries of State are thus outside of a closed circle of program or control responsibility (power), intelligence and information, which they might be forgiven for regarding as vicious."

The same conclusions could be applied to the likely future situation of Environment Canada within the federal government as well if it follows the path indicated through its current business plan and the CCME harmonization initiative.

Environment Canada's position in terms of its ability to influence the behaviour of the provinces and private sector economic interests would hardly be any better. With such diminished capacity of its own to implement policies either through financial incentives or regulatory or other coercive actions of its own, there would be little incentive for provincial governments to follow any course set by the federal government.

Similarly, without a credible capacity to employ coercive measures, it would be difficult for Environment Canada to bring about change within industry, even through the promotion of voluntary action. There is a strong consensus among scholars who have studied the phenomena of environmental "voluntarism" by industry that the actions taken by industry to date have been driven by a desire to pre-empt regulatory action by governments.⁴⁵ If the threat of regulation or other coercive action is effectively removed, so too will be the motivation for "voluntary" measures by industry.

3. Potential Environmental Roles and Responsibilities for the Government of Canada

In response to this situation, the federal government in general, and Environment Canada in particular, needs to identify and focus on the delivery of leadership, services, programs and research in areas essential to moving Canada towards environmental sustainability. There are six essential functions which meet these criteria that the federal government must fulfil in order to ensure the well-being of present and future generations of Canadians. They are as follows.

The Provision of Leadership on International Environmental Issues

The federal government must play a leadership role in environmental issues that are international in scope such as climate change, ozone depletion, biodiversity protection, international air and water pollution, the international movement of wastes, and the management of international (migratory) wildlife populations. It must also retain responsibility for ensuring that Canada's international environmental obligations are fulfilled.

The federal government is the only government in Canada with the authority to speak for Canada on the international stage. It is also the federal government which is ultimately responsible to Canada's international partners for the fulfilment of Canada's international obligations. In recognition of these factors, the courts have, in recent years, indicated their willingness to review of the scope of the federal government's capacity to implement Canada's international obligations through unilateral action.⁴⁶

In this context, the proposals to surrender federal authority to both develop Canada's positions on international environmental issues and to implement Canada's international commitments, contained in the proposed International Affairs schedule of the EMFA, must give rise to serious concerns. While it is appropriate for the federal government to consult with the provinces in the development of Canada's international positions, and the implementation of Canada's international commitments, ultimate authority to act in this area must be retained by the Government of Canada.

The Provision of Leadership on National Environmental Issues

The federal government, as the only government with a mandate to speak for all Canadians, must also provide leadership on environmental issues which are national in scope. This includes the provision of policy direction and domestic action on issues of a global nature, such as global warming, ozone depletion and biodiversity conservation.

This function also entails the provision of policy and action on issues which are of

an interprovincial character, such as the interprovincial movement of wastes or wildlife populations, interprovincial air and water pollution, and subjects which have impacts beyond a single province. The latter category would include the regulation of toxic environmental contaminants through CEPA.

In this context, the surrender of federal responsibility for the provision of leadership on national environmental issues to the CCME proposed in the draft EMFA raises extremely serious concerns. In effect, EMFA and the schedules on Guidelines and Standards, and Legislation and Policy propose to transform CCME and its structures into of a new "national" level of government to assume these responsibilities. This gives rise to major issues of legitimacy, accountability, and functionality of such an arrangement. The federal government would be reduced from status of being the national government which speaks for all Canadians, to one jurisdiction among thirteen.

The federal government's capacity to act on environmental issues of national concern also could be significantly constrained by the CCME proposals. A number of commentators have argued that the CCME EMFA seems designed to lock the federal government into an arrangement where it cannot take substantive action without the consent of the provinces.⁴⁷ Such an outcome must be avoided if the federal government is to continue to play a significant role in the protection of Canada's environment.

As is the case with international affairs, it is entirely appropriate and necessary for the federal government to *consult* with the provinces before acting on environmental issues of national concern. However, the Government of Canada must retain the ultimate authority to act in this area where it is necessary to do so to promote the well-being of present and future generations of Canadians.

The Provision of Environmental Protection in Areas of Federal Jurisdiction

This function includes ensuring environmental protection in relation to federal works, undertakings and lands, and in the operations and activities of federal departments, boards, agencies and Crown Corporations. The federal government's weak performance in this area has been the subject of considerable criticism over the past few years.⁴⁸

Environmental protection responsibilities arising from the enumerated federal heads of power in the *Constitution Act*, such as navigation and shipping, interprovincial works and Undertakings, and sea coasts and inland fisheries, are also encompassed within this function. The provisions of the *Fisheries Act* with respect to the protection of inland fish habitat have been especially important in establishing a national baseline standard for the protection of ecologically significant lakes, rivers, streams and wetlands.⁴⁹

In addition, the federal government is legally and morally obligated to fulfil its fiduciary responsibilities in conjunction with First Nations to ensure environmental protection on Indian lands. Again, major gaps in these areas have been identified over the past few years.⁵⁰

The Provision of Environmental Protection in Areas of National Concern and Provincial Incapacity

There are some environmental protection functions which are national in scope and which the provinces acting individually, or even collectively, are not capable of fulfilling. The legitimacy of federal legislative action in such cases of national concern and "provincial incapacity," through Parliament's power to legislate for the peace, order and good government of Canada was judicially recognized by the Supreme Court of Canada in its *R. v. Crown Zellerbach* decision.

The most obvious examples of subjects which fall into this category are the pre-import or manufacturing environmental and human health assessment of new products such as pesticides, chemicals and products of biotechnology. It simply would make no sense for each province to have an assessment process of its own for such products. In practice, most are unlikely to have necessary expertise or resources to provide such a program. Furthermore, a failure to assess a product in one province could undermine the goal of a program intended to ensure assessments before new products are manufactured or imported into Canada.

This implies a need on the part of the federal government to retain the responsibility and capacity to assess products from environmental and human health perspectives. In addition, the federal government must retain the capacity to implement nation wide preventative measures. The ability to undertake investigation and enforcement actions to ensure that pre-manufacturing or import notice is provided by proponents, and to secure the implementation of preventative requirements must be retained as well.

Other examples of issues which may require federal action to ensure effective environmental protection include the management of toxic environmental contaminants under CEPA. Measures by the federal government may also be required to address interprovincial air and water pollution, the interprovincial movement of wastes, and the management of interprovincial wildlife populations.

The Provision of Leadership in Environmental Science

The federal government has traditionally provided much of the scientific basis for Canadians' understanding of the state of their environment, and for the development of federal and provincial environmental standards. Provincial resources and expertise is

these areas are limited, particularly among the smaller provinces.

As a result of the program review process, the resources available within the federal government for environmental research have been significantly reduced, especially in the area of the atmospheric environment. There are also serious concerns over the decline of freshwater research as Department of Fisheries and Oceans withdraws from the freshwater fisheries field.

In context of reduced resources, there is a particular need to find ways to make university and independent environmental science and policy research more relevant to national and regional environmental needs. More effective ways of integrating this research into the Department's work need to be found as well.

The Provision of a Minimum Level of Environmental Protection for All Canadians

The sixth essential environmental role of the federal government is to ensure a minimum level of environmental protection to all Canadians. This is a function which can only be provided by the federal government, and is one traditionally associated with the national level of government in federal systems. In effect, the federal government must act as a guarantor of a minimum level of services to all of its citizens.

In the context of environmental policy, this function has two dimensions. The first is to provide assistance to those provincial governments which lack the resources to ensure a minimum level of protection of their residents' environment. Such assistance may occur through provision of financial aid for capacity building, or the delivery of programs by federal personnel to supplement provincial efforts.

The second way in which the federal government can act as a guarantor of a minimum level of environmental quality to all Canadians is through the existence and active enforcement of federal environmental standards. Federal requirements, such as those for substances found to be "toxic" for the purposes of CEPA, the pollution prevention and habitat protection requirements of the *Fisheries Act* and environmental assessment requirements of the *Canadian Environmental Assessment Act*, ensure that there is a national floor below which no jurisdiction is permitted to sink.

Such standards are critical to ensuring that "pollution havens" do not develop among the provinces. "Pollution havens," which are intended to attract investment, can prompt a "race to the bottom," among competing jurisdictions. At the same time, federal requirements must be applied in a manner which permits the provinces to raise their environmental standards beyond the minimum established through federal legislation, regulations and policies. The effective and efficient interface of federal and provincial requirements could be enhanced through the integration of federal requirements into provincial permits and approvals where appropriate. Monitoring and report requirements

might also be consolidated where this can be achieved without diminishing accountability, enforceability or the quality of the data gathered.

Neither of these roles can be fulfilled by the federal government on the "one size fits all" basis envisioned in draft EMFA. Environmental conditions, available resources and political willingness to act to protect the environment vary widely from province to province. Consequently, so to will the role which Environment Canada will be asked, and needed, to play in each province. Many of these needs may be better met through bilateral or regional federal-provincial, federal-territorial and federal-First Nations agreements than through a sweeping harmonization agreement. This approach has the additional advantage to the federal government of avoiding the twelve against one dynamic inherent in the CCME model.

If federal government no longer believes that it has the resources to actively enforce its own domestic environmental requirements, then it should consider alternatives to the simple delegation of this responsibility to the provinces. This is especially true in light of the track records of most of the provinces with the enforcement of the pollution prevention⁵¹ and habitat protection requirements⁵² of the *Fisheries Act*. There is also growing concern regarding the performance of a number of provinces under Administrative Agreements entered into through CEPA, particularly with respect to the CEPA pulp and paper effluent regulations.⁵³

Among the most obvious options would be to provide citizens with the right to pursue civil actions in response to imminent or actual violations of federal environmental law.⁵⁴ In addition, serious consideration must be given to the fettering of the discretion of provincial Attorneys-General to stay private prosecutions initiated by citizens under CEPA and the *Fisheries Act*.⁵⁵ Public access to monitoring data would be essential to such approaches as well.

5. Conclusions

Many of the issues underlying the environmental harmonization exercise are common to the debates in other policy fields over the appropriate role of the federal government in Canada in the current political, fiscal and constitutional context. If the federal government fails to articulate an appropriate vision of its place in Canadian society, it invites a serious crisis of legitimacy which may well threaten the viability of Canada in the next few years.

It is clear that the Canadian public continues to place a major emphasis on the role of governments in the protection of public goods, such as the environment, and the health and safety of their citizens. The role of the federal government in this context must be to act as the guarantor of a minimum standard of environmental quality to all Canadians, as a benefit of their citizenship of Canada. Canadians have consistently

expressed their desire to the federal government to play such a role. It is now contingent upon the Government of Canada to respond to this expression of confidence and trust.

The federal government can fulfil this role through a number of means. It must be able to provide assistance to those provincial governments which lack the resources to ensure a minimum level of protection of their residents' environment. In addition, through the existence and active enforcement of federal environmental standards it can ensure that "pollution havens" do not develop among the provinces.

The federal government must also retain responsibility and capacity for providing leadership and action on international and national environmental issues. These responsibilities should not be transferred to CCME, which lacks the legitimacy, accountability mechanisms and functional structures necessary to carry them out effectively.

It is wholly appropriate and necessary for the federal government to *consult* with the provinces before acting on environmental issues of national and international concern. However, the Government of Canada must retain the ultimate authority to act in these areas where it is necessary to do so to promote the well-being of present and future generations of Canadians and other members of the global society of which Canada is a part.

ENDNOTES

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4. Government of Canada, CEPA Review: Government Response: Environmental Protection Legislation Designed for the Future - A Renewed CEPA - A Proposal (Ottawa: Minister of Supply and Services, December 1995).
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7. See, for example, the Bloc Québécois dissent in Its About Our Health. See also, the exchanges between Preston Manning, M.P., Leader of the Reform Party of Canada and the Hon. Sheila Copps, Deputy Prime Minister and Minister of the Environment, regarding the CCME Harmonization initiative, House of Commons Debates, October 1995.
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18. See letter from Jim MacNeill to Dr. André Plourde, Chair, Task Force on Economic Instruments and Incentives to Sound Environmental Practices, November 17, 1994, stating the reasons for Mr. MacNeill's resignation from the Task Force.

19. See David S. Cohen, "Subtle Effects: Requiring Economic Assessments in the Environmental Choice Programme," Alternatives, Vol. 20, No. 4., October/September 1994.

20. See, for example, Environment Canada and the United States Environmental Protection Agency, The State of the Great Lakes 1995 (Ottawa and Washington, D.C.: Environment Canada and EPA, 1995).

21. This was reflected in the First Report of the National Pollutant Release Inventory, released in June 1995. It is also reflected in the Canadian Chemical Producers 1994 Emissions Inventory - Reducing Emissions (Ottawa: CCPA, 1995), Table 1.1.

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32. J. Swaigen and M. Winfield, "Water," in D. Estrin and J. Swaigen, eds., Environment on Trial: A Guide to Ontario Environmental Law and Policy (Toronto: Emond-Montgomery and the Canadian Institute for Environmental Law and Policy, 1993), p.520.

33. For a detailed discussion of the scope of these powers see K. Clark and B. Rutherford, "The Constitution, Federal-Provincial Relations, Harmonization and CEPA," in M. Winfield, ed., Reforming CEPA: A Submission to the House of Commons Standing Committee on Environment and Sustainable Development (Toronto: Canadian Institute for Environmental Law and Policy, September 1994), Appendix I, pp.5-8. See also J. Swaigen, "The Framework for Protecting Ontario's Environment," in Estrin and Swaigen, eds., Environment on Trial (3rd. ed. (1993)).

34. See for example; D.P Emond, "The Case for a Greater Federal Role in the Environmental Protection Field" (1972) 10 Osgoode Hall Law Journal 647; D. Gibson, "Constitutional Jurisdiction over Environmental Management in Canada" (1973) 23 U.T.L.J. 54; Mains, "Some Environmental Aspects of a Canadian Constitution", (1980) 9 Alternatives 14; D. Gibson, "Environmental Protection and Enhancement under a New Canadian Constitution," in Beck and Bernier, eds., Canada and the New Constitution (Montreal: The Institute for Research on Public Policy, 1983); D. Tingley, ed., Environmental Protection and the Canadian Constitution (Edmonton: Environmental Law Centre, 1987) including A.R. Lucas, "Natural Resources and Environmental Management: A Jurisdictional Primer," p. 31; A.R. Lucas, "Case Comment on R. v. Crown Zellerbach Canada

Ltd." (1989) 23 U.B.C.L.Rev. 355; Rodney Northey, "Federalism and Comprehensive Environmental reform: Seeing beyond the Murky Medium," Osgoode Hall Law Journal (1989), Vol.29, No.1, p.127; R. Lindgren, "Toxic Substances in Canada: The Regulatory Role of the Federal Government," in Into the Future: Environmental Law and Policy for the 1990s (Edmonton: Environmental Law centre, 1989); P. Muldoon and B. Rutherford, Environment and the Constitution: Submission to the House of Commons Standing Committee on Environment 1991 (Toronto: The Canadian Environmental Law Association, Brief No.200); and P. Muldoon and B. Rutherford, "Designing an Environmentally Responsible Constitution," 18 Alternatives No.4, May/June 1992; and B. Rutherford, "The Constitutional Division of the Environment: A Comment on the Oldman River Decision," National Journal of Constitutional Law, Vol.2, No.2, July 1992.

35.M.S. Winfield, "The Ultimate Horizontal Issue: Environmental Politics and Policy in Alberta and Ontario, 1970-1993," Canadian Journal of Political Science XXVII:1, March 1994, pp.148-149.

36. See D.C. Macdonald, The Politics of Pollution: Why Canadians are Failing their Environment (Toronto: McClelland and Stewart Inc., 1991), p.251.

37. See, Winfield, "The Ultimate Horizontal Issue," p.144, for a discussion of this dynamic in Alberta in relation to the 1993 Environmental Protection and Enhancement Act.

38. On the impact of the CEPA pulp and paper regulations see K.Harrison, "The Regulators Dilemma: Regulation of Pulp Mill Effluent in a Federal State" (Vancouver: Department of Political Science, University of British Columbia, June 1993).

39. K.McRoberts, "Federal Structures and the Policy Process," in Atkinson, ed., Governing Canada, pp. 148-178.

40. See, for example, D. Israelson, "Scrap Environment Canada fed-up pollution activists say," The Toronto Star, April 25, 1995.

41. P. Aucoin and R. French, Knowledge, Power and Public Policy, (Ottawa: Science Council of Canada, 1974), p. 76.

42. Ibid.

43. Ibid.

44. Ibid., pp. 76-77.

45. On the role of coercion in "voluntary" actions by industry see, for example, M.Mathieu Glachant, "Voluntary Agreements in Environmental Policy," (Paris: Environment Secretariat,

Organization for Economic Cooperation and Development, February 1994) and the results of the KMPG Environmental Consultants 1994 Environmental Management Survey. This indicated that regulatory requirements and concerns over environmental liability were the primary motivators for the establishment of environmental management systems within Canadian firms (95% and 69% respectively). Government voluntary programs were only cited by 16% of respondents as a motivating factor.

46. See, for example, L.C. Duncan and D. Vanderswagg, "Canada and Environmental Protection: Confident Political Faces, Uncertain Legal Hands," in R. Boardman, ed., Canadian Environmental Policy: Ecosystems, Politics and Process (Toronto: Oxford University Press, 1992).

47. K. Harrison, "Prospects for Intergovernmental Harmonization in Environmental Policy," in D. Browne, J. Hiebert, eds., Canada: the State of the Federation, 1994 (Kingston: Institute for Intergovernmental Relations 1994).

48. See, for example: Resource Futures International, Evaluation of the Canadian Environmental Protection Act (CEPA: Final Report (Ottawa: Environment Canada, 1994), pp. 107-113; and Standing Committee on Environment and Sustainable Development, Its About Our Health!, Ch. 11.

49. F.S. Gertler and Y. Corriveau ENGO Concerns and Policy Options Regarding the Administration and Delegation of Subsection 35(2) of the Fisheries Act and Consequences for Federal Environmental Assessment (Montreal: Quebec Environmental Law Centre, 1996).

50. See, Environment Canada, Environmental Protection on Indian Lands (Ottawa: Minister of Supply and Services, 1994).

51. See, for example, Kenneth M. Dye, Report of the Auditor-General of Canada to the House of Commons (Ottawa: Minister of Supply and Services, 1990).

52. See Gertler and Corriveau Options for the Enforcement and Delegation of Subsection 35(2) of the Fisheries Act.

53. Regarding the Canada-Alberta Agreement the results of the 1994 *R.v. Proctor and Gamble Inc* prosecution must give rise to serious concern. See Environmental Law Centre News Brief, Vol. 9, No. 2, 1994. Regarding the Canada-British Columbia Agreement see S. Ochman, "Harmonization: The Federal/Provincial Agreement on Effluent Controls (Whaletown, B.C: Reach for Unbleached, January 1996).

54. The government's December 1995 response to the House of Commons Standing Committee on Environment and Sustainable Development June 1995 CEPA review report contains a proposal for a "citizen suit"

provision in CEPA. However the proposed right of action is subject to so many limitations and conditions that it is effectively useless. CEPA Review: Government Response, pg.26.

55. See Gertler and Corriveau Options for the Enforcement and Delegation of Subsection 35(2) of the Fisheries Act.