

new remedy is provided and therefore the issue of standing before the courts still remains. Breach of a statute may be evidence of negligence.

Penal Proceedings. On the penal side, it may be observed that the activities prohibited by the Clean Air Act, and indeed any other federal environmental legislation, can be prosecuted as offences by the Federal government or by a provincial government. The Criminal Code itself makes a public nuisance (which it terms "common nuisance") an offence. In addition, the procedure of the Code may be used for the prosecution of offences under any other federal Act, and under that procedure any person may lay an information before a magistrate and commence a prosecution of the offender. The informant need not be personally affected, nor need he have property that is adversely affected by the offender's activity. Other than passing the threshold test, i.e. belief upon reasonable grounds that an offence has been committed, he need not have any qualification in order to lay the information.

The Attorney General may however step in at any stage of the prosecution and stay or quash it. There have been a few but significant private prosecutions under the Fisheries Act.

The Criminal Code does not define the expression "any person". As a non-resident has never laid an information, it is difficult to say whether that person would be included in the expression.

ii. Administrative Process

The public's access to Canadian (federal and provincial) administrative process is often a matter of administrative discretion. The question of whether a right to participate in a hearing exists depends on interpretation of the particular statute involved and to a certain extent on the nature of the hearing. The law in this area applicable in the absence of clear statutory provisions is complex. While the question of a right to participate may pose some difficult legal questions, in practice there do not appear to be any obstacles to residents of the United States appearing to make their views known in administrative proceedings.

C. United States

1. Constitutional Aspects

In the United States, as in Canada, legislative powers are held by both the federal and several state