

3.30 *Environmental Rights*. Witnesses before this Committee welcomed the Government's proposal to create a "Canada clause" in the body of the Constitution that would include

*... a commitment to the objective of sustainable development in recognition of the importance of the land, the air and the water and our responsibility to preserve and protect the environment for future generations.*<sup>40</sup>

However, some witnesses cautioned that the provisions in the Canada clause would be of symbolic value only, and that there is therefore a need for some legal backing for the principles.<sup>41</sup> In order to give legal force to the environmental commitment, several witnesses recommended that environmental rights be enshrined in the Canadian Charter on Rights and Freedoms. Some of our witnesses have recommended wording of such a right.<sup>42</sup> Inclusion of environmental rights was urged on several grounds:

*First, environmental rights would be a clear step toward mandating the requirement of the full integration of environmental quality into decision-making of government in the private sector. It would also have educational value whereby private and public sector actors would more likely take all environmental norms and issues more seriously.*

*Third, environmental rights would recognize the inherent value of the environment and natural resources for their own sake. . .*

*Fourthly, environmental rights empower people to protect the environment that sustains them.*<sup>43</sup>

The same witness noted that about 20 countries now have express or implied rights to a healthful environment in their national constitutions, and that environmental rights are gaining international recognition.<sup>44</sup> Some provincial and territorial jurisdictions in Canada have enacted or are considering environmental rights legislation (Yukon Territory, Northwest Territories, Ontario).

3.31 The Committee was impressed by the recommendation from Mr. Futrell (Environment Law Institute) that, where possible, constitutions in common law countries should be silent on specific issues such as the environment, in order to keep legislative options open and reduce the area for judicial interpretation.<sup>45</sup> However, witnesses from the Canadian Bar Association (CBA) advised us that there would be no real risk of lack of governmental accountability or flexibility if environmental rights were given constitutional protection. The

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<sup>40</sup> *Shaping Canada's Future Together*, pp. 9-10.

<sup>41</sup> See, for example, Issue 13, p. 39.

<sup>42</sup> See, for example, *Enhancing Environmental Protection in the Canadian Constitution* (WCELA), pp. 32-34.

<sup>43</sup> Issue 17, p. 6.

<sup>44</sup> *Environment and the Constitution* (Pollution Probe and CELA), Appendix D.

<sup>45</sup> Issue 9, pp. 18-19.