

1.16 Other witnesses told the Committee that the public's ability to ensure effective environmental protection was hindered by the current constitutional division of powers. The Canadian Bar Association referred to the uneven enforcement of environmental laws that has sometimes been the result of delegation to the provinces of enforcement responsibilities under federal statutes. The same witness, and others, also suggested that

*Canadians do not know who is responsible for what. They often do not know where to turn when they want to have legislation enforced.*⁷

1.17 Many witnesses felt that the federal government has access to more environmental protection power than it has exercised to date. In particular, the "peace, order and good government" provision was seen as a broad source of potential power, especially since the decision of the Supreme Court of Canada in *R. v. Crown Zellerbach*⁸. Federal regulation on marine pollution was upheld, even though it extended to regulation within provincial boundaries. Witnesses also suggested that the federal government could claim expanded environmental powers under its general trade and commerce power. In *General Motors v. City National Leasing*⁹, the Supreme Court of Canada held that, where the provinces are unable to regulate together in an area, federal regulation will be upheld. This decision has confirmed the power of the federal government to claim jurisdiction in matters that transcend provincial boundaries.

1.18 Early in 1992, after the Committee had concluded its hearings and had adopted its conclusions and recommendations, the Supreme Court of Canada handed down its decision in the case of *Friends of the Oldman River Society v. Canada*. The Committee requested the Library of Parliament to consider the impact of this decision on the Committee's conclusions and recommendations; the Library's response is reproduced as Appendix A. The Committee notes in particular the concluding statement that:

The Oldman River decision is obviously a fundamentally important decision for environmental regulation in Canada, and it will undoubtedly have widespread implications. The decision does not, however, adversely affect any of the Committee's recommendations regarding the division of powers on environmental issues. If anything, it supports many of the Committee's conclusions, and may be of assistance in their implementation.

However, the Committee has not itself yet had an opportunity to consider the implications of the *Oldman River* decision.

1.19 Our witnesses stressed, however, that environmental problems will be solved only by interjurisdictional cooperation and coordination. As the witness from the Rawson Academy of Aquatic Science put it,

⁷ Issue 16, p. 31.

⁸ [1988] 1 S.C.R. 401.

⁹ [1989] 1 S.C.R. 641.