

3.7 In summary, federal leadership on the environment is seen as a major requirement by most of our witnesses, and needs to begin with a clarification of the Government's attitude to the environment vis-à-vis its proposals for political renewal. As some witnesses observed, the government's proposals need to be subjected to an environmental impact assessment. We recommend that this clarification include at least three elements:

- (a) A reiteration and amplification of the brief statement by the Minister for Constitutional Affairs, that the environment "is a field in which existing federal jurisdictions must be respected and must be maintained."
- (b) Greater specificity on the nature of those proposals that directly or indirectly appear to affect the environment. These include the residual power, areas for federal withdrawal, areas proposed for delegation, property rights, and possibly also aboriginal self-government. Reassurance on safeguards and accountability is particularly important.
- (c) Recognition, in the context of the proposals on economic union, that economic and environmental decision-making are "inextricably intertwined".

3.8 *Implementation of International Agreements.* Special concern was expressed by several witnesses about the federal government's lack of a "treaty power", i.e. the power to act within Canada to meet international treaty obligations. Section 132 of the Constitution Act 1867 gave this power to the Parliament of Canada; however a 1937 judicial decision¹¹ held that this power did not extend to treaties entered into by Canada itself, in contrast to those, prior to the 1931 Statute of Westminster, that Canada inherited from Britain or that were negotiated on Canada's behalf by the imperial government. The ruling has not prevented Canada from acquiring or complying with such international obligations; however, when compliance involves provincial jurisdiction, cooperation with provincial governments is normally required.

3.9 This situation differs markedly from that in the United States, where, we were told, under Article 6 of the U.S. Constitution, a treaty ratified by the U.S. Senate becomes

*the supreme law of the land. . . and the judges in every State shall be bound thereby, anything in the constitutional laws of any State to the contrary notwithstanding.*¹²

3.10 In *Shaping Canada's Future Together*, the treaty power is not addressed directly. However, in his statement to the Committee, the Minister of the Environment expressed the belief that the increased cooperation and coordination sought in the proposals

*. . . would allow the Government of Canada to play a leading role in the management of transboundary environmental issues, both within Canada and internationally, and to negotiate international environmental treaties and agreements on behalf of Canada with the confidence our commitments can be fulfilled.*¹³

¹¹ A.G. Can. v. A.G. Ont. [1937] 1 D.L.R. 58 (P.C.)

¹² Issue 9, p. 13.

¹³ Issue 15, p. 12.