

the Environmental Assessment Panel (EAP) established as part of the EARP was merely advisory, reasoned the Court, construction could continue while the panel conducted its assessment. Thus, the Oldman River Dam was completed before the panel issued its report. The only exception--not since repeated--was a short halt in the construction of the Rafferty Dam in Saskatchewan following a Superior Court ruling in 1989 (Glenn 1992, 34-35). The Kemano II expansion project in British Columbia was delayed pending further environmental impact assessment and ultimately canceled, but these were decisions made for political reasons by the government of British Columbia (Wilson 1993, A5; Howard 1995, A1) not in response to litigation filed with the Federal Court. What appears in theory to be judicial activism, then, actually turns out in practice to be more like judicial restraint.

Even this moderate level of judicial activism was too much for the federal government. Under the parliamentary system, executives are accustomed to wide discretion in the enforcement of laws and implementation of policies. Because the prime minister leads the party holding the majority of seats in the parliament and because the party exercises strict discipline over its members, the executive can expect the legislature to endorse whatever legislation it places before the body. The concept that either the parliament or the judiciary would confine the government's realm of choice is alien to the Westminster model. Thus, Prime Minister Mulroney's response to the Federal Court's decision in Canadian Wildlife Federation was to order the Department of the Environment to scrap its "guidelines" and to request Parliament to enact a law clearly stating that such environmental assessment reviews are discretionary. The Canadian Environmental Assessment Review Act (CEAA) (R.S.C., 1992, C.37) was enacted in 1992, effectively reversing the Federal Court's decision. Under the act, the Minister for the Environment can delegate federal assessment responsibilities to the provinces whenever he wishes. Whether the minister constitutes