

with environmental matters.⁴ Aboriginal organizations were understandably concerned about any potential weakening of powers, including environmental powers, by the Crown with which they had negotiated earlier treaties and with which they anticipated much more comprehensive negotiation in the near future.⁵

3.3 When witnesses were pressed on the specific elements in the Government's proposals, it appeared that some of the items did not generate real concern in themselves; what mattered more to the witnesses was the cumulative effect of the total package. Those⁶ who were inclined to oppose the elimination of the declaratory power (section 92(10)(c) of the Constitution Act 1867) were probably aware that it had seldom been used in recent years. On environment-related fields such as forestry and mining, it was recognized that the federal interest is at present a very limited one. Nevertheless, several witnesses found the phraseology in the Government's proposals obscure, and therefore troubling.⁷

3.4 Similar concern about the vagueness of the Government's proposals was expressed in regard to the areas proposed for administrative and/or legislative delegation, including wildlife conservation and protection and soil and water conservation. As a witness from the Canadian Bar Association expressed it,

*When we see streamlining proposals such as this, the question is, is this good-faith streamlining or is it passing the buck?*⁸

It must also be recognized that, in the eyes of many observers, past experience with administrative delegation in the environmental field does not encourage further action of this kind. Mr MacMillan, with ministerial experience, was explicit:

*The record of provincial governments in this country in the environmental field is appalling, when the federal government has devolved or delegated some of its authority, especially for enforcement, to the provinces, as it did, for example, vis-à-vis section 33 of the Fisheries Act.*⁹

There may be no objection to the principle of delegation—it may indeed represent a very sensible way to improve the environment—but witnesses insist that delegation should be accompanied by a provision for reporting by the jurisdiction to which the powers are delegated, and delegation should be revokable if it fails to achieve the desired objective.¹⁰

⁴ Issue 16, p. 25. See also Issue 13, pp. 45-49.

⁵ See, for example, Issue 13, pp. 4-37. See also Issue 13A, p. 9:

"Our treaty and aboriginal rights are being placed in jeopardy by developments which do not respect the environment."

⁶ For example, Ms Barbara Rutherford, Canadian Environmental Law Association, Issue 17, p. 12.

⁷ See, for instance, Issue 13, pp. 50-51, and *Environment and the Constitution* (Pollution Probe and CELA), section 4.1.3.

⁸ Issue 16, p. 43.

⁹ Issue 6, p. 33-34. See also Issue 13, p. 54.

¹⁰ The WCELA brief demands, as a condition of delegation by the federal government, (1) strong federal leadership, (2) accountability, and (3) reasonable provisions for public participation in decision-making. (p. 27)