

which defines Québec's unique identity. At the same time that the federal government, for political reasons, has shied away from supplanting provincial environmental regulations affecting private persons, Ottawa's ability to employ other constitutional provisions to support an environmental regime has been stymied by the judiciary's narrow interpretation of its constitutional powers over trade and commerce. This narrow reading of the federal trade power is highly significant when one realizes that most of the environmental laws passed by the U. S. Congress have been under its constitutional power to regulate commerce among the states.

An alternative to the commerce power is the federal jurisdiction over the criminal law, which, by contrast, is primarily a state responsibility in the United States. Federal efforts to legislate on environmental matters using the penal law, however, have not fared well in the courts. The Judicial Committee of the Privy Council (JCPC) in *The Margarine Reference* (1951) and the Supreme Court's decision in *Labatt Breweries v. Attorney-General of Canada* (1980) invalidated federal criminal laws dealing with food and drug manufacturing on the grounds that they usurped provincial jurisdiction over public health. In *Schneider v. The Queen* (1982) the Supreme Court reaffirmed the broad jurisdiction of the provinces over public health.

The provinces obtained an important victory during the negotiations with Prime Minister Pierre Trudeau over patriation of the Canadian constitution. In exchange for the support of energy-rich Alberta and Québec for the main portion of Trudeau's constitutional plan, Trudeau inserted into the 1982 constitution act section 92A, which grants to the provinces extensive jurisdiction over the exploitation of natural resources, including forests, oil and hydro-electricity. Alberta and Québec subsequently launched large energy projects with the understanding that the federal government would not impose restrictions motivated by a desire to mitigate environmental damage caused by the projects. The provincial character of environmental protection was