

CHAPTER 1

THE CONTEXT OF THE STUDY

A. Introduction: The Changing Concept of “Environment”

1.1 Constitutional renewal and environmental protection are both vital to the future of Canada. The Committee therefore decided to study the division of powers on environmental issues, in the context of the current constitutional debate in Canada. Our decision to examine their relationship has been widely welcomed.

1.2 “Environment” is a word that has meant different things to different people at different times. Over the last 20 years in particular there has been a significant change and enlargement in meaning. The way we define the environment, and thereby identify those issues in which environmental considerations are relevant and important, may have profound implications for the constitutional and political future of Canada.

1.3 It is a truism that the Constitution Act of 1867 did not mention the environment. Some of our witnesses have noted that specific issues that we would now term environmental, such as fisheries and navigation, are specifically included in the 1867 division of powers.¹ However, it seems generally accepted that allocation of these specific powers is very different from recognition of the environment as an integrated whole.

1.4 Because the 1867 division of powers was relatively silent in this regard, it has sometimes been argued that many of our present environmental problems arise from, or have been intensified by, this omission. This led, it is claimed, to neglect of environmental issues by both federal and provincial governments until comparatively recently, and to continuing confusion and uncertainty in regard to which level of government is responsible for environmental action.

1.5 This debate has been renewed, in a modern form, by the appearance of the Government of Canada’s proposals on political renewal, contained in *Shaping Canada’s Future Together*. At least 10 of the 28 proposals appear to have significant implications for the environment. However, there is little direct reference to the environment in the proposals and this has evidently disturbed a number of individuals and groups. Some, including several witnesses, believe that the environment needs to be included, as a matter of urgency, in the explicit division of powers between federal and provincial governments. The reasons for this

¹ See, for example, the written submission by Elizabeth May (Sierra Club): *It is often said that at the time of the drafting of the British North America Act, no one considered the environment. It is often said, but it is not true. In fact, the 1867 version of environmental problems were already the subject of legislation. . .* Ms. May recognized that the term ‘environment’ does not appear in either Sections 91 or 92 of the Act, but urged that: *Given that the major aspects of pollution control reflected in pre-Confederation pollution legislation related to navigation and fisheries, it is very significant that both these heads of power were granted to the federal government under section 91.*