

settle quarrels between Ottawa and the provinces.

Provincial Powers. Under section 92 of the BNA the provinces have jurisdiction over municipal affairs, property and civil rights, and matters of a local nature. Thus, environmental legislation in the nineteenth and most of the twentieth century tended to be provincial. Human and industrial wastes, for example, in Ontario were regulated until the 1950s by the Ontario Public Health Act, first enacted in 1884.

The provinces became increasingly active in regulating discharges into the air and water in the 1960s and 1970s (Lucas 1990, 170). The main approach in Canada toward punishing environmental wrongdoers has been through civil fines and judicial injunctions rather than criminal prosecutions. This pattern supported provincial initiatives because the BNA assigns the civil law to the provinces and the criminal law to the federal government. Ontario and Alberta in 1971 were the first provinces to establish a ministry for the environment. Ontario has been the most prolific environmental legislator. Among some of the most important Ontario statutes are the Air Pollution Control Act of 1967, the Waste Management Act of 1970, the Environmental Protection Act of 1971, the Water Resources Act of 1972, the Environmental Assessment Act of 1975, and the Bill of Environmental Rights of 1994. Some of the provinces have enacted single acts consolidating regulation of air, water and landfills (Vanderzwaag and Duncan 1992, 4).

The primary foundation for provincial power over the environment is section 92 (13) of the BNA--property and civil rights (Hogg 1992, 537). The federal government has been reluctant to intrude into these areas because of the sensitivity surrounding Québec. Québec opposes any intrusion by Ottawa on its regulation of private rights because its civil law is based on the Roman, or Civil, Law tradition rather than the English common law. Federal encroachment on property or civil rights can be characterized as an encroachment by English Canada on one of the institutions