

3.15 Many other witnesses, when stressing the importance of a strong federal role in environmental legislation, expressed particular concern about the Government's proposal to restrict the use of the POGG power.<sup>21</sup> Witnesses suggested that, if the federal spending power is to be limited in the manner proposed by the Government, the POGG power may take on even greater importance as a basis of federal authority.

3.16 It is not clear to the Committee what the practical consequences to federal environmental powers of the Government's proposal on the residual power would be.<sup>22</sup> Nor is it clear why the Government found it necessary or desirable to make this proposal, which would "transfer to the provinces authority for non-national matters not specifically assigned to the federal government under the Constitution or by virtue of court decisions." It is the Committee's understanding that, under the test set out by the Supreme Court of Canada in *R. v. Crown Zellerbach*, non-national matters would not fall within the federal government's authority in any event.<sup>23</sup> If this is so, the Committee recommends that the Government reconsider its proposal on the Federal Residual Power, on the grounds that the proposal has little constitutional significance, but may indicate politically a weakening of federal leadership that would be very undesirable in regard to the environment.

#### **Recommendation 12:**

**The Committee recommends that the proposals for political renewal recognize that the federal residual power ('peace, order and good government') is one of the basic foundations for federal action to protect the environment and promote sustainable development. This power should in no way be diminished in its ability to deal with environmental needs.**

3.17 *Data Collection, Monitoring, Research and Public Information.* At the core of the arguments for federal leadership, a "level playing field", and an environmental union is the belief, expressed frequently by witnesses, that the federal government must have the power and capacity to set national standards in regard to the environment. Capacity to act involves knowledge: data collection and analysis, monitoring and research. Similar knowledge needs exist in regard to Canada's international environmental negotiations. As the witness from the Rawson Academy of Aquatic Science told us

*The federal government is the one institution that has invested the most in Canada in developing the knowledge that is required for policy-making in the environmental field. This is a priceless asset that needs to be nurtured. . .*

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<sup>21</sup> *Shaping Canada's Future Together*, p. 36.

<sup>22</sup> Mr Andrews, the witness from the West Coast Environmental Law Association, expressed the view that, on an initial reading, the federal power with respect to national concerns would not be affected by the Government's proposals. He went on:

*It strikes me the main concern with this proposal is on the political side; that is, to the extent which removing some of the federal government's residual powers may reflect a political move away from a stronger federal role. On that, I would simply answer with the political importance of a strong federal role in protecting the environment. (Issue 13, p. 46)*

<sup>23</sup> See Northey, pp. 140-144.