

### The Judicial Shift from Federalism to Environmentalism

Until recently the activism of the Judicial Committee of the Privy Council and the Supreme Court of Canada with regard to environmental policy was confined to protecting the prerogatives of the provinces. The practical effect of such a jurisprudence was to benefit polluting businesses since the provinces are much more dependent on the exploitation of natural resources such as forests, minerals, rivers and fossil fuels than is the federal government. The economies of Alberta and Québec, for example, rise or fall depending on the health respectively of the oil and hydroelectric industries. This jurisprudence has served well conservative interests in Canada. Tough environmental legislation depends on the ability of the federal government to expand its constitutional competence. Therefore one would expect a shift in the Supreme Court's doctrines to occur as the attitudes of the justices become more progressive. This is precisely what has transpired.

Access of Environmentalists to the Courts. Evidence of a new judicial activism favorable to federal responsibility for the environment appeared in 1987, when the Supreme Court ruled in Finlay v. Canada that persons who failed to meet the traditional requirements of standing to sue could nevertheless challenge administrative decisions. This liberalization of the threshold requirement opened the door to plaintiffs concerned about governmental decisions likely to damage the environment, such as licensing a hydroelectric dam, but who could not meet the traditional requirements to sue of specific, concrete, personal harm at the hands of the defendant. Finlay invited environmental non-governmental organizations (ENGOS) such as the Sierra Club to pursue a litigation strategy in the courts to influence environmental decisions. The Court was proclaiming that it would play a much more active role in arbitrating conflicts between developers and environmentalists, which in Canadian politics often means disputes between the provincial