

department strives to maximize its authority at the expense of its competitors. Likewise, if the basic document distributes power between two levels of government (provincial and federal), politics will be characterized by struggle between the center and the regions. These constitutional cleavages cry out for an institution to serve as referee to resolve the continuous disputes over power. The judiciary, accustomed to the impartial settlement of private and public conflicts, emerges as the most attractive of the institutional options. To understand the role of the courts in Canada in the environmental field, it is necessary first to grasp the way in which the Canadian constitution allocates the power to make environmental policy.

Environmental policy making at the end of the twentieth century is enormously complex. The environmental problems faced by Canadian law makers are as diverse as nuclear waste, extinction of plant and animal species, urban sprawl, acid rain, automobile emissions, solid waste disposal, deforestation and water pollution. The core of the Canadian Constitution, the British North America Act (the Constitution Act 1867), however, is a nineteenth century document. The courts, therefore, have had much difficulty sorting out which level of government is responsible for each of the environmental powers. The result has been a jurisprudence of compromise, which recognizes concurrent jurisdiction over most environmental matters. The Constitution only divides power between tiers of government, it does not separate the legislative and executive branches. Thus, one of the primary reasons for a relatively low level of judicial intervention in the environmental area in Canada is the lack of opportunity for the judiciary to umpire squabbles between parliament and prime minister. Under the Westminster model of parliamentary government enshrined in the BNA, the prime minister heads the government and leads the party with a majority of seats in the House of Commons, whose members observe strict party discipline. Canada is, however, a federation and as such has demanded that the federal courts