

*I believe Canada has already shown how a federal state can achieve such co-ordination. I sincerely believe. . . and this goes beyond the life of this government—that we can be proud of the close working relationship that has developed between the federal and provincial governments on environmental issues.*¹²

Public opinion surveys, reported by the witness from The Environmental Monitor, indicate that the present situation is both recognized and endorsed by the public:

*It's clear that Canadians are in support of the status quo on environment. They may want to tinker with it and they may be open to some tinkering, but clearly they don't want to throw their lot in with either just the federal or just the provincial level. They see the status quo as operating. They couldn't tell you who has what jurisdiction. They see both operating.*¹³

Several witnesses evidently preferred the existing situation to the environmental uncertainties that they perceived may be created by some of the constitutional changes proposed at present. For example, in their joint submission, the Canadian Environmental Law Association and Pollution Probe felt that “The present constitutional proposals . . . serve to confuse, rather than clarify, legislative authority to protect the environment.” They recommended a clarification “to reflect substantial provincial autonomy over local matters and federal jurisdiction over extraprovincial and international matters. . . In the alternative we urge Parliament to maintain the status quo with respect to the division of powers.”¹⁴

1.24 The Committee does, however, recognize that a substantial *prima facie* case can be made for more fundamental constitutional reform in regard to the environment. A Constitution that is preoccupied with the division of powers—with what one witness termed “the old federal-provincial football game”¹⁵—may be difficult to reconcile with an environmental and sustainable development context that demands recognition of complexity, ecosystem linkages, and the need for cooperation. Those inclined to this view might ask whether existing federal-provincial cooperation on the environment is facilitated by the constitution, or instead represents a successful effort to circumvent constitutional limitations. A recent review, from a legal standpoint, of recent federal environmental legislation and judicial interpretation concluded that

*In Canada, constitutional law inhibits environmental laws because the jurisdictional picture dividing federal and provincial powers divides the environment into many different spheres. This division accords nicely with the point source approach to environmental problems, but it conflicts with the more sophisticated ecosystem approach. . . At this point, the constitution has won over the environment.*¹⁶

¹² Issue 15, p. 8.

¹³ Issue 6, p. 25.

¹⁴ ‘Environment and the Constitution’, submission to the House of Commons Standing Committee on Environment by the Canadian Environmental Law Association and by Pollution Probe, section 4.3.

¹⁵ Issue 13, p. 14.

¹⁶ Northey, Rodney, ‘Federalism and Comprehensive Environmental Reform: Seeing Beyond the Murky Medium’, *Osgoode Hall Law Journal*, 29,1, 1989 (published 1991), pp. 127-81, at p. 179.