

improve the Canadian environment may be missed or diminished. It seems clear that Canada will be hard pressed to fulfil the international environmental commitments that it has made in recent years (e.g. in regard to the atmosphere or the Great Lakes). The Government of Canada should not be in the position of having to plead that a failure to fulfil a commitment was due to its lack of environmental authority. It may be that this issue could be considered productively within the framework of the Canadian Council of Ministers of the Environment. Be that as it may, we recommend that the Government of Canada address the general question of the treaty power in its revised constitutional proposals, because of its significance for environment and sustainable development in Canada.

Recommendation 11:

The Committee recommends that the proposals for political renewal include explicit recognition of the need for a power to ensure that Canada's international commitments to improve the national and global environment, and to promote sustainable development, can be implemented effectively and expeditiously. The Committee recommends the creation of a formal consultation mechanism in regard to the exercise of this power, particularly for Canadian jurisdictions with relevant powers. The Committee also recommends that this so-called 'treaty power' should include major international agreements that do not have the status of treaties.

3.14 *Peace, Order and Good Government.* This residual power of the federal government, under section 91 of the Constitution Act, is in present circumstances a main foundation for the federal government's environmental powers. As we were told by a former Minister of the Environment,

When we devised, for example, the Canadian Environmental Protection Act, we were advised by the lawyers seconded to us by the Department of Justice and by our internal legal experts that we would be on very shaky constitutional and legal grounds to the extent that we strayed in weaving our legislation away from, principally, the peace order and good government provisions of the Constitution and the federal criminal law power having to do with health, life and safety.²⁰

As discussed earlier (para. 1.17), the peace, order and good government ("POGG") power was further expanded, as a source of federal jurisdiction in environmental matters, by the *Crown Zellerbach* decision in 1988.

²⁰ Issue 6, p. 32.