FEDERAL-PROVINCIAL RELATIONS
AND THE ENVIRONMENT:
ATTAINING SUSTAINABLE DEVELOPMENT
THROUGH COOPERATION

by

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The environment is a major public concern today because people see pollution as a threat, to themselves, to their families, and to future generations. Today, Canadians are worried primarily because they believe environmental pollution is a major threat to health. While Canadians are most apt to see private industry as the culprit in polluting the environment, they look first to government to take responsibility for ensuring that proper steps are taken to clean it up and protect it. And, as is typical, Canadians look first to the federal government for leadership in this area (jurisdictional questions are not well understood, nor do they count for much) (Newman, 1990: 4-5).

Conflict is inherently neither good nor bad, but simply an inevitable state of affairs that occurs when people’s boundless appetites are loosed on a limited environment. However, cooperation is as inevitable as conflict in society ... because human beings are naturally sociable and gregarious and it is useful because one can accomplish more through combined effort with others than one can alone (Van Loon & Whittington, 1987: 5).

[It] is essential in our federal country that the balance between federal and provincial subjects of primary legislative powers should remain stable - reasonably constant - subject only to a process of gradual changes when these are rendered truly necessary by the demands of new conditions in our society from time to time ... [Subjects such as pollution] must be treated as outside the system, which means they should each be subdivided into appropriate parts so that necessary legislation can be taken by some combination of both federal and provincial statutes. Co-ordination of these legislative efforts should come through co-operative federalism (Lederman, 1989: 151 & 159).

The Canadian Council of Ministers of the Environment (CCME) brings together federal, provincial, and territorial governments in an effort to make progress together on environmental issues. Currently, it has an exercise under way to redefine the working relationship between orders of government to eliminate overlap and duplication, and to identify gaps in the way the environment is managed in Canada (Department of the Environment, 1995: 12).

Currently, most provincial/territorial governments have, or are in the process of adopting environmental objectives as part of their sustainable development strategies. These will eventually guide provincial/territorial departmental integration of environmental concerns into policy. It should be noted that, in most cases the formulation of such objectives has been achieved through a consensus building process provided by provincial and territorial Round Tables on the Environment and the Economy (Bregha, 1994).

In preparation, several essays were written over the past few months to provide a solid foundation for the core values expressed in this paper. The quotations can be found within those pages. Together, these comments form a revealing summation of my thesis. The following may be regarded as an elaboration upon their combined meaning.
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This paper is dedicated to my sister Jocelyne. Although we follow different paths now, I will always cherish the time we had together. A part of me will always be with you.

Thank you everyone.
ABSTRACT

A study of intergovernmental relations in the area of the environment will determine whether the current Canadian federal structure represents a dangerous impediment to the promotion of sustainable development. This paper examines the interjurisdictional quagmire that has developed from the fact that authority over the environment is a functionally concurrent field for the two orders of government. A history of federal-provincial relations in the area of environmental protection is followed by an analysis of the advantages and disadvantages associated with competitive and cooperative federalism. For the purpose of this paper, cooperative federalism is characterized by the presence of a formal institutional system to facilitate interaction between politicians and bureaucrats from both orders of government. Competitive federalism is defined as a system that lacks a formal institutional structure to promote discussion and coordination between federal and provincial officials in a specific field of interest. Last, I examine thirty sustainable development issues following the structure established in Agenda 21 to determine the impact of the present federal system on the development of these objectives. This study concludes that Canadian federalism is not a dangerous impediment to the promotion of sustainable development. Cooperative federalism in a form that does not eliminate the ability of governments to revert to competition promotes the emergence of an institutional system that facilitates information-sharing and discussion between the two orders of government, thus leading to coordinated efforts in the field of the environment. Respect for the current division of powers in this area is also essential to the cohesiveness of Canadian society. Policy-makers and advocates for a sustainable society should focus on working within the present system.
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INTRODUCTION

Centuries of unbridled exploitation and degradation have left Canada’s natural environment in substandard condition. Fish stocks on both coasts are depleted, unhealthy levels of acidity plague many of our lakes, and atmospheric pollutants, including those that cause global warming, threaten all forms of life. These problems are not beyond hope. Most people still believe that solutions exist or are discoverable and that such environmental conditions can be brought to within acceptable levels. However, implementing these remedies will require major shifts in human values and priorities.

The Brundtland Commission defined sustainable development as “development that meets the needs of the present without compromising the ability of future generations to meet their own needs” (World Commission on Environment and Development, 1990: 43). Economic production and the welfare of people are therefore, base components of sustainable development. The Commission’s work gave short mention of the importance in linking issues of sustainability with the maintenance of human health. In 1988, Gro Harlem Brundtland herself explained that the whole report was about health. Good health is also a basic requirement for sustainable development (Hancock, 1994). The first principle of the Rio Declaration on Environment and Development pledges that “Human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature” (United Nations Conference on Environment and Development, 1992: 11). The United Nations Conference on Environment and Development (UNCED), held in Rio de Janeiro, produced an action plan for nations to pursue in order to become sustainable members of the world community. Agenda 21’s forty chapters cover issues ranging from combatting poverty to the need to recognize and strengthen the role of indigenous people and their communities. Its
simple formula of identifying a problem, stating a basis for action, defining the objectives and activities that should guide government policy-making, and a rough estimate of the costs and finances involved, provides every country with a blueprint for the achievement of sustainable development.

Canadians face an additional hurdle when discussing the topic of sustainable development. Canada is a federal system that divides jurisdictional authority between two orders of government. The issue is further complicated by the fact that the environment is a functionally concurrent field. The courts, in accordance with existing constitutional lists of powers, determine on a case by case basis which level of government has dominion over environmental protection. This has led to a patchwork of overlapping responsibilities, uncertainty, and interjurisdictional conflict.

The history of environmental regulation in Canada has included both competition and cooperation between the two orders of government. Overall, intergovernmental affairs in matters relating to the environment are considered cordial. Interaction between government officials is facilitated by a network of committees and organizations that exist to gather information and promote discussion with the aim of developing sound environmental policies. Foremost among them is the Canadian Council of Ministers of the Environment. The entire system is based upon a ‘cooperative’ approach to federalism. However, intergovernmental collaboration does not change the fact that the division of powers adds a certain level of complexity to the issue of environmental protection. It may hamper or even threaten our ability to achieve sustainable development in this country. Gridlock can occur at any time. Governments may refuse to work together and when they do agree to cooperate, even minor differences can add months to the
negotiation process. These supplementary deferments in Canada’s ability to respond to environmental concerns beg the question: Can Canadians achieve the goal of sustainable development despite the presence of the current federal structure?

This thesis will focus on the following questions:

- Are federal-provincial relations in the field of the environment based primarily on competition or cooperation?
- What are the advantages and disadvantages associated with each of these approaches?
- In relation to Earth Summit ‘92 (UNCED, 1992), what are the implications for the attainability of sustainable development within the existing Canadian federal system?

The first two questions assess the present standing of intergovernmental relations concerning environmental matters and the value of both cooperative and competitive interaction between the two orders of government. This will allow us to identify the nature of those relations. The third section determines their impact on Canada’s ability to achieve sustainable development as outlined in Agenda 21.

This study will demonstrate that the current federal structure does not represent a dangerous impediment to progress. Cooperation and conflict serve to further the development of environmental policies in this country. More precisely, cooperative federalism in a form that does not eliminate the ability of governments to revert to competition promotes the emergence of an institutional system that facilitates information-sharing and discussion between the two orders of government thus leading to coordinated efforts in the field of the environment. Respect for the current division of powers in this area is also essential to the cohesiveness of Canadian society. Major changes to the present structure are generally impractical and unlikely to succeed. Therefore, sustainable development is attainable even though the added burden derived from the
division of powers may lengthen decision-making processes. Policy-makers and advocates for a sustainable society should focus on working within the present system as well as help identify measures that can minimize the delays incurred from living in a federal state.

There is an important distinction that must be made before we go any further. Throughout this paper, there will be a natural tendency for the reader to ask him/herself whether Canadian governments are actually doing enough to achieve sustainable development. Providing a response to this debate is not the objective of this thesis. I am examining the added effect the Canadian federal system has on the entire process. In simpler terms, I want to know whether there is the danger that Canadian federalism may represent the proverbial last straw that breaks the camel’s back. I will consider governmental commitments toward attaining sustainable development to the degree that a low rating may imply that there is not enough pressure on the federal system in order to properly gauge its performance. However, a complete account of federal and provincial activities in areas covered by sustainable development is not feasible due to practical constraints. Analysis in the section entitled Intergovernmental Relations and Agenda 21 will be limited to brief discussions regarding government initiatives and the role played by intergovernmental relations.
METHODOLOGY

The following section describes in detail the methodology employed in this thesis. The analysis required to answer the questions stated above is divided into five major sections:

1) I examine the interjurisdictional quagmire that has developed from the fact that authority over the environment is not explicitly assigned in the Canadian constitution to either order of government. I include an assessment of potential options when considering constitutional amendments to alter current practices.

2) I review the history of federal-provincial relations in the area of environmental protection since the first ‘green’ wave in the early 1960s. I include a detailed examination of the Canadian Council of Ministers of the Environment, its programs, and its role in bringing about intergovernmental cooperation.

3) I analyse the advantages and disadvantages associated with competitive and cooperative federalism. For the purpose of this thesis, competitive federalism is defined as a system that lacks a formal institutional structure to promote discussion and coordination between federal and provincial governments in a specific field of interest. Cooperative federalism is characterized by the presence of a formal institutional system to facilitate interaction between politicians and bureaucrats from both orders of government.

4) I examine thirty sustainable development issues and assess the impact that the present federal system has had on the development of these objectives. The structure of this section follows the action plan established in Agenda 21 under the headings Social and Economic Dimensions, Conservation and Management of Resources for Development, and Strengthening the Role of Major Groups. The criteria for determining success will be: to determine whether
intergovernmental relations are relevant to the particular section in question by specifying jurisdictional responsibilities; to identify relevant intergovernmental agreements that have been reached; and to relate current realities to conclusions drawn throughout this thesis.

5) The final steps of this paper are the *General Observations and Conclusions* chapter and my concluding Remarks.
FEDERAL-PROVINCIAL RELATIONS IN THE FIELD OF THE ENVIRONMENT: THE INTERJURISDICTIONAL QUAGMIRE

Canada is governed by a federal system. Two separate orders of government are recognized under the constitution - the national and provincial governments. Each is sovereign in its own sphere of jurisdiction. There are three distinct groups of legislative authority. First, certain responsibilities are placed solely under the control of the Parliament of Canada. These powers are listed in Section 91 of the Constitution Act, 1867. They include regulation of trade and commerce, sea coast and inland fisheries, and criminal law (Department of Justice Canada, 1996: 26-28).

The federal government receives additional authority from its POGG, disallowance, declaratory, and spending powers. Section 91 begins with a recognition of Parliament's ability to make laws for the Peace, Order and Good Government of Canada. The residual clause grants the national government the right to infringe upon provincial jurisdictions in special instances (Ibid.: 26). In In re Board of Commerce Act and Combines and Fair Prices Act, 1919, 1922, the Judicial Committee of the Privy Council (JCPC) limited the scope of the POGG clause to that of an emergency doctrine. Only under extreme circumstances such as famine or war could the federal government claim national importance as an excuse to interfere in the provincial sphere of authority (Russell et al., 1990: 53-67). In the 1988 Crown Zellerbach decision however, the Supreme Court of Canada declared in a four to three split that marine pollution presented a valid matter of national concern under POGG. The Ocean Dumping Control Act was found to have 'singleness' thus distinguishing it from provincial concerns and its impact on provincial legislative jurisdiction was considered reconcilable with the distribution of powers under the
Canadian Constitution. The minority opinion cast some doubt on the impact that the majority decision would have on provincial jurisdiction (Harrison, 1996: 46-47).

Section 90 of the Constitution Act, 1867 gives Parliament the right to apply its disallowance power, as described under section 56, to provincial legislation. Disallowance however, must be advanced before a full year has passed since receipt of an authentic copy of the said provincial Act (Department of Justice Canada, 1996: 19 & 26). The Lieutenant Governor of each province also has the ability to reserve a provincial bill for “the Signification of the Queen’s Pleasure” (Ibid.: 19). If no positive action is taken by the federal Cabinet to reinstate the legislation, it becomes null and void. These clauses give the federal government a veto over all provincial acts. The disallowance power has fallen into disuse in recent years. It was last applied in 1943. Though recourse to disallowance is still within the ability of the federal government, constitutional convention suggests that it is now a dead letter and may never be used again (Van Loon & Whittington, 1987: 196 & 248). The power of reservation was last invoked in 1961 by the Lieutenant Governor of Saskatchewan, Frank Bastedo. The Department of Justice quickly gave its assent and the bill was allowed to become law. Once again, constitutional convention seems to require extreme circumstances before the federal government may act to suppress provincial legislation (Jackson & Jackson, 1990: 202-203).

Under Section 92(10)(c), Parliament is able to assume control over works and undertakings by declaring them to be to the general advantage of Canada or of two or more provinces (Department of Justice Canada, 1996: 30). The declaratory power is another means through which the federal government can validate its interference in jurisdictions exclusive to the provinces. Where the disallowance power permits Parliament to negate provincial
legislation, the declaratory power enables it to implement public works that go beyond the interests of any single province.

The federal government’s spending power allows it to make payments to individuals, institutions, or other governments for any purpose, including those that fall under provincial jurisdiction. The Canadian Parliament may also attach conditions, short of actually regulating fields that are not within its domain, that must be met before funds are given away (Banting, 1987: 52-53). In Attorney General of Canada v. Attorney General of Ontario (Employment and Social Insurance Act Reference), 1937, Lord Atkin of the JCPC declared that “Dominion legislation, even though it deal with Dominion property, may yet be so framed as to invade civil rights within the Province, or encroach upon the classes of subjects which are reserved to Provincial competence” (Russell et al., 1990: 100). In other words, the federal spending power cannot take the form of a regulatory program if it falls within provincial domain.

The second distinct group of legislative powers assigned under the Canadian constitution are those reserved exclusively for the provinces. Section 92 of the Constitution Act, 1867 provides a list. They include provincial authority over municipal institutions, property and civil rights, and generally all matters of a local or private nature. Section 92A grants the provinces the right to make laws in relation to non-renewable natural resources, forestry resources, and electrical energy within their own borders. Section 93 also places education under the control of provincial legislators (Department of Justice Canada, 1996: 29-33). F.R. Scott has suggested that whenever a court restricts the legislative authority of the federal government, it generally follows that the provinces have jurisdiction. This may also work in the opposite direction. “But in general the denial of a specific power to the central government is the same as attributing it to
the local governments” (Scott, 1989: 68). Since its inception in 1982, the Canadian Charter of Rights and Freedoms empowers the courts to deny certain powers to both orders of government.

Third, agriculture and immigration are listed as concurrent jurisdictions under Section 95 of the Constitution Act, 1867. Both levels of government may legislate in these areas. In cases where provincial and federal laws conflict with one another, Acts of the Parliament of Canada have precedence. Section 94(a) also allows both orders to legislate in areas of old age pensions and supplementary benefits, including survivors’ and disability benefits irrespective of age. In this concurrent field, provincial laws are given paramountcy (Department of Justice Canada, 1996: 34-35).

It is important to understand the exclusive rights given to each level of government. Any law may come under review by the courts. The latter must decide the validity of such legislation in light of the division of powers and the Charter of Rights and Freedoms. A law passed by the ‘wrong’ level of government or that violates the civil liberties we all enjoy under the Charter will be struck down by the courts as unconstitutional (Estrin & Swaigen, 1993: 16-17). Canada is therefore governed by a political system that grants fixed jurisdictions to two separate orders of government¹. Within which of the three groups listed above do environmental matters fall?

The fathers of Confederation did not envision the level of importance that environmental protection would attain in the future. Thus it was never listed as either a federal, provincial or

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¹ The distinction between federal and provincial powers is not so clear in real life. Most laws are never contested and those that are must be judged on an individual basis according to their own merits. Some case decisions may conflict with one another or even reverse past judgments. If we include the use of the federal government’s spending power, we can see the potential for overlap. Therefore, the line that separates the authority of the two orders of government is at times unclear and certainly not drawn in stone.
concurrent jurisdiction. The result has been a patchwork of responsibilities. Over the years, the courts have divided federal and provincial authority over environmental concerns in accordance with other fields of jurisdiction that are explicitly mentioned in the Canadian constitution. This has resulted in a considerable degree of overlap and uncertainty (Harrison, 1995: 418).

A detailed list of the legislative powers relevant to the management of environmental matters is provided by Doern and Conway in The Greening of Canada: Federal Institutions and Decisions (Doern & Conway, 1994). Though these lists may be inadequate when considering sustainable development issues, they are helpful in demonstrating the pervasive nature of environmental concerns. The first identifies ten jurisdictions\(^2\) from which the federal government exercises control over various aspects of environmental protection. These include the powers of Parliament over taxation and spending, works of multi-provincial or national importance, trade and commerce, and its ability to make treaties with foreign countries (Ibid.: 84). Many of these responsibilities provide only an indirect authority over the environment. For example, federal authority over fisheries allows the national government to legislate in the area

\(^2\) Powers of Parliament: federal lands and Indian reserves (includes administration of any non-provincial territories); taxation and spending (taxation powers and leverage through expenditure policies); interprovincial and international trade and commerce (environmental control is an indirect result of regulating trade under federal authority); census and statistics (information used to influence national standard setting); navigation and shipping, seacoast and inland fisheries (indirect vehicle for federal environmental regulation); agriculture and immigration (concurrent with provinces); criminal law (allows Parliament to legislate the protection of human life and safety, facilitates the development of national standards); railways and other works and undertakings of an inter- or extra-provincial nature, and works of multi-provincial or national importance (environmental control is an indirect result of regulating certain industries or transportation modes); treaty powers (the federal government is the sole Canadian signatory authority and implements Empire treaties); and general powers - laws for the Peace, Order and Good Government of Canada (Parliament can exercise authority under emergency, residual and national dimension doctrines).
of water pollution since most toxins are harmful to fish (Harrison, 1995: 419).

Over the years, federal authority over trade and commerce has been reduced by numerous court decisions. Sir Montague Smith and the JCPC limited the use of the trade and commerce clause to the regulation of international, inter-provincial, and general trade affecting all of Canada (Russell et al., 1990: 37-42). In In re Board of Commerce Act and Combines and Fair Prices Act, 1919, 1922, Viscount Haldane asserted that in cases of general trade, the trade and commerce power was incapable of serving on its own as a primary jurisdiction thus reducing it to the status of an auxiliary power (Ibid.: 61-67). In Attorney General of British Columbia v. Attorney General of Canada (Natural Products Marketing Act Reference), 1937, the JCPC further limited the clause by invalidating its use in cases of international and inter-provincial trade that touched any aspect of intra-provincial trade (Ibid.: 101-103). More recent decisions by the Supreme Court of Canada have moderately expanded the trade and commerce power. In Attorney General of Canada v. Canadian National Transportation, 1983, Justice Dickson supported federal legislation on the claim that it aimed at the national economy as a whole rather than a particular industry with ends that could not be achieved by the provinces on their own (Ibid.: 259-260). In General Motors of Canada Limited v. City National Leasing, 1989, the Supreme Court clarified the application of this general trade power. When a federal provision has been found to intrude on provincial jurisdiction, then the court must determine the validity of the act under the second branch. Normally this is accomplished by identifying the presence of a lawful regulatory scheme and ensuring that the scheme and the provision are sufficiently integrated so that the latter can be upheld by virtue of the relation (Supreme Court of Canada, 1989: 671-672).
The federal government’s authority over treaty-making has also been restrained by court decisions. In *Attorney General of Canada v. Attorney General of Ontario (Labour Conventions Case)*, 1937, Lord Atkin declared that Parliament’s authority over legislation giving effect to a Canadian treaty depended upon the subject matter of the treaty. If it lay within provincial jurisdiction, then it would be up to the provinces to pass the laws necessary to enforce the treaty. Therefore, the federal government would be well-advised to gain the support of the provinces before negotiating treaties that fell under provincial powers (*Ibid.*: 104-110). “Lord Atkin’s approach in essence rendered the power of enforcing treaties thoroughly subject to the general division of powers in Canadian Federalism” (*Ibid.*: 105).

Doern and Conway identify seven legislative powers\(^3\) exclusive to the provinces and relevant to environmental protection. These include authority over education, all matters of a local or private nature, and agriculture and immigration. As stated above, the latter two are concurrent jurisdictions (Doern & Conway, 1994: 84).

The potential for legislative overlap and conflict in the field of agriculture and immigration is obvious. However, the possibility also exists in other areas concerning the environment. There are tendencies for discord and confusion between the federal government’s role to make laws for Peace, Order and Good Government and provincial control over all matters of a local or private nature, between federal regulation of trade and commerce and the

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\(^3\) Powers of the Provincial Legislaturess: public lands, the exploration for, development, conservation and management of non-renewable natural resources and forestry resources in the province, the development, conservation and management of sites and facilities in the province for the generation and production of electrical energy; property and civil rights; local works and undertakings; municipal government and facilities; all matters of a local or private nature; education; and agriculture and immigration (concurrent with Parliament).
provinces’ authority over property and civil rights, and several other federal and provincial powers. Therefore, the environment is often viewed as a functionally concurrent field (Hatherly, 1987: 126). Since many environmental concerns such as air and water pollution go beyond provincial boundaries, the solutions to these problems often necessitate federal involvement in long-standing provincial jurisdictions. The variety of interests at the national, regional, and provincial levels require bilateral and multilateral negotiations to settle these extra-provincial matters (Doern & Conway, 1994: 83-85).

The disadvantages associated with Canada’s interjurisdictional quagmire in the field of the environment centre around the problems of overlap, uncertainty, and conflict. Overlap leads to both policy and administrative inefficiencies. Policy efficiency refers to making the proper policy decisions needed to deal with the problem at hand. Administrative efficiency pertains to minimizing wasteful costs involved in the implementation of a particular policy or act. The former is invariably a priority for all governments. However, the number of redundant programs tends to increase when there are several levels of government involved in a single jurisdiction. In a time of fiscal restraint, government officials are stressing the importance of administrative efficiency to alleviate problems of scarce resources and funding. This includes reducing administrative expenses, establishing quicker service, and eliminating waste and extravagance (Johnson, 1960: 246-247).

An explanation for the level of uncertainty surrounding environmental matters may be found in governmental reticence to test jurisdictional bounds. Legislation in an unclear domain is likely to go before the courts. Given the general finality associated with judicial judgements, a government will consider various factors before taking the chance of losing a case. They include
the strength of its constitutional arguments, the temperament of the courts toward the subject matter, the level of hostility exhibited by other governments, and the potential for achieving results through informal bargaining. A government will also weigh the political benefits and costs attached to any jurisdictional gains that may result from going to court (Harrison, 1996: 31-32). "At the limit, if a policy offers net political costs rather than benefits, a government has no incentive to test the constitutional waters, even if legal victory would be virtually certain and politically painless" (Ibid.: 32). All of these considerations can lead to inactivity by governments due to their uncertain position or unwillingness to tackle certain environmental concerns. The advantages and disadvantages of competitive federalism will be examined later in this paper.

What could we hope to accomplish if changes were made to the existing structure of federal-provincial relations concerning environmental protection? Since the current system exists because of the jurisdictional arrangements that are in place, major reforms would entail an amendment to the constitution. This would be extremely difficult to achieve since it would require the consent of the Parliament of Canada and two-thirds of the provinces representing at least fifty percent of the population of all provinces. Once the amendment becomes constitutional law, it still may not apply to all Canadians since dissenting provinces, no more than three, can opt out of any resolution that transfers power to central government (Department of Justice Canada, 1996: 68-69).

Mary Hatherly from the University of New Brunswick’s Faculty of Law identifies four basic options when considering constitutional amendments to alter existing practices. First, the environment could be listed as an exclusive jurisdictional power of either the national or provincial governments. Arguments could be made for each order of government, though
Hatherly favoured the Parliament of Canada because of its extra-territorial capacity, international status, and superior fiscal powers (Hatherly, 1987: 127-128). An amendment such as this would have a sweeping effect on how this country is governed. Canada is currently managed by a carefully balanced federal system that must respect the diversity of its people while keeping them unified under one state. The environment is a broad subject that has legislative implications in at least seventeen federal and provincial jurisdictions. If understood in terms of sustainable development, the environment would touch almost every item in the federal and provincial lists of powers. Granting that much authority to only one of these two orders of government would eviscerate the political system that has maintained peace and stability in this country for over one hundred years. National integrity and issues of unity could certainly fall prey if such a proposal were forced upon reticent provinces. Alberta and Quebec have been particularly vehement in their opposition to the expansion of federal powers in the field of the environment. Therefore, some form of concurrency in this area is simply necessary.

[I]t is essential in our federal country that the balance between federal and provincial subjects of primary legislative powers should remain stable - reasonably constant - subject only to a process of gradual changes when these are rendered truly necessary by the demands of new conditions in our society from time to time ... [Subjects such as pollution] must be treated as outside the system, which means they should each be subdivided into appropriate parts so that necessary legislation can be taken by some combination of both federal and provincial statutes. Coordination of these legislative efforts should come through cooperative federalism (Lederman, 1989: 151 & 159).

Hatherly’s second option revolves around the idea of constitutionalizing sectors of the environment. Concerns could be divided into issues relating to air, land, and water. Subsequently, jurisdiction over air could be given to one order of government, water to the other,
and land could become a shared responsibility (Hatherly, 1987: 128). Problems identified with the first model would certainly apply to this proposal. Though some objections may be blunted by the fact that power over the environment would be divided between the two levels, surrendering large blocks of authority in any of these sectors would still be unpalatable to most government officials. There would also be considerable debate among the provinces over which area should go to them. Newfoundland may prefer control over water while Alberta or Saskatchewan may want to have authority over air. These complications would make it exceedingly difficult to achieve the amount of support needed to implement such an amendment to the constitution. In addition, this solution would not properly address issues such as the extra-territorial limitations placed on the provinces. More importantly, this suggests that the environment is actually divisible, that air pollution can be readily separated from concerns over land and water. This is clearly not the case. Therefore, this model would fail to resolve the level of overlap and jurisdictional uncertainty associated with environmental protection.

The third possibility would entail the allocation of jurisdictional control on a territorial basis. The provinces would be given authority over all environmental matters that occur within provincial boundaries. On the other hand, the federal government would have control over environmental concerns that are inter-provincial or international in scope. This closely reflects the existing structure that governs intergovernmental relations in the field of the environment. Interests that are local or private are generally controlled exclusively by the provinces and issues that have a national dimension to them often invite federal involvement (Ibid.: 128-129). The problem remains: Where do we draw the line between local and national interests? The federal role in environmental protection might also be drastically reduced to that of an umpire stepping
in only when one province violates the rights of another or when actions occurring in a foreign country threaten the integrity of the Canadian environment. On the other hand, inter-provincial concerns often begin as intra-provincial issues. Therefore, environmental degradation may appear to be a national responsibility even though proper preventative measures would require provincial legislation. Overlapping responsibilities and constitutional uncertainty would continue under this model. This proposal would also clash with existing jurisdictional boundaries that currently separate the two orders of government. Overall, the third option offers little in the way of improvements while suffering the stigma associated with unknown or untested alternatives. The ratio of risk versus return is more than likely to discourage governments from amending the constitution in this manner.

The fourth recommendation forwarded by Hatherly is simply to indicate in the body of the Canadian constitution that the environment is a concurrent power. This would grant both orders of government equivalent jurisdiction over environmental concerns. Therefore, the provinces would legislate matters of a local nature and yet Parliament would be free to act when inter-provincial interests are affected or when it is necessary to pre-empt any provincial legislation (Ibid.: 129). Evidently Hatherly would grant paramountcy to the federal government.

It [concurrency] encourages cooperation between governments; it encourages coordination; it is a way of offsetting any theoretical gaps in our constitution; and it is a way of giving due regard to the fact that those levels of government have legitimate interests in a single environmental problem (Ibid.: 129).

Much like Hatherly’s third option, this one mirrors present intergovernmental relations in the field of the environment. However, giving federal statutes precedence over provincial legislation would be a net loss to the latter group. The provinces would lose sovereign control over much of
their current power base, something that would be unacceptable to most of the provincial
governments, in particular Alberta and Quebec. The additional conflict that may arise out of the
fact that both levels would suddenly be free to meddle in areas previously considered exclusive
jurisdictions of the other could also derail the cooperative process. We may conclude that none
of the four options offer a net improvement over the existing structure that governs federal-
provincial relations in the field of the environment. In addition, none of them would have much
hope of surviving the amending procedure required to make them constitutional law. Even if one
of them were to be accepted, it is reasonable to assume that one or more provinces would choose
to opt out which would lead to different rules and standards in those jurisdictions, thereby
further complicating matters. Therefore, the present system is preferred over these alternatives,
benefiting primarily from being a relatively known quantity. A certain level of concurrency
already exists between the two orders of government without giving either one a consistent
advantage over the other whenever conflict arises.

The division of powers and the interjurisdictional quagmire that governs federal-
provincial relations in the area of environmental protection are both consistent with the
fundamental concept that defines federalism in this country. They allow Canadians to remain
united and to benefit from being members of a single nation while also respecting the
population’s diverse needs and preferences at a provincial level. People that push for quick
breakthroughs to attain sustainable development by demanding major shifts in power between
the two orders of government demonstrate a lack of understanding regarding the fragile nature of
Canadian politics. This is not to say that the present system has already shown its adequacy in
dealing with environmental problems, an issue that will be discussed in greater detail in the
following pages. We may yet determine that important modifications to the Canadian approach are needed before we can achieve sustainable development. However, efforts made by groups such as the Greenprint for Canada Committee are counterproductive because they fail to recognize the proper dynamics needed to make intergovernmental relations function in a manner that will result in improved environmental protection. We must discover ways to achieve the desired goal of sustainable development through the current structure that governs intergovernmental relations in matters concerning the environment.

4 The Greenprint for Canada Committee issued a 31 page booklet following the re-election of the Progressive Conservative Party in 1988. It included a long list of recommendations calling for strong federal action in the field of the environment irrespective of provincial concerns (Greenprint for Canada Committee, 1989). Many of the proposals, in this author's opinion, clearly violated provincial jurisdiction and treated the latter as inferior governments. The report had little impact on national policies. However, the fact remains that this type of publication does not help foster good federal relations with the provinces. We must remember that sustainable development can only be achieved with provincial cooperation.
FEDERAL-PROVINCIAL RELATIONS IN THE FIELD OF THE ENVIRONMENT: A HISTORY OF COOPERATION AND COMPETITION

The history of federal-provincial relations in the field of environmental protection is complex. There are instances of conflict and discord as well as examples of cooperation and coordination between government officials. The process is further complicated by the fact that most intergovernmental negotiations focus on specific issues, some being more contentious than others, which are often dealt with in a concurrent fashion. When we also consider the number of governmental agencies and special interest groups vying for attention, we begin to understand the difficulties associated with attempts to provide a simple account of past events. Nonetheless, it is necessary if we are to determine the ability of federal and provincial governments to work together to forge a sustainable society.

The first ‘green’ wave occurred during the early 1960's. Confronted with a growing public awareness of pollution problems, both orders of government were forced to enact environmental legislation. The federal government created a Department of the Environment and passed nine major environmental statutes including the Canada Water Act of 1970 and the Clean Air Act of 1971. Parliament’s actions were supported by a slim majority of provinces. Alberta, British Columbia, Ontario, and Quebec publicly denounced the federal government for intruding upon provincial jurisdiction. Tension and conflict, therefore, marked intergovernmental relations in the field of the environment during this period despite the creation of the Canadian Council of Resource Ministers, later renamed the Canadian Council of Resource and Environment Ministers (CCREM), in 1961 to provide a forum for discussion and facilitate the exchange of information (Harrison, 1995: 420-421).
The Canadian economy suffered a recession in the early 1970s. The federal government's attention shifted away from environmental protection to focus on such issues as high inflation and unemployment. Many of the previously introduced pieces of legislation, including the Canada Water Act, were never fully implemented. Authority over the environment gradually shifted back to the provinces. New relations were cemented into bilateral accords between the provinces and the federal government. There was a general agreement that Parliament would be responsible for establishing national guidelines after consulting with the provinces. In exchange, the latter would pass and enforce legislation that was at least as stringent as the agreed upon standards. Only British Columbia, Newfoundland, and Quebec did not sign similar deals with the federal government. That mattered little though as Parliament rarely intervened and its function went from that of a regulator to that of an advocate for environmental protection (Ibid: 422-424).

Much of the credit for the cooperative character of federal-provincial relations during this period is attributed to the CCREM. It promoted information sharing and discussion of environmental issues leading to cooperative intergovernmental initiatives. The CCREM also served in an advisory capacity to provincial governments that requested its services. In the mid-1970s, the CCREM's role was drastically reduced to a purely liaison function. Doug Macdonald suggests that the move occurred after governments began to view the council as a potential threat. In the following decade, resource and environment departments began to merge together. The natural resource ministers withdrew from the CCREM in 1988 and the organization was renamed the Canadian Council of Ministers of the Environment (CCME) (Macdonald, 1991: 54). A lack of activity in the area of environmental protection may also be responsible for the
cooperative quality of this period. If one level of government or both stop acting to protect the environment, then competition should decrease as the federal system experiences what may be characterized as a 'leadership vacuum'. Though a void was created as both levels of government shifted their attention toward economic woes, work completed by the CCREM and the bilateral accords negotiated by the federal government and many of the provinces suggest that there was also a notable shift toward intergovernmental cooperation.

The environmental movement was revitalized in the late 1980s by a series of ecological disasters including ozone depletion, Chernobyl, and the Exxon Valdez oil spill off the coast of Alaska. Opinion polls registered high public concern over the environment throughout the late 1980s (Harrison, 1996: 116-118). Keith Newman, a senior associate at Environics Research Group Limited, commented that public interest was primarily based on the threat that environmental degradation posed toward human health. Though people blamed private industry for most of the pollution, they expected governments, in particular the federal government, to accept responsibility for ensuring that proper steps were taken to protect them and the environment (Newman, 1990: 4-5).

The sharp rise in public interest lasted until the onset of another recession in the early 1990s. However, those few years were enough to pressure governments to act more aggressively to protect the environment. The situation was further animated by environmentalists who pressed the courts to force the federal government into performing environmental assessments on projects that fell within their own jurisdiction. In the Rafferty-Alameda decision, the federal court forced Environment Canada to perform an environmental assessment of the dam as required by the Environmental Assessment and Review Process (EARP) Guidelines Order
These activities aggravated intergovernmental relations during the 1980s and early 1990s. Other irritants for the provinces included the Green Plan and the enactment of the Canadian Environmental Protection Act (CEPA). In prior to the plan’s release, Environment Canada initiated a massive public consultation program which included forty-one information sessions and hearings in seventeen cities across the country. The federal government also privately consulted with the provinces. Provincial officials however, were upset about the secretive nature of the plan. They were not informed as to what the plan would actually include, though they expected the worst since the federal government promised to get tough with polluters. Fearful of a possible carbon tax, the Alberta media began calling the unreleased Green Plan ‘son of the National Energy Program’. The provinces breathed a collective sigh of relief when the plan was finally released in 1990. Environmentalists reacted negatively toward what they viewed to be little more than another spending program (Ibid.: 121-123). Though a lack of emphasis on regulatory policies and promises of additional funds to help protect the environment went a long way toward improving intergovernmental relations, the failure to include provincial officials in the decision-making process served to heighten tensions between the two levels of government. Confrontation was also in the cards when it came to CEPA. The federal government sought to achieve two major objectives when the legislation was proclaimed in June, 1988. CEPA consolidated several existing statutes including the Environmental Contaminants Act, the Canada Water Act, and the Clean Air Act. CEPA also significantly strengthened the federal government’s role in the control of toxic substances (Ibid.: 128).

Perceived federal incursions into traditional provincial responsibilities once again led to
intergovernmental tensions with Alberta, British Columbia, Ontario, and Quebec. This time however, the federal government placed greater importance upon setting and enforcing national standards. “[Environment Minister] McMillan responded by asserting a stronger federal role in environmental protection in the form of new legislation that placed renewed emphasis on uniform national standards” (Harrison, 1995: 425). CEPA could be revoked in provinces that established ‘equivalent’ regulations. Even under EARP, replaced in 1992 by the Canadian Environmental Assessment Act to prevent private citizens from forcing the national government into performing environmental reviews of projects that transgressed federal jurisdiction, there were no enforcement provisions. Assessments were performed simply to inform the government of the potential impact that a project could have on its surrounding environment. The provinces were still the primary environmental enforcers, only now they were being pressed to adopt and implement national standards set by the federal government after lengthy consultation with the provinces, industry, and environmentalists. The latter were included at the behest of the national government as a counterweight against reticent provinces and obstinate business groups (Ibid.: 424-429).

Intergovernmental tensions were assuaged with the help of the CCME. In 1989, federal and provincial governments extended the role of the CCME and accorded it additional resources. It received a permanent and enlarged secretariat based in Winnipeg. Two new committees were established under the CCME, one for strategic planning and the other for immediate environmental operations. In addition to its previous directive of discussion and information sharing, it now provided consultation on a vast array of environmental issues to departments that required assistance (Doern & Conway, 1994: 92). The operation costs of the
CCME are shared by all the governments involved. The federal government contributes one-third of the costs while the provinces and territories divide the rest on a per capita basis (Skogstad & Kopas, 1992: 49).

The Canadian Council of Ministers of the Environment (CCME) brings together federal, provincial, and territorial governments in an effort to make progress together on environmental issues. Currently, it has an exercise under way to redefine the working relationship between orders of government to eliminate overlap and duplication, and identify gaps in the way the environment is managed in Canada (Department of the Environment, 1995: 12).

The CCME involves both politicians and high level officials in its organization (Table A). At the top there is the Council of Ministers. Its membership is one federal, eleven provincial, and two territorial environment ministers. The chairmanship rotates among the thirteen members. This helps to put the ministers on an equal footing. They meet at least twice a year (CCME, March 12, 1998).

Next is the Deputy Ministers Committee. It holds four to five annual meetings and reports directly to the Council. The deputy ministers are responsible for the direction of all other committees within the CCME. Adjunct to the Deputy Ministers Committee are the Secretariat and the Management Committee. They form the administrative body that handles the day-to-day duties of the CCME (Skogstad & Kopas, 1992: 54).

Recently, the two major subcommittees, the Environmental Protection Committee and the Strategic Planning Committee, were combined to form the Environmental Planning and Protection Committee (EPPC). The EPPC is concerned with both current environmental problems and long-term planning. As of March 31, 1998, there were eight task groups under its direction: Economic Integration; Environmental Education and Communications; Hazardous
Waste; National Air Issues Coordination Committee; National Task Force on Packaging; State of the Environment Reporting; Soil Quality Guidelines; and Water Quality Guidelines. The National Air Issues Steering Committee and the National Air Issues Coordinating Committee are directed in conjunction with the Council of Energy Ministers (CCME, March 31, 1998). The members of these task groups are recruited from existing federal, provincial, and territorial staffs. Their duties are added onto their normal obligations. These men and women represent a pool of experts to advise and assist ministers and deputy ministers. They work cooperatively to achieve specific goals and, through consensus, propose national policies, programs, standards and guidelines. The task groups also publish scientific, technical, and informational documents that are available to the public. Through the efforts of its committees and task groups, the CCME has been able to accomplish a number of objectives. Governments have committed themselves to solid waste reduction, exhaust regulations for new vehicles, and a clean-up program for abandoned waste sites (Macdonald, 1991: 54-55 & 128).

The most important document issued by the CCME to date is perhaps its Statement of Interjurisdictional Cooperation on Environmental Matters (STOIC). Released in 1990, it was a response to the passage of CEPA, a highly centralized and controversial piece of legislation that threatened the balance of power and the cooperative nature of environmental relations (Harrison, 1995: 425-430). STOIC served to renew the vows of partnership between the two orders of government. The document is divided into three parts. First, it recognized the need for Interjurisdictional Cooperation. Both levels of government acknowledged their shared authority to regulate environmental matters and the need for coordinated responses to these concerns. This is particularly important considering the fact that environmental problems are increasingly
taking on inter-provincial, national, and even international significance (CCME, 1993: 1).

Second, both orders of government agreed to adopt the following *Principles of Cooperation*. Government officials committed themselves to acting on environmental matters that fell within their sphere of authority while respecting the jurisdiction of other governments. They also pledged to notify and consult other governments in instances of interjurisdictional impacts from their actions. Cooperation must remain based on ‘the spirit of partnership’ to maximize the efficiency and effectiveness of government policies. A commitment was also made to share environmental information and collaborate in the development of national objectives and standards. In preparation for international negotiations, the federal government agreed to consult the provinces, especially when obligations exist for both levels (*Ibid.*: 2).

Based upon these principles, the governments issued a *Statement of Objectives*. Both orders of government will work together through the CCME to harmonize environmental legislation and programs. This may include bilateral accords and issue-specific agreements to promote environmental cooperation. They will also seek to harmonize environmental assessment and review procedures. With the help of the CCME, governments will continue to develop national environmental standards and strategies in order to guide and facilitate efforts to coordinate the management of interjurisdictional matters. Finally, they will remain committed to the continued development of a scientific database to support informed decision-making by government officials (*Ibid.*: 3).
The **Statement** provides the overall framework for effective intergovernmental cooperation on environmental matters, and sets out the principles which will guide the formulation of formal environmental cooperation agreements between neighbouring provinces or territories, or between provinces and the federal government (Ibid.: 4).

STOIC represents an important shift in overall provincial strategy concerning the environment. Since federal intrusion is now considered unavoidable, the provinces are attempting to block any unilateral action by tying the national government to a system based on consultation and consensus. This process also serves to bring all of the provinces on board, thereby preventing any of them from undercutting the others in the never-ending battle for private investments by promising companies lower environmental standards. Therefore, both orders of government make compromises during negotiations to arrive at agreements on environmental matters (Harrison, 1996: 143-144).

Other major events that took place in the early 1990s include numerous administrative agreements between federal and provincial governments, Canada’s participation at the United Nations Conference on Environment and Development (UNCED), and the current proposal for a Canada-Wide Accord on Environmental Harmonization. The federal government has negotiated bilateral agreements with the provinces concerning the administration of pollution control provisions under the Fisheries Act and federal pulp and paper regulations to name a few (Ibid.: 158). Canadian involvement in UNCED will be thoroughly discussed later in this paper. Finally, the CCME’s latest efforts have centred around its primary objective of achieving legislative harmonization in the field of the environment. On January 29, 1998, the members of the CCME, with the exception of Quebec, signed the Canada-Wide Accord on Environmental
Harmonization (CWAEH). The Accord aims to enhance environmental protection, promote sustainable development, attain greater efficiency and predictability of environmental management across Canada, and develop nationally consistent environmental objectives, standards and scientific databases. The signatories have also signed sub-agreements dealing with environmental assessment, inspection activities, and development of Canada-wide standards in areas such as air, water and soil quality. The Canada-Wide Environmental Inspections Sub-Agreement aims at improving efficiency and cost-effectiveness through a one-window delivery system of environmental inspection activities. One-window delivery eliminates overlap by delineating regulatory responsibilities to the order of government best situated to deal effectively with the particular environmental concern in question. The process also provides added clarity and a clearer path toward direct public accountability while circumventing the judicial system’s involvement in assigning governmental authorities in the field of the environment. The Sub-Agreement on Environmental Assessment provides for the completion of a single assessment and review process when two or more governments are required to assess the same proposed project. Finally, the Canada-Wide Environmental Standards Sub-Agreement focusses on creating national ambient standards regarding specific concerns so that all Canadians can benefit from a common high degree of environmental quality. The CCME is currently working on developing additional sub-agreements in other areas including enforcement, monitoring and reporting, environmental emergencies, and research and development (CCME, February 2, 1998). Though similar to STOIC, CWAEH nonetheless represents an important shift in federal-provincial relations. Greater emphasis is being given to the elimination of overlap and the creation of a one-window approach to environmental
regulation. The Accord and the Sub-Agreements also offer increased accountability through regular public reporting of measurable obligations and results, and a commitment to develop alternative plans if obligations are not met (Ibid.). Though these agreements remain largely untested, the CCME has made a commitment to perform a review in two years to determine the level of success, and Quebec refuses to sign on until additional conditions are met by the federal government, CWAEH should be viewed as a clear success regarding intergovernmental relations in the area of environmental protection. Federal and provincial governments have set the groundwork for a structure that will promote added clarity and accountability while eliminating bureaucratic overlap and allowing all governments to retain their legislative authorities.

We may conclude that the general trend in environmental protection has revolved around three basic features. First, the federal government has led the way in proposing national guidelines and objectives. Second, a significant effort has been made by the federal government to consult and bargain with the provinces in the establishment of regulatory standards. Third, enforcement has generally been left to the provinces (Skogstad & Kopas, 1992: 44).

Prior to the late 1980s, the federal government played a largely supportive role of conducting research, offering technical expertise, regulating mobile source emissions, and gently encouraging the provinces to adopt consistent national standards. In contrast, the provincial governments assumed the role of front-line protectors of the environment - setting standards for environmental and effluent quality, issuing permits for individual sources, and enforcing both provincial and federal standards (Harrison, 1995: 414-415).

Skogstad and Kopas put forward three factors that may help explain the pattern in intergovernmental relations. The lack of clarity and jurisdictional overlap in the field of environmental protection has forced the two orders of government to seek an arrangement
The federal role in particular is constrained by constitutional uncertainty. As we have seen, federal authority is often based on indirect constitutional jurisdictions, such as fisheries. The limits to these powers generally remain unclear to this day. In turn, provinces are confined to their own borders. Provincial legislation is valid only within the province from which it originates (Harrison, 1995: 418-420).

Cooperation also came about because of a common preference to avoid coercive legislation. Federal and provincial officials also share an uncertainty about the compatibility between economic growth and environmental protection. Both levels of government have close ties with polluting industries and show a bias that favours economic development over environmental protection (Skogstad & Kopas, 1992: 47). Kathryn Harrison extends this argument concerning the cooperative nature of federal-provincial relations in the field of the environment. She contends that during periods of low public awareness, the federal government is willing to abdicate its responsibilities in order to evade the hostility of companies that resist environmental regulations. This has allowed the provinces to exert their authority over natural resources with minimum interference from the national government (Harrison, 1995: 416-417).

Third, Skogstad and Kopas acknowledge the presence of a well-established set of mechanisms that facilitate intergovernmental consultation. They include institutions such as the CCME and various advisory committees. These institutions allow ministers and bureaucratic officials from both orders of government to get together to discuss and coordinate policies affecting the environment (Skogstad & Kopas, 1992: 44). All of these factors have encouraged the development of a cooperative system in matters concerning the environment.
When it comes to environmental protection, the present federal system satisfies two major conditions needed to promote amenable relations between the two orders of government. First, it grants a functionally concurrent status to both levels while also respecting the constitutional division of powers. Second, it benefits from being a structure that is already in place with a long history of encouraging governments to work through their differences. Clearly major changes to the way this country protects its natural environment, especially those requiring an amendment to the Canadian constitution, are impractical and offer little in the way of certain improvement. However, the current structure still allows for a great deal of latitude. Governments may decide to cooperate or compete against each other on a number of different environmental issues. The advantages and disadvantages of both approaches must be understood before we can proceed with our evaluation of the attainability of sustainable development in Canada.

For the purpose of this paper, competitive federalism is loosely defined by the lack of a formal or institutional structure to assist in the coordination of intergovernmental activities in a specific field of interest. Generally, one level of government acts without consulting the other. Competition does include a limited degree of cooperation. Consultation however, conventionally takes place only after the government in question has declared its intent to implement the controversial piece of legislation or policy. According to Albert Breton, competitive federalism originates from the need to gain the support of voters. Governments provide the policies they desire in order to get reelected. The federal government seeks its support at the national level while the provinces must please those that live within their own borders. When a policy at one
level is incompatible with the actions or inactions taken by other affected governments, there will be conflict between them (Breton, 1989: 476-477).

Competition occurs at three levels. First, there is the rivalry that takes place between federal and provincial governments. We will refer to this as intergovernmental competition. Since both orders of government have overlapping legislative responsibilities in the field of the environment, intergovernmental relations hold a significant potential for conflict. If one level of government believes that it will gain additional support by acting alone, then it will resist attempts made by others to establish an institutional structure to promote cooperative federalism. Then the former will be free to implement its own policies without having to consult other governments. If it appears to the latter that those legislative programs threaten their own support base, then they will be forced to react in defence of their interests. In accordance with Breton’s assessment that public demand represents the motivating factor behind government activities, it will not matter whether any of these legislative programs complement or conflict with one another. The end result will be competitive federalism.

There is a potential for similar relations to develop between provinces. We will call this interprovincial competition. Conflict will arise when the actions of one government adversely affect the popular support of one or more neighbouring provinces. If so, then the latter will be forced to implement policies to counteract the effects of the controversial policy or program. Generally, these differences are resolved through court proceedings. It is important to note the existence of interprovincial competition since it often impedes intergovernmental cooperation. For the purposes of our discussion however, the former is secondary to intergovernmental competition and will be treated as such in this paper.
Third, competition also occurs at an intra-governmental level. There are signs of competing interests within government departments as well as between different agencies, elected representatives, and between the House of Commons and the Senate. Similar forms of confrontation take place at the provincial level as well. Intra-governmental competition is not germane to our discussion. This paper simply recognizes that intra-governmental competition may affect public attitudes toward environmental concerns which in turn may force governments to enter into competitive relations with each other.

There are four major advantages to having a competitive federal system. First, the division of powers becomes more clear and defined as a result of additional court referrals. The number of actions brought before the courts is likely to increase in proportion with the higher number of intergovernmental and interprovincial conflicts. The subsequent decisions rendered will help clarify the lines that exist between federal, provincial, and Charter rights in the field of the environment. Enhanced knowledge of the responsibilities of each level of government should also help ease one of the tenets compelling governments to cooperate with one another. As long as court decisions do not threaten the overall stability of the Canadian state, greater certainty in the division of powers could become a stabilizing force in a competitive federal model.

There is unfortunately a serious disadvantage related to court referrals. The proceedings are costly and lengthy events that can result in unpopular rulings. If the courts fail to soothe political tensions, then they become seeds of discontent in themselves threatening the stability of the entire country. Since these judgements are rarely overturned and constitutional amendments are even less likely to succeed, the courts often have the power to shape legislation for decades to come. There is clearly a price to pay when drawing upon the courts to reduce the level of
uncertainty surrounding the division of powers in the field of the environment, and it is often a cost that politicians are not willing to accept. Governments in Canada have preferred to cooperate with one another rather than depend upon court rulings to decide these matters.

“Politicians generally prefer political solutions, in which they can split the difference and provide partial satisfaction to both sides, to the clear-cut, ‘either-or’ decisions produced by the judicial process” (Stevenson, 1990: 394). Current intergovernmental efforts under CWAEH aimed at creating a one-window approach to environmental regulation also advance the prospect for a clearer definition of governmental responsibilities in specific areas of environmental concern. Moreover, the goal of added clarity is being achieved through political channels, specifically the CCME, which offers government officials the opportunity to negotiate consensual agreements while bypassing the courts altogether.

Second, competitive federalism encourages multiple responses to similar environmental concerns. This breeds diversity and innovation. These benefits are often attributed to the increased autonomy resulting from competition. However, it is difficult to demonstrate that similar results cannot be attained under a cooperative structure such as the one that exists in Canada today. If cooperative and competitive systems have the same number of contributors to their decision-making processes, then we may conclude that some semblance of diversity and innovation can exist in both. The loss in diversity and inventiveness under a cooperative structure is generally based upon an assumed shift toward unilateralism, that is a concentration of power into the hands of one of the two levels of government (Breton, 1989: 465-466). This need not happen. The Canadian system includes both federal and provincial participation in policy-making processes aimed at protecting the environment. In this manner, national as well as
local needs are discussed and accommodated through some form of compromise on the part of involved parties. Provinces are often free to modify policies or programs to meet their own special needs. In addition, successful programs generally appear in other jurisdictions regardless of the presence of national guidelines. The difference between competitive and cooperative federalism in this respect is largely a question of timing.

A third advantage to competitive federalism is an elevation in the quality of public accountability. If competition is based upon each government attempting to optimize their popular support, then it will naturally promote democratic policy-making. "Responsible government is democratic government; but responsible government plus federalism is extended democracy, simply because there is more competition" (Ibid.: 460). Federal and provincial governments also act as checks and balances in defence of people's interests at both national and local levels. Though the two may conflict from time to time, competition for votes forces the federal government to acknowledge regional and provincial interests. The provinces must in turn respect the concerns of the national government as well as those raised by other provinces if they wish to avoid federal intrusion in their jurisdiction or court decisions that are likely to strike down their legislative programs. In addition, intergovernmental relations tend to be more open and public during moments of tension. Cooperation is often tied to collusion and secret deals (Ibid.: 464-465). Though such arrangements may be made in a competitive climate, they are less frequent and generally limited to dealings that occur after new policies are being implemented by some government. All of this helps to ensure that government decisions remain in line with the wishes of the people.

As we will demonstrate later in this paper, additional government accountability is
important in a sustainable community. However, sustainable development is the primary end, that is the achievement of economic and social development which provides for the basic needs of all people while respecting the environmental and technological limitations placed upon us (World Commission on Environment and Development, 1990: 43). Increased accountability and public participation aimed at pressuring governments into implementing environmental programs and policies are desirable as long as they are based upon the principles of sustainability. Environmentalists often take it for granted that their objectives are highly compatible with the will of the people. Yet a zealous reliance upon public demand to motivate politicians can be problematic at times, especially in a federal state such as Canada. If popular support for the protection of the environment wanes or fluctuates in any single province, then that government will be less inclined to push for stronger environmental legislation even though it may be necessary to achieve sustainable development. This is true in both cooperative and competitive federalism. However, if there were an institutional structure in place to promote cooperation, pressure from other governments may become an impetus for change. Earlier we noted that Harrison believes a lack of public interest allowed the federal government to waver in its commitment to protect the natural environment despite the presence of a cooperative system. This conclusion implies that a federal presence is required to keep the provinces properly motivated to strengthen environmental regulations. Breton would argue to the contrary, that public pressure at the provincial level is needed to effectively motivate local governments into action. What we can conclude with certainty is that both competitive and cooperative federalism fail if the two orders of government have no incentive to move on environmental concerns, and that under cooperative federalism there exists an additional forum through which government
officials can press their colleagues into action on environmental problems that should concern them all.

The fourth important advantage that competition holds over cooperation is its ability to achieve an efficient allocation of limited resources. Breton argues that competitive federalism encourages governments to practice ‘entrepreneurial competition’. New policies force other governments to react and implement their own programs that either complement or oppose the former. The ultimate result is a series of policies that necessarily respect the interests of the public whether they focus on economic growth or environmental protection. Assuming that people understand the need for proper environmental management and that governments act in the manner described by Breton, the people would demand and thus receive environmental protection in an ‘optimal’ manner (Breton, 1989: 460-463). “Politicians, in that view, are entrepreneurs who compete for resources by introducing new policies, by developing new forms of organization, by heralding new unifying symbols, by structuring a new social consensus, etc.” (Ibid.: 462). In other words, people get what they asked for or what they were willing to support at election time. Under this line of reasoning however, sustainable development would only be implemented if people both understood and desired it for themselves. Otherwise, entrepreneurial competition would necessarily fail to construct a sustainable community.

There are certain disadvantages associated with competitive federalism. Competition may become inefficient if tensions between governments go unresolved for extended periods of time. Entrepreneurial competition is hardly a recipe for efficiency when governments waste resources to counteract each other’s policies. If these governments are unable to come to any agreement, which is understandable if no institutional forum exists to promote discussion and
cooperation, then the inefficient use of resources will continue until a solution arises, probably in the form of a court decision that confers legislative authority in the area in question to one of the two orders of government. In some cases however, such a resolution can take years.

Competitive inefficiency is the result of an even greater problem. It is a symptom of conflictual relations that are founded on mistrust and disunity. During moments of extreme tension, the actions of one government could raise the ire of another or several other governments to the point of threatening the peace and stability of the entire country. Federal intrusion into provincial jurisdiction and squabbles over the constitutional division of powers are two of the major concerns expressed by separatist forces in Quebec. The situation could worsen if an equally contentious court decision were to be imposed upon opposing factions. The smooth functioning of a competitive system depends upon some level of good will between its participants as well as a general desire to work within the system. Severe moments of strife are the exceptions in Canadian history, but they provide a strong argument for the development of cooperative federalism to head off issues that have a potential to fragment the Canadian state.

The absence of a cooperative infrastructure also makes it difficult to implement initiatives requiring the approval or support of both orders of government. For example, the federal government cannot fulfill many of its environmental commitments under international agreements without the support of the provinces. The process would be accelerated if a cooperative system was in place to promote discussion, information exchange, and coordination between governments. We cannot assume that if each government does its part, the sum total of those efforts will achieve sustainable development despite the lack of an institutional structure with the express mission of promoting such an outcome.
The obstacles that these disadvantages present to competitive federalism suggest that there is a need for a cooperative structure, even though it may not have the authority to impose any solutions upon its membership. In fact, a system of intergovernmental and interprovincial coordination that depends upon voluntarism may be best for Canada. It promotes cooperation without eliminating the ability of governments to practice competitive federalism. Therefore, some semblance of concurrency is achieved without completely subverting the constitutional division of powers. The participants are also forced to respect each other's needs and to make compromises that are in the best interest of the entire country.

Once again, cooperative federalism involves an institutional structure of some form that brings politicians and/or government officials together to discuss issues and coordinate activities in a specific area in the spirit of attaining some common goal. Governments may still act unilaterally, unless constitutionally prevented from doing so, if they believe their needs are not being satisfied. However, a successful structure will avoid mishaps by establishing conventions that encourage its participants to compromise for the good of all.

Donald Smiley, a foremost expert in the study of Canadian federalism, identifies five conditions that promote just such an achievement (Smiley, 1970: 113-115). First, representatives must have the authority necessary to speak for their respective governments. More precisely, "[w]hat is necessary is that the participants perceive each other as persons closely in touch with the perspectives of their respective administrations and with some degree of influence in determining these perspectives" (Ibid.: 113). The structure of the CCME brings together environment ministers and deputy ministers from each government in Canada. This adds to their shared ability to speak on behalf of their respective government. The last few decades have also
seen an increase in the number of high-profiled ministers taking on the environment portfolio. Though they often face stiff opposition within cabinet meetings because of the prevalent myth that economic development and environmental protection are antithetic to one another, this should be seen as a confirmation of the growing prominence given to those responsible for addressing today’s environmental concerns. However, environment officials have not managed to elevate their ministry to the status of a central agency and, as such, it remains on par with other vertical constituency departments within government.

Second, cooperation is less complicated when participants share a common frame of reference such as being from the same profession. It is also important in this respect to have a stable membership. Within the CCME, people work with others who share similar job descriptions. This makes it easier for these groups to work together, though concern should be expressed regarding the artificial filter that exists between scientific experts and top-level policy makers. The CCME has a hierarchical structure with deputy ministers operating as intermediaries between scientists working for the different task groups and environment ministers. Membership within the Council of Ministers is also unstable. All of this serves to elevate the position of deputy ministers to the possible detriment of other groups within the CCME.

Third, the participants should be committed to the success of the program or particular policies involved rather than to enhancing the influence of their respective legislatures. Governments must act in good faith as equal partners with a willingness to work together to find solutions to conflicts that exist between their respective interests. Fourth, cooperation is facilitated when participants are prepared to include the interests of others into their own
objectives. Therefore, government officials must be prepared to compromise even before they begin negotiations. These two conditions are difficult to measure within the CCME.

Membership throughout the CCME is based upon equal status among governments and decisions are made through a consensus-building process. I would also suggest that STOIC, CWAEH, and other agreements signed by governments in Canada demonstrate a willingness to cooperate, though the limits of their good naturedness have so far gone untested. Governments must still follow through on these commitments as well as go much further to rectify environmental degradation and shape Canada into a sustainable community. Governments have yet to commit themselves to the difficult decisions needed to promote sustainable development. Therefore, the relatively low level of pressure placed upon the federal structure has allowed governments to avoid testing the limits to cooperation.

Canadians have only begun to grapple with the two major stumbling blocks to action - the extremely high cost of pollution reduction and the political conflicts that will inevitably accompany the process of deciding how that cost will be allocated ... When the crunch comes, will Canadians be willing to pay the necessary price, in terms of taxes, consumer prices, jobs or lifestyle changes (Macdonald, 1991: 128)?

If change comes from a shift in popular values, then we can expect governments to reflect the new mood of the country and work together toward sustainable development. If ‘the crunch’ forces people and governments to act before such a change in attitude has occurred, then the cooperative system may fail us and governments could revert to competition. However by allowing governments to compete with one another, the institutional structure that makes cooperation possible is able to survive difficult times and this should give us hope for even the darkest future.
Last, it is helpful if those negotiations are confidential. All parties must be prepared to share classified information on a consistent basis. This requires limitations upon public involvement in the cooperative process. Smiley wrote these conditions over twenty years ago and there has been considerable evolution in public norms since then. People expect and demand an opportunity to participate in decision-making while governments and their agencies, including the CCME, have moved toward a stakeholder approach; a process that allows for direct input from scientists, non-governmental organizations, business and other relevant interest groups. “[O]penness, transparency, accountability and the effective participation of stakeholders and the public in environmental decision-making is necessary for an effective environmental management regime” (CCME, February 8, 1998). Every Canadian has a role to play if we are going to attain sustainable development and the movement’s success depends upon empowering people. However, there is a difference between consulting the public and making governments accountable, and carrying out intergovernmental negotiations in public. Certain stages of the decision-making process within the CCME are completed behind closed doors. This helps to eliminate political grandstanding before the cameras and allows government officials to negotiate in good faith. Much like competitive federalism however, the success of this process ultimately depends upon the good will of government representatives. The success of the CCME and the cooperative structure that already exists in this country suggests that these five conditions have been satisfied in Canada.

Under such circumstances effective consultation can lead to a solution which includes both federal and provincial aims, a solution agreed upon against a background of mutual respect among the governments concerned for the constitutional responsibilities of each other (Smiley, 1970: 114-115).
Remember that the goal set out before us is the achievement of a sustainable community. The general advantage of a cooperative system may be demonstrated through a non-cooperative game such as the ‘prisoner’s dilemma’. The game begins with the arrest and separation of two suspects. The police lack the evidence needed to charge either of them. Each is offered a choice, either confess or do not confess to the crime. If they both confess, they will be charged to the full extent of the law. If only one of them confesses, then that person will receive lenient treatment while the other gets ‘the book’ thrown at him/her. Last, if both remain quiet, they will be charged with a lesser crime. If they cannot communicate, each will confess. If they could talk to one another, they would act differently. Therefore, there are gains from cooperation. Albert Breton argues that the prisoner’s dilemma is not an appropriate model for federalism (Breton, 1989: 467-468). First, he says governments are not kept incommunicado. Second, Breton looks at the model as an ‘oligopolist’s dilemma’ and concludes “that co-operation benefits the oligopolists, while competition serves consumers” (Ibid.: 468). I argue that the prisoner’s dilemma is very much applicable to federalism. First, the issue is not whether the prisoners are kept separate, but rather the level of trust that exists between them. If the two prisoners fully trust each other, it will not matter that they are kept separate. Conversely, if they do not trust one another, then it will not make any difference if they are permitted to speak to each other. The same problem exists in a federal state. If governments trust each other, if they meet the criteria set out by Smiley, then they are more apt to achieve some form of compromise to resolve their differences and coordinate their activities. They can accomplish greater things together if trust and good will exists between them. In this sense, the cooperative structure serves as a means to allow governments to communicate with each other so that an optimal result can be attained for
the betterment of all involved parties. Second, it is improper for Breton to relate governments to oligopolists since the former pursue the interests of the citizenry while oligopolists satisfy only their own self-interests. Remember that Breton himself claims that governments are motivated by the need to get reelected, to satisfy the self-interests of voters. This is also the basis for democratic government throughout the free world. Therefore, when governments agree to cooperate, it is assumed that the agreement is generally in the best interest of the people.

Cooperative federalism’s most important advantage lies in its ability to achieve results through a series of negotiations with minimal tension between governments. Compromise promotes stability. We must remember that Canada is based upon a fragile balance between national and provincial interests, between unity and a respect for diversity. The delicate nature of the Canadian federal state has been highlighted in recent years by constitutional debacles and the threat of separatist forces in Quebec. These events stress the importance of managing controversial issues that may endanger the fabric of this country. The environment may not be one of the fundamental antagonisms threatening Canada today, but its sweeping character requires us to treat environmental politics with great care. The potential for conflict and strife has certainly not been felt thus far in intergovernmental or interprovincial relations in the field of the environment, and a cooperative structure should help ensure that it never does.

Both cooperative and competitive models work well when only one level of government is active in a particular area of authority. Federalism becomes contentious only when the two orders attempt to legislate the same field of interest. Under competition, a court ruling is generally needed to determine which level of government has paramountcy in a concurrent jurisdiction. Under cooperation, governments are more apt to enter into negotiations to find a
political solution. Through the CWAEH, governments are working together to apply a one-window delivery system that eliminates overlap and provides added clarity by delineating regulatory responsibilities to the order best suited to deal effectively with the specific environmental problem in question. When a concern is delegated to the provinces, we can also expect a certain amount of flexibility to breed an assortment of responses designed to address local considerations. This should encourage innovative developments in a cooperative structure that also presses governments to respect nationally agreed upon objectives and guidelines.

Another advantage to cooperation lies in its multiplicative effect. After years of working together on CCME committees, government officials have asserted that the high levels of trust and confidentiality that developed have led to aggregated results. Governments become more secure which, in turn, facilitates candid discussion and compromise. As these ‘trust ties’ become entrenched, they can be expected to achieve even greater degrees of cooperation as well as spill over into other areas of intergovernmental relations. The need to control spending at both levels has encouraged governments to work together to reduce the duplication of environmental programs and services (Harrison, 1994: 191-192).

Institutionalized cooperation based on trust and secrecy can become a disadvantage to a community. The threat of collusion and the loss of government accountability are both strong arguments made by Breton for discouraging the use of cooperative federalism. He claims that it leads to ‘elite accommodation’ and threatens the basic principles of democracy. Breton also points out the danger of cooperation deteriorating toward a concentration of power into the hands of a single order of government which goes against the fundamental reason for establishing a federal system (Breton, 1989: 464-467). These conclusions are debatable. It is
important that governments compromise to accommodate their diverse needs. However, they remain accountable to the public to the extent that their actions are ultimately scrutinized by the voters as Breton himself demonstrates. Governments through the CCME have already expressed their determination to keep decision-making open and to provide mechanisms that allow the public to hold governments accountable. The thought that one level of government would abdicate full responsibility in the area of environmental protection is also suspect. As we have seen, federal retreats from the field are often linked to the establishment of national guidelines.

The CWAEH also includes a clause that clearly states that harmonization does not alter government authorities under the Canadian Constitution. Therefore, the notion of a one window system of regulation is not the result of one level abdicating its powers to another, but rather a recognition of which order of government is best suited to provide certain services or control some specific activity.

There remains the threat that governmental collusion may go against the environment, that governments may not be held fully accountable for their actions or inactions. This leads me to conclude that independent monitoring systems are needed in each jurisdiction. The first option would be to establish Environmental Commissioners within each government. These officers could act as watchdogs. They would be mandated to reveal instances of non-compliance with existing legislation and identify areas where improvements could be made. Their annual reports would be tabled in their respective legislature and would be made public. The courts could also be integrated, or reintegrated, into the monitoring system if each government passed an environmental bill of rights. The populace would be in a position to press charges or sue anyone who violated their new rights. This may also grant people the ability to force
governments to reconsider certain policy decisions. These options have already been introduced in Ontario through the Environmental Bill of Rights which includes both legislation for the creation of an Environmental Commissioner and for the protection of individual rights to a healthful environment (Bill 26, 1993). The federal government has recently appointed a Commissioner of the Environment and Sustainable Development, established in the Office of the Auditor General. An annual report is tabled before Parliament by the Commissioner along with an evaluation of government efforts to incorporate environmental considerations into its decision-making processes (Liberal Party of Canada, 1997b). Either option would achieve the desired result, that is, a successful monitoring of government activities in the field of the environment. An informed and empowered public could prevent governments from colluding against the environment and pressure them to implement preventative legislation.

A third major advantage attributed to cooperative federalism is its ability to bring together a wide variety of participants in the discussion process. As we have seen, the federal government is likely to consult environmental organizations and incorporate their views. Industry has often had the ear of provincial officials because of the latter’s close ties to local resource-based economies. In a cooperative system, each of these and other stakeholders are given additional opportunity to voice their concerns. As we will demonstrate later in this paper, such an arrangement is more in tune with the goals established under Agenda 21. Since scientists and staff members from each government work together through the CCME to find solutions to common environmental problems, every government benefits from the expanded pool of knowledge and expertise, especially smaller provinces that have traditionally been forced to rely upon the federal government as their primary source of information.
Unfortunately, adding to the number of participants also reduces the overall effectiveness of a cooperative structure by encouraging low-end results. If governments act in poor faith or fail to find an acceptable compromise, cooperative federalism is likely to produce environmental policies that address only the lowest common denominator of all the interest groups involved. Since coordination often depends upon some form of consensus, a willful government can force others to settle for far less rigorous environmental legislation than they might have desired before entering negotiations. Though other governments remain free to unilaterally implement more stringent policies in their own jurisdiction, the threat of losing employment and investment dollars to another province with lower environmental standards often prevents them from acting on their own. Innovation and progress may be compromised in the interest of maintaining a unified front. This refers back to Smiley’s conclusion that cooperative federalism can only go as far as its participants are prepared to accept. It is important to remember that if there is little or no desire to cooperate, then government relations will be extremely tense. The disadvantages to competitive federalism will also be heightened by such adversarial relations. The proper functioning of both systems depends to a certain extent upon the good will of government officials. Cooperative federalism can at least claim victory in getting reluctant governments to implement certain environmental measures that may not have been adopted under pure competition. Environmentalists often refer to the threat of low-end results as proof that cooperative federalism should not tie itself to a consensual decision-making process. There is little doubt that a system requiring only majority consent to impose policies upon all of its members would lead to tougher environmental standards. However, this would clearly violate the basic principle of federalism. A lack of respect for the division of powers would jeopardize
the cooperative structure and possibly compromise the peace and stability of the entire country. As stated above, constitutional amendments needed to implement such changes are highly unlikely. The existing structure of intergovernmental relations in the field of the environment is the only real option.

As we saw earlier, there are also instances of inefficient competition which in turn suggests that there are gains in efficiency to be had through cooperation. In addition to those stated above, there are the added expenses involved in service duplication. Administrative efficiency may be improved through the elimination of redundant programs, something that is presently being pursued by the CCME. There are also benefits involved in attaining economies of scale. Some tasks such as cleaning up toxic waste sites, performing costly research, and purchasing expensive equipment require the pooling of resources. The non-performance of these tasks would threaten the ability of smaller governments to achieve sustainable development.

Breton resolved that “Co-operative federalism, because it proscribes unilateral action, is therefore a disguised ploy to shackle the federal government, to prevent it from addressing the problems it alone can resolve and is constitutionally responsible for resolving” (Breton, 1989: 466). Based upon the analysis provided in this paper, I would like to amend this conclusion. In relation to environmental protection, cooperative federalism shackles the federal government to prevent it from acting unilaterally in constitutional jurisdictions that are not necessarily its own or have traditionally been left to the provinces. However, cooperative federalism also shackles the latter to national guidelines established through consultation between the two orders of government. It then becomes the public’s responsibility to hold governments accountable.

Cooperation depends upon the good will of all parties involved. Therefore, competition
must remain a part of the system. Specifically, governments must retain the ability to walk away from negotiations if their interests are being ignored. A 'give and take' relation must exist without relying on coercive measures to force participants to toe the line. A semblance of competition also helps to offset some of the disadvantages associated with cooperative federalism, namely the threat of collusion and low-end results. If the parties involved are ultimately free to act as they deem necessary, then they will have the ability to accommodate their diverse needs and promote changes that serve the best interests of all Canadians.

Two more important conclusions drawn from this chapter are worth repeating before we begin to examine the impact of intergovernmental relations on the attainability of sustainable development. First, independent monitoring systems should be established by each government to ensure that the public is made aware of government activities or inactivities in the field of the environment. The people must be well-informed so that they can hold governments accountable for going against the principles of sustainable development. An Environmental Bill of Rights would allow for court actions to defend individual rights to a healthful environment while an Environmental Commissioner would perform public audits of the government's annual record regarding environmental protection.

Second, a limited degree of secrecy is necessary to allow intergovernmental negotiations to reach compromises. The exchange of sensitive information and the need to promote frank discussion requires some closed door meetings. However, public participation in an otherwise open process is absolutely essential if Canada hopes to achieve sustainable development. People must realize and accept that sustainability can only be attained after drastic changes are made to current production and consumption patterns. Real change must first affect the hearts and minds
of the citizenry. Breton is correct in recognizing the link between public will and government action. Canadians must be prepared to make radical adjustments in their style of living before governments can find the resolve needed to promote sustainable development. Protest can also serve as an effective instrument for holding governments accountable and to pressure them into enacting tougher legislation. *A concerted effort should be made to direct the bulk of public pressure toward the provinces to instigate change in the field of the environment at that level.*

The role of the federal government has generally been that of an advocate for environmental protection. The provinces have traditionally been the primary regulators and enforcers of environmental legislation. Therefore, it only makes sense to focus greater attention on local and provincial politics to instigate change. Public tension at this level would also be less apt to impair intergovernmental relations. It may seem easier to concentrate limited resources on the federal government, but I sense that more could be accomplished if interest groups gained the support of a handful of have and have-not provinces. Remember that *cooperative federalism can only go as far as its participants are prepared to accept, and public pressure is a major impetus for change.* The cooperative structure serves as a means to allow governments to communicate with each other so that an optimal result can be attained for the betterment of all involved parties. These issues aside, the existing structure of federal-provincial relations in the field of the environment seems most able to lead Canada toward a sustainable future without jeopardizing the peace and stability needed to keep this country together. We must now determine whether federalism has been a visible impediment toward the goals of sustainable development as outlined in Agenda 21.
Sustainable development is concerned with the world population’s quality of life. It recognizes that the careless exploitation of natural resources, issues of poverty, problems of waste, and the continued pollution of our air, water, and land will result in inevitable declines in the living standards of present and future generations. In economic terms, sustainable development demands responsible growth that meets the basic needs of all people while respecting the limitations placed upon us by current levels of technology and the planet’s own natural carrying capacity.

The environmental movement has gone through several stages in the last forty years. In the 1960s, the focus was on resource management. The 1970s saw a shift in policy that stressed the protection of the natural environment. Since the release of the Brundtland Commission’s Our Common Future (World Commission on Environment and Development, 1990) in 1987, the international community has shifted its attention toward achieving sustainability for the world. The 1992 United Nations Conference on Environment and Development (UNCED) held in Rio de Janeiro produced an all-encompassing action plan known as Agenda 21 detailing policy decisions needed to attain sustainable development. It embodies the political commitments that the global community is prepared to implement in regard to development and environmental protection. The first principle of the Rio Declaration on Environment and Development states that “Human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature” (UNCED, 1992: 11). Over-dependence and problems of inefficiency threaten the earth’s reserves of economically extractable natural
resources. Poverty compromises all aspects of the environment because impoverished people generally cannot afford to be attentive to environmental issues. Unbridled accumulation of waste and unsanitary disposal methods endanger the health of all creatures and place an excessive strain on the availability of land. Finally, the contamination and corruption of our soil, atmosphere, and water supply pose an accumulative threat to the well-being of every member of the global community.

For wealthy nations, sustainable development means policies concerning issues such as recycling, energy efficiency, conservation, rehabilitation of damaged landscapes. For the poor nations it means policies for equity, fairness, respect of the law, redistribution of wealth and wealth creation (Ibid.: 16).

This statement suitably sums up the purpose behind Earth Summit '92. This paper focuses specifically on the implications it holds for Canada and its federal system. The following discussion divides sustainable development issues into three major sections paralleling the structure provided in Agenda 21. First, I examine Social and Economic Dimensions including the integration of environmental and developmental considerations into decision-making processes in this country. Conservation and Management of Resources for Development covers topics such as protecting the atmosphere. Last, I look at Strengthening the Role of Major Groups. Sustainable development involves more than just issues of environmental degradation. That is why it is essential to relate this study to as much of the work done in Agenda 21 as is reasonably possible. Included in the analysis are Canadian governmental experiences related to the goals discussed in each chapter. I also provide assessments of the existing federal structure's ability to promote sustainable development across Canada. The criteria for determining success will be: to determine whether intergovernmental relations are relevant to the particular section in
question by specifying jurisdictional responsibilities; to identify relevant intergovernmental agreements that have been reached; and to relate current practices to conclusions drawn throughout this thesis. Note that most chapters overlap in a manner that allows similar issues to complement and reinforce one another through further elaboration and repetition. The document in its entirety forms a closed loop approach allowing governments and other interested groups to deal with every social and ecological concern imaginable according to their specific needs and capabilities.

A. Social and Economic Dimensions

*International Cooperation to Accelerate Sustainable Development in Developing Countries and Related Domestic Policies*

This chapter in Agenda 21 was inspired by the need to achieve a more equitable world economy through the creation of a supportive international climate for attaining environment and development goals. Developing nations in particular require access to foreign markets in order to create the kind of trade surplus needed to fuel domestic economic growth. Therefore, the objective of each government should be to promote open trade with all states, especially with developing members of the world community. Industrialized countries must provide greater access to their domestic markets for exports from developing countries as well as meet international targets for official development assistance funding. Debt issues should be addressed through debt and debt-service reduction plans. Every nation must also support policies that make economic growth compatible with environmental protection. This includes sound economic management by government officials. However, environmental regulations should not
unjustly restrict trade, especially trade with developing countries. If such environmental policies are deemed necessary, then they must: include the principle of non-discrimination; be the least trade-restrictive; ensure transparency; and give special consideration for the plight of developing states (UNCED, 1992: 49-53).

As we saw earlier, trade is generally a concurrent jurisdiction. The federal government has the authority to negotiate international treaties, legislate in the area of trade and commerce, and make laws for Peace, Order and Good Government. All three of these responsibilities have been restricted by previous court decisions. The provinces have the right to regulate property and civil rights, and generally all matters of a local or private nature. Therefore, there exists a role for both orders of government in promoting open trade with other countries, though the federal government would be expected to take the lead.

Canada strongly emphasized the importance of trade liberalization at Earth Summit '92. Various aid packages and debt relief programs were accorded under the Mulroney government (Richardson, 1994b). Canada also participated in the Uruguay Round of the General Agreement on Tariffs and Trade as well as negotiations to bring Mexico into the North American free trade zone. These activities have helped liberalize trade with developing countries while promoting sustainable development goals. “Reduction or elimination of tariffs over time should promote environmental improvement via better access to goods and services, including pollution abatement equipment” (Department of Environment, 1994: 20). Provincial and territorial governments played an important role in the development of these trade treaties including the North American Agreement on Environmental Cooperation, an extension to the North American Free Trade Agreement (Department of Environment, 1994: 20-21). In recent years, Team
Canada trade missions have improved trade relations with a number of developing nations. With representatives from federal and provincial governments as well as several major Canadian companies, though Quebec sent a delegation to only the last trip into Asia, these expeditions to Central American, South American, and Asian-Pacific rim countries have produced numerous business deals. Canada is currently negotiating a free trade agreement with Chilean officials (Liberal Party of Canada, 1997a).

In Canada, trade liberalization is generally regarded as a concern outside the jurisdiction of environment ministers. As such, much of this chapter falls beyond our field of analysis. What has taken place in recent years does suggest that Canada has had considerable success in liberalizing trade with other nations and federalism has not been a major impediment against such advancements, though the emphasis is generally placed upon improving trade even when this could jeopardize environmental protection in other countries. The basic argument by governments has been that each state is sovereign and free to make its own decisions regarding domestic policies. Independent Environmental Commissioners could help bring this issue to the public's attention. Environmental protection has not been completely ignored. The Commission for Environmental Cooperation was created to complement environmental provisions under NAFTA. It addresses regional environmental concerns, helps prevent potential trade and environmental conflicts between signatory countries and promotes the effective enforcement of environmental law (Commission for Environmental Cooperation: April 4, 1998).
Combating Poverty

Earth Summit organizers hope to promote sustainable economic growth throughout the world, especially in developing countries. Such development should provide every person with the means to earn a livelihood and help eradicate poverty. Programs that integrate the promotion of sustainable livelihoods and environmental protection must focus on empowering local groups, in particular women and youths, to reduce inequalities that may exist. These activities should range from the provision of basic education and health care systems to ensuring accessible services for responsible family size planning (UNCED, 1992: 55-58). The chapter on combatting world poverty represents a crossroad bringing together many of the strategies covered in other sections of Agenda 21.

Poverty is generally thought of as a problem for developing nations. Canadian efforts at the Rio Conference reflect this view. However, issues of equality and access to employment are worldwide problems affecting impoverished groups in every country, including Canada. In fact, the number of people earning less than the minimum income required to meet basic necessities according to Canadian norms and standards has increased from 15.2 percent to 17.9 percent of the population between 1990 and 1993 (Department of Environment, 1996: 30). Poverty is a major social issue in this country, but is rarely linked to environmental concerns. Often thought of as a health and welfare problem, jurisdiction generally falls to the provinces by virtue of Section 92(7) of the Constitution Act, 1867 (Department of Justice Canada, 1996: 30). The federal government manages to involve itself in this ‘national problem’ through the use of its spending powers. Social programs exist in every province to help reduce poverty and alleviate the burden of unemployment. Under section 36 of the Constitution Act, 1982, the federal and
provincial governments are committed to:

(a) promoting equal opportunities for the well-being of Canadians;
(b) furthering economic development to reduce disparities of opportunities; and
(c) providing essential public services of reasonable quality to all Canadians

(Department of Justice Canada, 1996: 67).

To this end, the government of Canada makes equalization payments to the fiscally weaker provinces thus ensuring comparable levels of public services and taxation throughout the land (Ibid: 67). A variety of other programs also rely upon intergovernmental cooperation for their funding including employment insurance plans, job retraining, public education and health care services, and several social assistance schemes. RESO, an economic and social development model that originated in the poor districts of Montreal, is being examined by the Liberal government in Ottawa for application throughout Canada. Businesses, unions, and community groups collaborate with various levels of government to promote an integrated approach to community development. Private initiatives also play a major part in combatting poverty in this country. They include food drives and outreach programs. The Women and Environments Education and Development or WEED project is involved in building Women's Networks for Sustainability (O'Brien, 1994).

Public and private initiatives have not eliminated the problem of poverty. Today, the volatility of market forces make it difficult to keep the same job throughout one’s lifetime. However, a basic foundation is already in place in Canada to promote the goals outlined in this chapter, namely, enabling every person to find a sustainable livelihood. Decades of federal-provincial interaction in this area has helped to develop the linkages needed to promote satisfactory resolutions to differences that may exist.
Changing Consumption Patterns

Unsustainable patterns of consumption and production, especially in industrialized countries, are considered the primary causes of environmental degradation. The disproportionate distribution of wealth has also left the vast majority of the world’s population impoverished and incapable of meeting basic human needs. Therefore, the world community must alter consumption and production patterns to reduce environmental stress and meet the basic requirements of every person. Domestic policies must focus on efficient production processes, discourage wasteful consumption, and encourage the development of environmentally sound technologies (UNCED, 1992: 58-61).

Consumption and production are the two basic components of trade. As such, they constitute the total sum of all economic activity. Almost all, if not all, government jurisdictions are affected by the economic trade, effectively making this a concurrent field on par with sustainable development. Both orders of government must cooperate if any inroads are to be made into reaching sustainable levels of consumption and production.

There is little movement in Canada to respond to these concerns. It is generally accepted by governments and the private sector that excesses in consumption are needed to sustain and promote continuous economic growth. Initiatives were taken to help educate consumers and reduce post-consumer waste. The federal government launched the Environmental Choice and the EcoLogo programs in the late 1980s to identify “environmentally friendly” goods through the use of special labels. The hope was for market forces to impact both consumer choice and production processes through this type of information-based service (May, 1994a).

In 1990, federal and provincial environment ministers agreed to a 50 percent reduction of
solid waste by the year 2000 (May, 1994a). The focus has been placed on recycling programs such as the blue box initiative in Ontario. Another intergovernmental agreement came in the area of packaging. Food packaging is one of the greatest contributors to the waste stream (E.S.P. Coalition, 1989). Efforts to reduce food packaging are complicated by health and product safety issues. Canada’s response to these problems has been the National Packaging Protocol (NAPP). Established in 1990 by the CCME, NAPP sets guidelines for industrial, commercial, and household packaging in order to reduce total amounts by 50 percent by the year 2000. The agreement consists of six main policies:

- All packaging shall have minimal effects on the environment;
- Priority will be given to the management of packaging through source reduction, reuse and recycling;
- A continuing campaign of information and education will be undertaken to make all Canadians aware of the function and environmental impacts of packaging;
- These policies will apply to all packaging used in Canada, including imports;
- Regulations will be implemented as necessary to achieve compliance with these policies; and
- All government policies and practices affecting packaging will be consistent with these national policies (CCME, 1990).

The project has been a major success despite its dependence upon voluntary self-regulation by business and industry. Agriculture Canada claims that food and beverage packaging headed for disposal declined by 21 and 32 percent respectively in the two years since the signing of NAPP. Both numbers exceed the 1992 target of a 20 percent reduction in packaging waste (Agriculture Canada, 1996). The CCME has announced a 23 percent national reduction in solid waste from 1988 to 1994. Government, corporate, and private citizen initiatives are credited with the success shown thus far toward achieving the 50 percent reduction target (CCME, June 1997a).

Though promising, these accomplishments fall short of the objectives outlined in Agenda
21. However, this cannot be blamed on Canada’s federal system. Rather, governments at all levels have shown a lack of commitment for fear that their actions may stifle economic growth. There is a general feeling in the industrialized world that maximizing productive efficiency and minimizing post-consumer waste will be enough to achieve sustainable development goals. The CCME reported to the UN in 1996 that “more progress has been achieved in changing institutional and industrial consumption than in changing the habits of individuals and households ... Making production more efficient is a means of making overall consumption more sustainable” (Department of Environment, 1996: 34). Though there is considerable opposition to this view, only time will tell whether governments have erred in their calculations.

Demographic Dynamics and Sustainability

World population growth, in combination with unsustainable patterns of consumption and production, places a severe strain on the planet’s carrying capacity. Rapidly expanding cities are also responsible for serious environmental degradation. We must recognize the link between demographic trends and environmental concerns. Research is needed to advance our understanding of the relations between demographic dynamics, cultural behaviour, technology, life support systems, and natural resources. Governments must also integrate demographic considerations into their national policies on environment and development. “National population policy goals and programmes that are consistent with national environment and development plans for sustainability and in keeping with the freedom, dignity and personally held values of individuals should be established and implemented” (UNCED, 1992: 64). Population programs should be implemented at local levels to enhance the capacity to protect
the environment and improve the quality of life (Ibid.: 61-67).

The 1994 International Conference on Population and Development adopted a program that focussed on empowering women, improving women’s health, and the achievement of development goals rather than setting population targets (Whelton, April 8, 1998). Women’s rights are protected by the Charter of Rights and Freedoms, and combatting poverty, a subject discussed in a previous section, involves both orders of government.

Demographic concerns are not considered to be significant in Canada given the country’s relatively low birth rate and population density. There is no overall population policy for Canadians. Our high level of economic development in conjunction with various government programs aimed at providing health care, education, and family planning services to women are largely responsible for the stable nature of Canada’s growth rate (Department of Environment, 1996: 37-38).

Protecting and Promoting Human Health

Sustainable development is an anthropocentric concept. Therefore, it is not surprising to see that human health was one of the primary matters addressed at Earth Summit ‘92. The first principle of The Rio Declaration on Environment and Development deals with the issue of health. In the report, physical, biological, spiritual, and social/economic concerns are included when defining the term health. Therefore, health, the environment, and social/economic improvements are all interconnected. An inter-sectoral approach is required if these problems are going to be managed properly. Agenda 21 hopes to achieve health for every human being by the year 2000. This includes the eradication of communicable diseases such as polio. Special
efforts must be made to protect and educate vulnerable groups, especially children, indigenous people, and the very poor. Governments must also prevent urban growth from outstripping their ability to meet basic human needs. Only a healthy and well-cared-for person can properly contribute to the economic and social development of a community. Therefore, another objective for governments must be to conserve the environment at levels that do not impair human health and safety (UNCED, 1992: 67-76).

Once again, health is generally considered a provincial jurisdiction with the federal government exercising some control through the use of its spending power. Canada has achieved many of the goals outlined above. Canadians benefit from a publicly financed health insurance system that covers most medical services. It is administered by the provinces with funding contributions from the federal government. The establishment, maintenance, and management of hospitals, asylums, and charities have been provincial responsibilities under the Canadian Constitution since 1867. However, the expansion of the modern welfare state did not begin until after the Second World War when the federal government used its spending power to initiate a number of shared-cost social programs. The Canada Assistance Plan, established in 1966, provided benefits for the elderly, the disabled, and unemployed persons. Other inter-governmental arrangements exist in areas such as post-secondary education, hospital insurance, and medical care (Norrie, 1993: 100-115). The Canadian Environmental Assessment Act also includes health as a component in any environmental assessment. Efforts have been made in recent years to establish national guidelines for the inclusion of health as a consideration in provincial environmental assessment acts (Hancock, 1994).

Though certain provinces have consistently complained that most of these programs
infringe upon provincial jurisdiction, they help to provide for the health and well-being of all Canadians. It would be erroneous to suggest that intergovernmental relations in this area have been free from conflict. However, results achieved through intergovernmental negotiations under the existing federal system speak for themselves. The provinces are eligible for federal funding and free to develop and administer health policies as they see fit as long as they continue to respect the five principles of medicare: public administration, comprehensiveness, universality, portability, and accessibility (Norrie, 1993: 104). In order to improve intergovernmental collaboration in the field of health, a special task force could be established to develop and analyze different preventative health measures as well as help integrate health issues into decision-making processes at both levels of government. The CCME’s mandate could also be extended to include a recognition of the link between human health concerns and environmental protection. Perhaps a new task force on health and environment may be established in conjunction with federal and provincial health ministers and other interested groups.

*Promoting Sustainable Human Settlement Development*

Industrialized countries must deal with the unsustainable demands created by existing settlements while developing nations require additional resources and economic development to put a halt to deteriorating conditions in their growing settlement projects. Human settlements throughout the world must provide for people’s basic needs while minimizing their impact on the surrounding environment. First, governments must adopt national strategies for the provision of safe and healthy shelters for all. Settlement programs must also focus on improving urban
management to, among other things, ensure access to water, sanitation, drainage, and waste disposal facilities. In disaster-prone areas, governments must develop a 'culture of safety', and prepare both pre- and post-disaster arrangements. Sustainable land use planning must also be incorporated into settlement decisions to ensure low-impact lifestyles. Environmental damage must be avoided whenever possible. This includes promoting sustainable energy and transportation services. Energy-efficient technology and renewable sources must be incorporated to reduce the negative effects of energy production (UNCED, 1992: 76-87).

Provincial governments develop and implement housing and land use policies in Canada. The municipalities administer provincial housing regulations and provide most infrastructure needs such as water and sanitation. The federal government, through the Canada Mortgage and Housing Corporation, participates in national social housing programs, usually in cooperation with other governments. Therefore, intergovernmental relations play a secondary role aimed at assisting local decision-makers. In addition, most of the objectives outlined in this chapter have already been met in this country. However, over a million Canadian homes are considered substandard and previous settlement patterns have been less than sustainable. The private marketplace provides for the housing needs of most Canadians. Social programs also exist in every province to supply subsidized housing for disadvantaged persons. Additional attention is also being paid to promote sustainable communities and good living environments. Energy-efficient technology is being incorporated into the construction of new housing projects in accordance with changing public demands. Sustainable land use plans have been developed in several provinces (Department of Environment, 1994: 39-44). The CCME and the Federation of Canadian Municipalities have identified various strategies including bylaws that maximize the
use of existing housing stocks (Canadian Urban Institute & Urban Environment Centre, January 1994: 21-23). Since most decisions are based on market demands or placed in the hands of local governments, public pressure greatly determines the pace of change. Further discussion of these issues can be found in other sections of this paper, including Combating Poverty and Integrated Approach to the Planning and Management of Land Resources.

Integrating Environment and Development in Decision-Making

Sustainable development links environmental concerns to all aspects of human activity. Therefore, it is of the utmost importance that environment and development issues be integrated into existing decision-making structures. Governments must review their economic and environmental policies to ensure that the two are progressively integrated at all levels of decision-making. Legal and regulatory policies as well as enforcement mechanisms must also be included in the process. This will require the development of economic and accounting instruments that incorporate environmental costs. Prices must reflect the total value of used resources and contribute toward the prevention of environmental degradation. In addition, these procedures must facilitate the involvement of concerned individuals, groups, and organizations to ensure that their interests are properly considered (UNCED, 1992: 87-95).

Integrating environmental and developmental concerns into decision-making will affect every facet of government. In effect, all decisions made must demonstrate a consideration for their potential impact on the environment and development. Adapting current decision-making processes to reflect environmental and developmental concerns is something that each government must do for itself. However, the end result is something that will affect all of
Canada, and as such requires some form of intergovernmental cooperation. Federal and provincial governments in this country are making slow progress on these issues. Economic growth remains the focal point of policy-making. A balance between economic development, social values, and environmental concerns does not exist at this time. The CCME’s Economic Integration Task Group examines how economic activities affect the environment and identifies possible responses (CCME: March 1997). The Canadian Environmental Assessment Act requires an assessment of potential environmental impacts prior to substantive action on any federal project. As stated earlier, the CWAEH’s Sub-Agreement on Environmental Assessment now provides for the completion of a single assessment and review process whenever two or more governments are required to assess the same project. The federal government also charges each department with the task of devising and implementing sustainable development strategies of their own to be updated every three years. The plans will also be assessed by the recently established Commissioner of the Environment and Sustainable Development found in the Office of the Auditor General. An annual report is tabled before Parliament by the Commissioner along with an evaluation of government efforts to incorporate environmental considerations into decision-making processes (Liberal Party of Canada, 1997b). Certain provinces, including Ontario, Manitoba, and New Brunswick, have also created organizations to help link health issues and sustainable development in areas such as agriculture, energy use, forestry, and urban planning and development (Hancock, 1994). Most provincial departments are being required to incorporate environmental considerations into the definition of their mission statements. Ontario’s Environmental Bill of Rights requires a Statement of Environmental Values from each ministry. The latter records the department’s commitment to uphold the purposes of the
Environmental Bill of Rights and defines how environmental concerns are incorporated into its decision-making process along with economic, scientific, and social considerations (Bill 26, 1993: 7).

Currently, most provincial/territorial governments have, or are in the process of adopting environmental objectives as part of their sustainable development strategies. These will eventually guide provincial/territorial departmental integration of environmental concerns into policy. It should be noted that, in most cases the formulation of such objectives has been achieved through a consensus building process provided by provincial and territorial Round Tables on the Environment and the Economy (Bregha, 1994).

Each government must also 'get its house in order'. They all have significant purchasing power, own or lease numerous buildings, and hold investments that affect the environment. Tax and spending measures can impose unintended environmental costs. For example, subsidies to agriculture may lead to soil degradation. Governments at both levels have begun to move on these issues. However, additional efforts must be made to ensure that government instruments, including annual budgets, do not promote unsustainable practices. Economic indicators must also come to reflect environmental considerations. Statistics Canada, the country’s single largest contributor to the collection and dissemination of data and information, must take the lead in this area. Only then will officials be in a position to identify government-supported activities that are net losses in economically sustainable terms. Another key to sustainable development involves integrating environmental concerns into past legislation. In its Green Plan, the federal government committed itself to a comprehensive review of existing statutes, programs, and policies. The government of Canada also promised to perform environmental impact assessments of all proposals going before Cabinet. However, these initiatives were generally
abandoned with only a few assessments ever being completed after departments complained that they lacked the resources and know how to carry out these objectives (Bregha, 1994).

Overall, governments still have far to go before environmental considerations are properly integrated into existing decision-making processes. The slow march is once again the result of a lack of political will at both levels of government. However, some of the conditions required for progress are already in place. Governments should endeavour to adopt similar standards dictating how environmental and developmental concerns would be integrated into decision-making. Though this has not yet been accomplished, the CCME’s Economic Integration Task Force is in place to facilitate intergovernmental cooperation in this area. Once governments realize the benefits to be gained from an integrated decision-making approach, it is reasonable to expect the process to spread to other segments of Canadian society. Institutions that promote public awareness such as Environmental Commissioners and Round Tables on Environment and Economy are necessary to help stimulate governments toward action. Every provincial Round Table was dismissed after completing their task of designing sustainable development strategies. However, sustainable development is not a static concept. Communities must be eternally vigilant in their commitment of promoting sustainable policies in the face of changing economic, environmental, political, social, and technological conditions. In the pursuit of this goal, provincial Round Tables should be reinstated to encourage steady dialogue between governments and other interested groups.
B. Conservation and Management of Resources for Development

Protecting the Atmosphere

Safeguarding the integrity of the earth’s atmosphere is vital to the survival of all living creatures. This chapter in Agenda 21 begins by addressing the uncertainty surrounding atmospheric conditions. Information is needed to improve our understanding of the processes that influence and are influenced by the planet’s atmosphere as well as the economic and social consequences of atmospheric changes. However, principle fifteen of the Rio Declaration states that a lack of scientific certainty must not be used to impede reasonable action against threats of serious or irreversible damage (UNCED, 1992: 13). Certain human activities must be curbed to promote sustainable development. Governments are expected to reduce the adverse effects to the atmosphere caused by the production, transmission, and consumption of energy. The transportation sector, another major source of harmful discharges, must also be regulated. Governments must develop cost-effective policies to limit the damage done by these emissions. Industry must minimize their negative impact on the atmosphere. Possible initiatives include improving pollution abatement technologies and replacing chlorofluorocarbons (CFCs) and other ozone-depleting substances with appropriate substitutes. In addition, terrestrial and marine resources have a positive effect on the Earth’s ability to naturally absorb air pollution. They must be protected and preserved for the good of the human race. Every country must also integrate atmospheric concerns into decision-making. Last, strategies to reduce transboundary atmospheric pollution must be added to international agreements. The goals outlined in this section were left rather vague to ensure that they did not conflict with existing treaties, including the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer and the 1992
Framework Convention on Climate Change. Developing nations are also given additional leeway in this chapter to allow for the promotion of much needed economic growth in those countries. Other governments do remain free to carry out tougher measures if they so desire (Ibid.: 96-102).

Air quality is an issue that necessarily concerns both orders of government for reasons expressed earlier in this paper. In 1982 however, the Manitoba Court of Queen’s Bench declared that control over air pollution was clearly beyond the authority of provincial governments. “The Court held that because air contaminants do not respect provincial boundaries, control of air quality clearly is a matter beyond private or local concern” (Harrison, 1996: 45). As such, the entire subject fell within federal jurisdiction under the Peace, Order, and Good Government clause. The court also found the Clean Air Act supportable under federal responsibility for criminal law since the legislation intended to control hazards to public health (Ibid.: 45). Yet, there are two valid reasons why provincial governments must be involved in protecting the atmosphere. First, industries and objects that emit pollutants generally fall under traditional provincial jurisdictions. Provinces have a long history of regulations in this area and it would be difficult and highly controversial to simply disregard them now. Second, sustainable development is about preventing as well as controlling pollution. Implementing preventative measures will require the support of both orders of government.

Canada has been a world leader in negotiating international agreements in the area of atmospheric pollution. The Montreal Protocol, the 1990 London and the 1992 Copenhagen amendments to the Protocol, and the Convention on Climate Change (CCC) have all been ratified by Parliament. As of June 1992, the country’s annual consumption of CFCs had been reduced by 58 percent. This country has consistently met or exceeded its obligations under the
Protocol. In 1992, Environment Canada announced that greenhouse gas emissions not subject to the Montreal Protocol would be stabilized by the year 2000, an issue that will receive further attention later in this section. Canada and the United-States have also signed the Convention on Long-Range Transboundary Air Pollution to deal with the problem of acid rain (Environment Canada, 1994a).

Federal, provincial, and territorial governments have worked together on most of these initiatives. All governments are committed under the National Action Program on Climate Change to meet terms outlined under the CCC. The National Action Plan on Recovery and Recycling of CFCs involved federal and provincial officials in collaboration with the Heating, Refrigeration and Air Conditioning Institute to develop a training program on the proper handling of CFC refrigerants (Department of Environment, 1996: 51-53). The CCME’s National Air Issues Coordination Committee also deals with various concerns including global warming, acid rain, and ground level ozone.

Operating under the Comprehensive Air Quality Management Framework Agreement, the mandate of the coordinating committee is to develop coordinated air issue management plans and strategies, track progress in achieving targets to reduce air pollutants, facilitate national stakeholder consultations, and advise the federal government regarding negotiations on international air quality agreements (CCME, March 1997).

A multi-stakeholder process that includes the participation of both orders of government, non-governmental agencies, and members of the private sector has also been established to help develop strategies on atmospheric issues (Environment Canada, 1994a).

Overall, it seems that progress has been made in the area of air pollution. However, former Environment Minister Sergio Marchi admitted that Canada would not be able to fulfill its
commitments under the CCC in the area of greenhouse gases. He blamed the provinces, in particular Ontario, for the country’s failure. In order to address this problem, he announced that, starting in 1998, new emission standards for cars would reduce hydrocarbons and nitrogen oxide levels by 30 and 60 percent respectively. The benzene content in gasoline would also be limited to one percent. Environment Minister Marchi called upon the provinces to perform regular vehicle inspections to enforce the proposed legislation. He specifically challenged Ontario to initiate a program of inspection and maintenance similar to the one in place in British Columbia since 1992. Ontario’s Environment Minister Norm Sterling publicly stated that the department intended to introduce emissions testing before 1998 (Ho, 1997: A1 & A3).

Though Sergio Marchi’s public attack may not have seemed conducive to cooperative relations, this type of power struggle is common in intergovernmental negotiations. The federal proposal will be largely ineffectual without provincial support. The federal minister was simply trying to stimulate activity in the area of atmospheric pollution by giving the weak environmental record of Ontario’s conservative government some unwanted attention. Ultimately, some form of collaboration will be needed if Canada is to meet its international commitments. Failure to do so would be an embarrassment to the entire country.

 Integrated Approach to the Planning and Management of Land Resources

Economic growth and human requirements are placing ever increasing pressures on available land and natural resources. Our demands must be managed effectively and efficiently if these resources are to be handled in a sustainable manner. An integrated approach that takes into consideration the impacts that economic and social pressures have on their immediate
environment must be adopted by all governments. The end result should be a series of appropriate choices and trade-offs that maximize sustainable productivity and use of available land and natural resources. Policies supporting the best possible use of these resources should be in place by the year 1996. Evaluation systems must also be established to review land and resource management programs. The public should be made aware of the importance of proper land and resource planning measures so that they may become involved participants in the process (UNCED, 1992: 102-105).

In Canada, 90 percent of the land is owned by governments, though most Canadians live on and most economic activity occurs on privately held lands. Except for federal lands, the provincial governments have constitutional jurisdiction over land use policies and natural resources, although much of that authority is delegated to regional and municipal authorities. Therefore, a Canada-wide policy on resource and land use planning does not exist. However, resource and land use strategies are being developed at the provincial level. In 1992, British Columbia established the Commission on Resources and Environment to advise the government on land and natural resource management approaches. Land use policies have been developed in four other provinces: Manitoba, Ontario, Prince Edward Island, and Quebec. Alberta, New Brunswick, Newfoundland, Prince Edward Island, and Quebec have also implemented legislation to provide regional planning across municipal boundaries (Department of Environment, 1995: 46-47). The other provinces failed to establish policies supporting the best possible use of land resources by the 1996 deadline set in Agenda 21. Public participation has been encouraged during the development of many of these policies. Independent monitoring systems such as a Bill of Environmental Rights or an Environmental Commissioner would
further empower people to press governments on this issue.

In general, in recent years there has been a substantial shift by provincial governments away from single-use resource management primarily oriented to short-term markets, to a more balanced, system-based approach oriented to sustainable use and the maintenance of ecosystem integrity... In Canada, there is a clear trend towards cooperative, coordinated, ecosystem- and sustainability-based resource management (Richardson, 1994a).

The federal government does have an indirect influence upon land and resource management matters through its policies in areas such as agriculture and soil conservation. The Federal-Provincial Committee on Land Use is also studying the concept of a 'national perspective on land' (Richardson, 1994a). However, intergovernmental relations play a small role in this area. Some concern must be expressed about the lack of a national plan for the management of Canadian lands and natural resources. Ecosystems rarely respect provincial, regional or municipal boundaries. Additional coordination across these lines is needed if we are going to develop an integrated process for all of Canada. However, the solution does not necessarily require any meaningful federal involvement. Interprovincial cooperation could deal with these problems without forcing major changes in present interjurisdictional limits.

**Combating Deforestation**

Wood and forestry products have been a staple for human communities throughout our known history and the management, conservation, and sustainable development of trees, forests, and forest lands remain vital to the prosperity of future generations. Efforts must be made to preserve the ecological, economic, social, and cultural roles that forest resources play in human civilization. The loss and degradation of forests must be halted and enhanced protection for
existing forest lands must be followed by the greening of damaged lands through forest rehabilitation, afforestation, reforestation, and other rehabilitative measures. These initiatives must be incorporated into policies promoting the efficient assessment and utilization of forest resources. Planning and observation systems must also be strengthened so that reliable and useful information can be used to determine the impacts of forestry related programs and activities (UNCED, 1992: 105-111).

Of the 417.6 million hectares of forest in Canada, 10 percent of the world’s forests, only 119 million hectares or 25 percent is given to commercial timber production. Logging is also excluded by policy or legislation from another 50 million hectares of forest land (Whelton, April 8, 1998). 71 percent of Canada’s forests are managed by the provinces. Federal and territorial governments oversee another 23 percent of forest lands. The remaining 6 percent is private property (Department of Environment: 1995: 61). Section 92A of the Constitution Act, 1867 expressly gives provincial legislatures authority over forestry resources. However, the central government retains control over federal lands, as well as paramountcy over regulating the export of forestry resources from provinces (Department of Justice Canada, 1996: 31).

Once again a divided jurisdiction need not be a problem if both orders of government are committed to the protection and sustainable development of forests. Efforts may be made to overcome boundary problems. This seems to be the case. In 1992, National Resources Canada, Canadian Forest Services, and the Canadian Council of Forest Ministers (CCFM), along with the help of other interest groups, developed a five year plan to ensure that human activities do not destroy the forest’s ability to renew itself. The National Forest Strategy sets out nine strategic directions and 96 actions designed to achieve sustainable forest management in Canada. An
independent panel completed a mid-term evaluation of the program and found that reasonable progress had been made across the country showing a strong commitment toward fulfilling the strategy’s goals. The CCFM is also developing a comprehensive system of indicators to help measure and report progress in these areas. Under the Green Plan, the federal government has also established ten working-scale model forests covering approximately six million hectares. These areas are used to develop and test innovative techniques in integrated resource management (Department of Environment, 1995: 61-63). In 1995, the Organization for Economic Cooperation and Development reported in its Environmental Performance Review of Canada that the renewal of Canadian forests is secure because of the efforts made by governments, private companies and other interested groups (Whelton, April 8, 1998). The presence of a cooperative structure has facilitated the process of developing intergovernmental agreements aimed at managing forestry resources in a sustainable manner.

Forest policies in Canada are shifting from management for sustained yield to sustainable forest ecosystem management ... Governments, industry, labour, Aboriginal people, and a wide range of interest groups are sitting at the same table, trying to achieve a balance between environmental, economic, and social demands placed on forests (Ibid.: 62).

*Managing Fragile Ecosystems: Combating Desertification and Drought*

Fragile ecosystems such as deserts and semi-arid lands contain unique features and resources. Land degradation through drought and desertification must be prevented in areas susceptible to these conditions. Information and observation networks must be improved to help combat such degradation through the use of various techniques including intensified soil
conservation, afforestation, and reforestation. In developing countries, poverty often forces human settlements to encroach upon these fragile lands. This trend must be reversed so that these activities do not accelerate rates of desertification and drought. Anti-desertification programs along with drought preparedness and relief schemes must also be incorporated into national development plans. Finally, the public must be made aware of local desertification and drought concerns so that they may help prevent their occurrence (UNCED, 1992: 111-117).

The Canadian prairies represents a sub-region with a semi-arid climate. Both orders of government can claim responsibility regarding desertification and drought through their shared jurisdiction over agriculture. Programs are already in place to encourage economic diversification and to prevent soil degradation and erosion through better agricultural practices. Federal and provincial governments promote the sustainable management of land resources in the provinces of Alberta, Manitoba, and Saskatchewan through the Prairie Farm Rehabilitation Administration. Other cooperative initiatives in this area include the Community Pasture Program and the Partnership Agreement on Rural Development (Department of Environment, 1995: 50-51). A long tradition of intergovernmental cooperation has facilitated the process of implementing soil conservation policies and reducing the threat of erosion and desertification.

*Managing Fragile Ecosystems: Sustainable Mountain Development*

Mountainous regions are often important sources of water, energy, and biological diversity. They are also highly susceptible to environmental degradation. Governments must begin by addressing the lack of knowledge that exists about mountain ecosystems. Added information should focus on developing integrated land-use and watershed plans to deal with
problems of soil erosion, landslides, and rapid loss of habitat and biological diversity.

Alternative livelihood opportunities must also be promoted to help alleviate the strain created by human encroachment on these fragile ecosystems (UNCED, 1992: 119-120).

Mountain development is considered a special case under land-use management issues. As such, additional information is available in sections concerning forests, human settlement development, and land-use policies. Canada’s national parks system as well as provincial parks in Alberta, British Columbia, and the Yukon offer protection for mountain areas. Obviously, federal lands fall under federal authority and provincial lands are the responsibility of the provinces. Since mountain ecosystems can often cross these boundaries, some level of cooperation is needed to promote consistent sustainable development policies. Regional governments, through cooperative programs, are encouraged to prevent the degradation of border ecosystems. The model forests program, used to develop and test innovative techniques in integrated resource management, includes four projects in mountainous regions. Concerns over logging and tourism are also being addressed by government and parks officials through land-use planning mechanisms (Department of Environment, 1995: 53-55). The presence of a cooperative structure has facilitated the move toward integrated land use and resource management planning.

*Promoting Sustainable Agriculture and Rural Development*

UNCED attaches two major concerns to agriculture: ensuring an adequate food supply for the world population; and limiting encroachment on fragile ecosystems that are only marginally suitable for cultivation. A priority is placed on maintaining and improving the
capacity of existing agricultural lands with a high-yield ratio. This will require the sustainable use of technological and genetic resources such as the safe application of fertilizers and pesticides to help increase food production. Agenda 21 recognizes that these recommendations will lead to increased environmental degradation, including higher demands on energy sources and the spread of harmful chemicals. However, this is considered to be necessary in order to provide food for the growing population, the majority of whom live in poverty. The goal is to keep these abuses within sustainable limits (UNCED, 1992: 120-128).

As we have seen, agriculture is a concurrent jurisdiction in Canada. However, many key decisions are being made at the farm level where self-interest is expected to drive the need for resource protection. There is also a long tradition of formal intergovernmental association in this field. The CCME’s Soil Quality Guidelines Task Group, Land Management Assistance Programs, Canadian Agreements on Agri-Food Development (CAAFD), the Great Lakes Action Plan, and the Canadian Pesticide Regulatory Regime are but a few of the joint efforts aimed at improving the sustainability of agriculture in this country. CAAFD are shared-cost programs, primarily research-oriented, that include initiatives addressing residue management, wildlife and wetland conservation, genetic resources, soil conservation efforts, manure management, greenhouse gases, problems of low level ozone, alternative pest management, and many other issues directly related to the promotion of sustainable agriculture. These activities were initiated during the early 1990s by the Federal-Provincial Agriculture Committee on Environmental Sustainability. The Committee identified eight major concerns for agriculture in Canada: preservation of soil resources; surface and ground water quality; water quality management; sustainable management of wildlife habitat; air and climate change adaptation; energy
efficiency; pollution and waste management; and promoting diversity in genetic resources. The Committee also stressed the importance of enhanced research into best management practices compatible with ecological limits to improve land use and agricultural practices (Department of Agriculture, 1994).

In Canada private interest and market forces are expected to drive farmers to maximize the productivity of agricultural lands. Governmental efforts have generally focussed on developing and advancing environmentally sustainable practices. Overall, government and private efforts incorporate many of the sustainable concepts found in this section of Agenda 21. Intergovernmental relations in the area of agriculture represent an excellent example of what cooperation and coordination among federal and provincial governments can accomplish in a concurrent jurisdiction. In the future however, governments must ensure that agricultural lands are protected from settlement encroachment. The necessary legislation is in place, but provincial governments must remain vigilant in their enforcement.

Conservation of Biological Diversity

Biological resources represent a capital asset with great potential for yielding sustainable benefits. Habitat destruction, over-harvesting, pollution, and the improper introduction of foreign species are threatening the world’s biological diversity. Government action is needed if these trends are to be overturned. Conservation of ecosystems and the sustainable use of their biological resources must be integrated into national development strategies. Additional research should also be undertaken to develop an understanding of the economic, environmental, and scientific values of biodiversity. In this way, the variety and availability of species and
ecosystems that the world economy depends upon will continue to provide for the needs of future generations (UNCED, 1992: 129-131).

Biological diversity represents a broad field that could incorporate numerous federal and provincial jurisdictions. They may include federal control of trade and commerce, and the POGG clause as well as provincial authority over public lands, natural and forestry resources, and all matters of a local or private nature. Both orders of government have treated biodiversity as a concurrent responsibility.

Canada is a signatory to the Convention on Biological Diversity. The agreement has three major objectives: the conservation of biological diversity; the sustainable use of its resources; and the equitable sharing of the benefits arising from the use of these components.

The discovery of cancer fighting properties in the rosy periwinkle has become a classic example of the need for a mechanism and a guarantee for the sharing of benefits. The rosy periwinkle yielded millions of dollars in profits to the pharmaceutical company that developed the leukaemia drug, but the host country, Madagascar, received nothing and went on to allow the ecosystem that sustained the rosy periwinkle to be destroyed. The convention aims to create an incentive for the conservation of biological diversity through the sharing of benefits (May, 1994b).

The Convention requires governments to ensure that some of the benefits of such finds are returned to the country of origin (May, 1994b).

Canada has been an active supporter of the Convention and has developed its own Canadian Biodiversity Strategy signed by all governments. The latter provides a framework for action at all levels of government to protect the integrity of ecosystems and enhance our ability to sustainably develop genetic resources. The Strategy has five major goals: to improve both our understanding of ecosystems and our resource management capability; to conserve Canada’s
biological diversity and ensure the sustainable use of these resources; to promote public awareness for the need to conserve biodiversity and sustainably use biological resources; to provide incentives and legislation supporting the conservation of biodiversity and the sustainable use of biological resources; and to work with other countries to conserve biodiversity, use genetic resources sustainably and share equitably the benefits that arise from their utilization (Environment Canada, August 21, 1997).

The Canadian Biodiversity Strategy was an intergovernmental effort that included input from a variety of sources. It was prepared by the Biodiversity Working Group which was composed of one representative from each provincial and territorial government and several federal departments. A Biodiversity Advisory Group was established to provide for public participation in the process and to advise the Working Group. Its membership included representatives from non-governmental organizations, business interests, and Aboriginal communities. Their involvement ensured a high degree of support for the project. The Strategy was also designed to complement and enhance environmental actions in other fields such as existing sustainable agricultural and forestry practices. Each province is also free to develop individual strategies for the sustainable management of ecosystems and biological resources within their borders. British Columbia and Quebec completed their plans in 1996 and 1995 respectively. Other related activities include efforts to complete a Canadian network of protected areas by the year 2000. Numerous parks and forestry reserves already exist in each province. A national wildlife policy was also adopted in 1990 to protect endangered species threatened by international or interprovincial trade. Reforms in 1994 have led to a more integrated approach designed to work with other jurisdictions and stakeholders (Department of Environment, 1995: 85)
The negotiation of the Canadian Biodiversity Strategy represents a major success for intergovernmental collaboration and environmental protection. This is also an excellent example of the spill-over effects that can be achieved through cooperative negotiations. Safeguarding Canada’s biological diversity also entails protecting the integrity of ecosystems. This relates back to an earlier comment made regarding the interconnectedness of issues in Agenda 21.

Despite past achievements, there is still much work to be done. The process of moving from strategy to implementation must be completed, a great deal of scientific data must still be collected, and governments must endeavour to heighten public understanding of the concerns related to conserving and managing this country’s biological resources (Whelton, April 8, 1998).

**Environmentally Sound Management of Biotechnology**

Biotechnology involves specific human-made changes in deoxyribonucleic acid (DNA) or other genetic materials. These techniques lead to useful products and technologies with the potential for significant improvements in a variety of areas. Biotechnology can both increase and improve food supply and distribution throughout the world. Human health standards can also be elevated with this technology through improvements in water quality, reforestation, soil conservation, and the detoxification of hazardous wastes. These applications and many others can be used to extend our capacity to protect and enhance the natural environment.

Biotechnology can also help preserve and diversify the genetic pool of plants, wildlife, and other biological components that exist on this planet. Recovering uncounted quantities of energy and waste may also lie within the capabilities of biotechnicians in the near future. There is a need to ensure that this form of technology is utilized in an environmentally sound and sustainable
manner. Governments must ensure the safe development, application, and exchange of biotechnology through internationally agreed upon principles relating to risk assessment and management. Considering the fact that developing countries are generally rich in biological resources but lack expertise and investment, there must be a global partnership to achieve the level of cooperation and coordination needed to ensure that the benefits of biotechnology may be shared by all of humanity (UNCED, 1992: 133-139).

Biotechnology can be related to research and development. Both orders of government take part in R&D projects, generally in collaboration with industry or university staffs. Therefore, federal and provincial governments alike have felt at liberty to enact legislation regarding biotechnology. The federal government takes responsibility for applications that are national in scope while the provinces have jurisdiction within their respective borders.

The federal government has modified existing legislation to regulate biotechnology to ensure that all products are assessed for environmental effects before being imported, manufactured or sold in Canada. Provincial input into environmentally sound management of biotechnology is made possible through a federal-provincial committee established under the Canadian Environmental Protection Act (Whelton, April 8, 1998). There has been a National Biotechnology Strategy and a National Biotechnology Advisory Committee in Canada since 1983. With representation from the national government, businesses, academia and other interested groups, the Committee provides advice to the federal government. In recent years, federal and provincial governments have been working to reduce duplication in the area of biotechnology and to bring consistency to regulations on the release of such products into the environment (Department of Environment, 1995: 34-38). Biotechnology is a fast growing
industry with a vast potential for future benefits or future headaches. Early signs of intergovernmental cooperation should help to establish a protocol for the safe and efficient management of these products. However, the danger for abuse or weak government regulations suggests the need for an independent monitoring system.

Protection of the Oceans, All Kinds of Seas, Including Enclosed and Semi-Enclosed Areas, and Coastal Areas and the Protection, Rational Use and Development of Their Living Resources

The oceans and seas are essential components of the global system that sustains life on this planet. Marine and coastal environments also present opportunities for economic growth. However, governments must commit themselves to an integrated approach to the management and sustainable development of these living resources. Precaution and anticipation must guide policy-makers in promoting regulations and programs that avoid, reduce, and control degradation of the marine environment, in particular coastal erosion and siltation. 70 percent of marine pollution derives from land-based sources including agriculture, forestry, human settlements, industrial discharges, and sanitation. Governments must also monitor domestic fishing practices and enforce regulations aimed at conserving the living resources of the high seas. Endangered marine species must be protected and restored as well. If managed properly, these resources can provide long-term nutritional and social benefits to coastal communities. The marine environment is also highly vulnerable to climate and atmospheric changes. As part of the increased effort required to improve our understanding of the marine environment and its role in global processes, additional information must be gathered to allow for the effective prediction and management of climate and atmospheric changes. This must be part of an
international commitment to cooperate through information exchanges and the coordination of research systems studying the marine environment and its resources. Special attention must be given to small island states. They are ecologically fragile and often economically disadvantaged by their small size and limited resources. Their geographical isolation is also responsible for the comparatively large number of unique species of flora and fauna. Island states are particularly vulnerable to the effects of climate change. Therefore, the world must bear some responsibility in meeting the essential needs of these people, maintaining biodiversity, and improving living conditions in these countries (UNCED, 1992: 139-155).

In Canada, the federal government has jurisdiction over navigation and shipping as well as sea coast and inland fisheries while the provinces have authority over shorelines and many land-based activities affecting aquatic resources. The Canada Oceans Act came into force on January 31, 1997. Its objectives include delineating this country's exclusive economic zone, authorizing the creation of a national system of marine protected areas, and providing the legislative framework needed for a new ecosystem-based integrated management strategy to protect Canadian waters and promote the sustainable development of ocean resources (Department of Fisheries and Oceans, January 1997). The Oceans Management Strategy is expected to bring together federal, provincial, and territorial governments, as well as Aboriginal authorities, and other interested groups in the spirit of cooperation to develop a national plan for the management of Canada's estuarine, coastal, and marine ecosystems. Marine pollution is another problem being addressed by both levels of government. The federal government is currently working with provincial and territorial governments, in consultation with other relevant stakeholders, to develop a National Program of Action for the Protection of the Marine
Environment From Land-Based Activities. The focus will be on regional implementation (Whelton, April 8, 1998).

The primary focus of ocean-related activities in this country has been on declining fish stocks. Past government policies in this area clearly failed, leading to depleted supplies of cod and other major groundfish species. The fisheries industry on the east coast was virtually shut down leading to profound social, economic, and cultural hardships for dependant Atlantic communities. Efforts to establish the sustainable management of all harvested species have led to the creation of the Partnerships Implementation Strategy. The goal is to develop a stakeholder approach so that governments, industry, and other groups can participate in the decision-making process and promote a fisheries that is sustainable, self-reliant, and economically viable. Once again, both orders of government have worked in collaboration to strengthen and improve fisheries policies toward these ends (Department of Environment, 1996: 57-63).

When discussing the impact of the Canadian federal structure on this country's ability to fulfill its commitments under this section, Judith Swan stated that:

> For example, efforts to develop coastal zone management schemes have proceeded smoothly in areas where there is cooperation between federal and provincial representatives. It is difficult to imagine the government of Quebec willingly surrendering any powers to the federal government, despite the fact that a unified CZM policy could result and succeed (Swan, 1994).

This commentary highlights a flawed assumption often made by people concerned with intergovernmental relations in the field of the environment. It suggests that any solution to environmental problems will necessarily involve a transfer of power from one order of government to the other. This need not be the case. Federal-provincial negotiations in the past
have demonstrated that cooperation and coordination can achieve desired results without having to amend the constitution’s division of powers or to force provinces to abdicate authority to federal agents. The historical trend has been to develop national standards or guidelines, agreed upon by both orders of government, which are then implemented and enforced by the provinces. The CWAEH demonstrates a new focus on developing a one-window approach to eliminate waste and duplication in government services. However, nothing in the accord or its sub-agreements alters the authority of governments under the constitution. Rather, the two orders of government determine through political consensus the order best situated to deal effectively with specific environmental concerns. The process also facilitates public accountability by adding clarity to the entire process. Intergovernmental arrangements based on consensus are not achieved without difficulties. There are certainly moments of friction involved in these negotiations. In the area of oceans and fisheries management however, federal-provincial conflicts have been overshadowed by interdepartmental squabbles and international disputes between Canada and other states. There are over fifteen federal departments and agencies involved in the development of coastal management schemes, each defending its own bureaucratic interests (Swan, 1994). Canada has also been involved in major disputes concerning fishing rights with the European Union and the United States. These entanglements have presented more of a threat to the sustainable management of Canada’s oceans and marine resources in recent years than have intergovernmental relations over the same period.
Protection of the Quality and Supply of Freshwater Resources: Application of Integrated Approaches to the Development, Management and Use of Water Resources

Human beings and all terrestrial ecosystems depend upon freshwater resources for their survival. The international community must preserve their hydrological, biological, and chemical functions while ensuring a supply of quality water for every person. This is rendered difficult because of widespread scarcity, and incompatible activities that result in the pollution or destruction of freshwater resources. Approximately 80 percent of all diseases in developing nations are caused by the consumption of contaminated water. To satisfy the needs of all countries in a sustainable manner, governments must develop an integrated water resource management policy. This involves protecting freshwater supplies, including groundwater, in a way that takes into account the functioning of aquatic ecosystems and the long-term value of the resources. Government strategies should depend upon water resource assessments to identify potential sources, to determine the quality and dependability of freshwater supplies, and to evaluate human activities affecting those resources. They should also take full advantage of innovative technologies when planning efficient water-use programs. Satisfying basic human needs and safeguarding the integrity of ecosystems and freshwater resources must be the guiding principles behind the development of these sustainable policies. Safe water supplies and proper sanitation procedures are also required to help protect the environment, improve human health, and alleviate poverty. This approach must be holistic so that water demand for food production, the impacts of climate change, and various other factors affecting freshwater resources are included in government planning systems. Special attention must be given to concerns over the effects of urban development on water demand and usage (UNCED, 1992: 157-172).
Water management in Canada is largely a provincial responsibility, generally seen as a local work, though the federal government retains significant charge under the 1987 Federal Water Policy and the Green Plan. The CCME also initiated the Water Quality Guidelines Task Group in 1987. The Task Group published the Canadian Water Quality Guidelines which has led to stricter regulations under federal and provincial legislation concerning activities such as effluent discharges from pulp and paper mills. Integrated resource management plans affecting freshwater sources have also been initiated by several provinces, including Alberta and Quebec. These plans involve regulations and programs affecting drinking water quality, sanitation, and soil erosion. Similar guidelines have since been adopted by over forty other nations (CCME, March 1997). The Canadian Climate Board and other agencies are studying the possible effects of climate changes on the environment and economic activities in Canada (Department of Environment, 1994: 45-48). "A recent review by Environment Canada of Chapter 18 and Canadian water management initiatives suggests that, for the most part, Canada is aware of the needs outlined in the chapter and policies and programs are often already planned or in place to address these needs" (Scott, 1994). Although more than 90 percent of Canadians have access to treated water supplies, and approximately 75 percent of those living in communities of over 1000 people benefit from sewage treatment plants, improvements are needed to water supplies and sanitation services for native communities. Canadians are also the world's second largest per capita consumers of water. Greater effort is needed to promote water conservation in this country (Scott, 1994). Once again, public perceptions must change before we can expect government officials to take necessary action in this area.
Environmentally Sound Management of Toxic Chemicals, Including Prevention of Illegal International Traffic in Toxic and Dangerous Products

The use of certain chemicals is necessary in order to achieve the social and economic goals set out in Agenda 21. However, these demands must be managed in an environmentally sound manner in accordance with the principles of sustainable development. "The long-range effects of pollution, extending even to the fundamental chemical and physical processes of the Earth's atmosphere and climate, are becoming understood only recently and the importance of those effects is becoming recognized only recently as well" (UNCED, 1992: 172). Additional resources and international cooperation are required to improve our understanding of how these chemicals affect the health of people and their surrounding environment. Assessing the risks that these materials pose is a prerequisite to proper planning. International cooperation in this area would be more cost-effective as it would avoid unnecessary duplication of efforts. This will require the harmonization of classification techniques and labelling systems to promote the safe use of chemicals. Countries should also participate in information exchanges on the benefits and risks associated with chemicals. To manage chemicals that are currently in use, countries must begin by establishing risk reduction programs. The plans should promote the substitution of harmless or less harmful substances for toxic chemicals whenever reasonable or necessary. Pollution prevention procedures and standards for chemicals must also be part of every government's strategy to manage the production and use of chemicals within its jurisdiction. Other areas of risk reduction include preventing chemical accidents and rehabilitating sites damaged by toxic chemicals. "The objective of the programme area is to eliminate unacceptable or unreasonable risks and, to the extent economically feasible, to reduce risks posed by toxic
chemicals, by employing a broad-based approach ... and by taking precautionary measures” (Ibid.: 176). National systems for the management of chemicals must be introduced in countries where they do not exist and strengthened elsewhere to maximize their effectiveness. Finally, every government must do its part to detect and prevent the illegal international trafficking of toxic and dangerous products in contravention to domestic laws or relevant international legal instruments (Ibid.: 172-179).

The control of toxic chemicals represents another example of concurrency in the field of environmental protection. The provinces have a responsibility because of the private nature in which these chemicals are produced or used, as well as through their control over intra-provincial trade. The federal government could claim jurisdiction over interprovincial and international trade and commerce, criminal law, and the POGG clause. Both orders of government have taken action to control and manage the use of toxic chemicals.

Canadian governments have focussed on developing a "cradle to grave" management approach to toxic substances. The federal government regulates the use of toxic chemicals through the Canadian Environmental Protection Act. This includes providing for an assessment of new substances to determine their ‘toxicity’ before being introduced into the Canadian marketplace. Similar efforts are made by provincial governments. The National Office of Pollution Prevention is working in conjunction with the provinces to develop a strategy for pollution prevention across Canada. The Accelerated Reduction-Elimination of Toxics Program brings together industry, governments, environmental groups, and labour to establish criteria for selecting substances and setting targets for the reduction and eventual elimination of bioaccumulative and persistent toxic chemicals. The program relies upon voluntary compliance
by involved groups. All of these initiatives are part of the federal government’s move away from ‘react and cure’ methods in favour of an ‘anticipate and prevent’ approach when dealing with dangerous substances. Canada also participates in the International Program on Chemical Safety which is working toward the harmonization of classification and labelling systems for chemicals (Clifford, 1994b).

Although many of the objectives identified under Agenda 21 for the sustainable management of chemicals are being met in Canada, it is worth noting that a text calling for a ban or a phase-out of asbestos and organohalogens was deleted at the behest of the Canadian delegation during PrepCom meetings prior to Earth Summit ‘92. The agreed upon accommodation simply states that bioaccumulative and persistent toxic chemicals that cannot be adequately controlled should be phased out (Clifford, 1994b). Domestic pressures and regional interests probably surfaced at every stage of UNCED. The example demonstrates that Canadians must recognize that delegates were compromised by such constraints. This may help us understand why the language used in Agenda 21 often seems ambiguous, vague, or even soft in certain areas. This also supports the conclusion that public awareness and public pressure must come before we can expect governments to take the next step toward promoting sustainable development.

*Environmentally Sound Management of Hazardous Wastes, Including Prevention of Illegal Traffic in Hazardous Wastes*

Hazardous wastes represent another substance threatening the health of human beings and the quality of our natural environment. Governments must achieve five major objectives to
deal with this problem. First, the production of hazardous wastes should be prevented whenever possible. Changing industrial processes and consumer patterns to maximize pollution prevention must be the first step in all areas of waste reduction. If unavoidable, then hazardous wastes should be minimized through cleaner production approaches. This includes the recovery of hazardous wastes that can be transformed into new or reusable products. Third, the hazardous wastes that remain must be managed in a manner that does not cause harm to the health of people or the environment. These strategies must be integrated into industrial, commercial, and societal planning processes. This should include additional research into health and environmental impacts related to hazardous wastes as well as other programs promoting public awareness of these issues. The capacities of institutions, both publicly and privately owned, responsible for the management of these materials must also be strengthened to meet socially acceptable norms. Fourth, more international cooperation is needed to manage transboundary movements of hazardous wastes. Standardized identification and monitoring procedures are needed so that hazardous wastes can be properly treated and managed throughout the world. Governments should also prohibit the export of these materials to countries that lack the capabilities required to deal with them in a healthful and environmentally sound manner. Last, every government must implement proper measures to detect and halt the illegal trafficking of hazardous wastes (UNCED, 1992: 179-184).

In summary, the chapter tries to address the problems of how to prevent and minimize the generation of hazardous waste, and how to manage those wastes in such a way as to ensure that the health of people and the environment are not put at risk. It recognizes that this is a problem which will have to be addressed by the international community, governments and industry (Clifford, 1994a).
Governmental jurisdiction over the use of hazardous wastes could be characterized in the same way as jurisdiction over the use of toxic chemicals. Federal and provincial governments are both active in this concurrent field. Hazardous wastes are controlled in this country through the Export or Import of Hazardous Waste Regulations under the Canadian Environmental Protection Act. Canada has also ratified the Basel Convention that regulates the disposal and transboundary movement of hazardous wastes. These federal initiatives deal with the last two objectives listed above. Hazardous waste minimization and prevention measures require the support of both levels of government if they are going to be effective. By the year 2000, federal and provincial governments in Canada are committed to cutting by 50 percent the amount of hazardous wastes destined for disposal. Like its solid waste reduction initiative, the project depends upon voluntary acts by governments and industry to meet its goal. The Hazardous Waste Minimization Committee is an industry-led organization created to help meet the 50 percent decrease by 2000. The Committee also includes representatives from governments, environmental groups, and labour. In 1993, the CCME reestablished its Hazardous Waste Task Force to promote a harmonized approach to the management of these materials across this country. A comprehensive inventory of hazardous wastes is also being developed by the CCME in collaboration with Environment Canada. The federal government is also creating non-binding guidelines to help strengthen institutional capacities to deal with hazardous wastes. Similar efforts are being made by many of the provinces to improve their ability to manage and treat hazardous materials. All of these initiatives are part of Canada’s move toward pollution prevention strategies (Clifford, 1994a). Properly managing hazardous wastes and other dangerous contaminants has multiple benefits since these chemicals can lead to air, land, and
water pollution threatening human health and wildlife. The level of intergovernmental interaction, mostly centred within the CCME, demonstrates a commitment to coordinate efforts to control and prevent the production of hazardous wastes.

Environmentally Sound Management of Solid Wastes and Sewage-Related Issues

“Environmentally sound waste management must go beyond the mere safe disposal or recovery of wastes that are generated and seek to address the root cause of the problem by attempting to change unsustainable patterns of production and consumption” (UNCED, 1992: 184). The Earth Summit’s definition of solid waste covers all non-hazardous wastes such as municipal, commercial, and institutional wastes. The concept of waste management is founded on the hierarchical ordering of the four major waste-related programme areas: waste minimization; maximization of reuse and recycling techniques; environmentally sound treatment and disposal of waste; and the extension of waste services. Waste is an unavoidable by-product of production and consumption processes. The first step must be to eliminate excess waste and establish waste minimization policies. As the cost of disposal methods continues to increase, reuse and recycling techniques become increasingly cost effective alternatives. Governments must promote reuse and recycling systems at the national, regional, and local levels. Even after implementing reduction, reuse, and recycling policies, some waste will still remain. Treatment facilities and safe disposal methods are required to deal with this garbage. Waste services must be extended to ensure adequate provision for all urban and rural populations (Ibid.: 184-188).

All three levels of government share in the responsibility for waste management.
Municipalities are responsible for waste collection and disposal operations. Provinces authorize and oversee disposal and treatment facilities. The federal government becomes involved when waste and sewage-related issues affect federal lands or entail interprovincial or international transport.

Canadians are among the highest per capita waste generators in the world. However, progress is being made in this area. All of the following CCME task groups are directly or indirectly involved with waste management: National Task Force on Packaging; Water Quality Guidelines; Environmental Education and Communications; Hazardous Waste; and the Soil Quality Guidelines Task Group. The CCME is also responsible for developing the National Waste Management Strategy. In 1989, every government in Canada committed itself to a 50 percent reduction in waste generation by the year 2000. Part of this objective will be reached through the NAPP initiative described in an earlier section on consumption patterns. Recycling, composting, and other waste reduction projects are also underway in most provinces. However, more could be done in the area of sewage treatment. There are no national guidelines and many communities lack the proper facilities needed to treat their sewage. Therefore, a great deal of Canada’s waste water still goes untreated (Clifford, 1994e). The OECD Environmental Performance Review Report (Organization for Environmental Cooperation and Development, April 9, 1998) was critical of Canada for the high levels of waste generated in this country. The OECD concluded that it would be difficult for Canada to meet its 50 percent reduction target by the year 2000.

Overall, many of the waste management objectives outlined in Agenda 21 have been addressed or are being dealt with by government officials. The CCME’s various task groups help
to ensure that intergovernmental relations do not present a serious impediment to the prospects of developing a sustainable waste management system for all Canadians. However, solid waste and sewage-related issues have not been fully resolved. These concerns are directly related to current consumption and production patterns. As such, Canada will continue to have waste problems as long as consumers and producers continue to support unsustainable activities. These concerns suffer from a lack of public understanding regarding the link between world poverty and unsustainable lifestyles among the richer segments. Only when this is understood will people be in a position change their own behaviour patterns and to press governments for real change.

Safe and Environmentally Sound Management of Radioactive Wastes

The nuclear age has led to the generation of radioactive wastes. These are byproducts from the nuclear fuel cycle and various nuclear applications. The wastes must be safely managed, transported, stored, and disposed of in an environmentally sound manner with the ultimate goal of protecting human health. Plans must be developed, including emergency procedures, to ensure the proper management of all activities prior to and following the production of radioactive wastes. Governments must also promote policies that minimize, limit, and control the generation of such waste (UNCED, 1992: 188).

All aspects of the nuclear fuel cycle fall under the jurisdiction of the federal government. Therefore, intergovernmental relations are not an issue. Canada is a country that both mines and uses radioactive substances. As such, the federal government has long standing policies on the management of high and low level radioactive wastes. Nuclear issues are under the authority of
the Atomic Energy Control Board. It has also become common in Canada to place major new
activities in this area through independent and public environmental review and consultation
processes. The Board’s strict control mechanisms are based on the belief that the producer is
responsible. Waste producers can propose their own long-term waste management strategies. In
cases when a producer can no longer be held accountable, the Low Level Radioactive Waste
Management Office is responsible for the clean-up of any contaminated sites. Atomic Energy of
Canada Limited, a federally owned corporation, is currently planning to construct and operate a
demonstration unit of a modular near surface disposal system. It will be used to process the
company’s own radioactive wastes as well as those received from small producers that do not
wish to develop their own disposal facilities (Clifford, 1994d).

C. Strengthening the Role of major Groups

Social groups play a key role in the promotion of sustainable development. They serve as
important stakeholders in our communities. These groups provide governments with valuable
information and voice a variety of opinions meant to serve the public’s best interests. This
section is part of UNCED’s broader goal of improving public participation in decision-making
processes. Agenda 21 identifies nine groups whose role in their community must be strengthened
to help implement the objectives agreed to by governments at Earth Summit ‘92. They are:
women; children and youth; indigenous people; non-governmental organizations; local
authorities; workers and their trade unions; business and industry; the scientific and
 technological community; and farmers.

The following sections provides general statements in support of previous commitments
reported throughout this paper. Most environmental programs, policies, or legislation prepared by federal, provincial, territorial, and municipal governments in Canada require some form of public consultation before they can be put into action. These include the Canadian Environmental Protection Act, the Canadian Environmental Assessment Act, the Quebec Environmental Quality Act, and the Alberta Environmental Protection and Enhancement Act (Department of Environment, 1996: 20). However, specific groups within society are not always pursued actively by Canadian governments to ensure their involvement. Though they may not be expressly targeted, all nine groups, as well as average citizens, are free to participate in these proceedings or voice their opinions to government officials, including their elected representatives.

It is important to note that governments consult the public separately. Even when a policy or a legislation affects both orders of government, officials carry out their public proceedings apart from each other. Therefore, this discussion has no direct impact upon the study of intergovernmental relations and the added effect that the Canadian federal structure has on the entire process of promoting sustainable development. As Breton pointed out however, governments are motivated by their need to get reelected. This creates an indirect effect upon intergovernmental relations. People influence the positions taken by governments during negotiations. Success “will rely to a large degree on the extent of direct accountability of both levels of government to their constituents ... meaningful mechanisms to hold both levels of government accountable for their commitments, not only to each other, but to their respective electorates” (Harrison, 1996: 175). Independent monitoring systems should be established by each government to ensure that the public is made aware of government activities or inactivities
in the field of the environment. If public pressure were also centred more on the provinces, the primary protectors of the environment, then I believe that there would be less conflict between the two orders of government and more progress made toward attaining sustainable development. However, this necessitates a change in public attitudes before people can be in a position to press government officials. The nine groups identified in Agenda 21 are expected to take the lead in educating the public, pressing governments for change, and holding our officials accountable for their actions.

*Global Action for Women Towards Sustainable and Equitable Development*

Various action plans and conventions have been endorsed by the international community to end gender-based discrimination and emphasize the importance of women participating in decision-making processes. Their cooperation is also required in developing national ecosystem management strategies. To this end, governments should implement the Nairobi Forward-Looking Strategies for the Advancement of Women. Constitutional, legal, administrative, cultural, behavioural, social, and economic obstacles to the full participation of women in sustainable development must also be eliminated in each country. In addition, government officials should pursue policies that increase the proportion of women decision-makers, technical advisers, and managers in environment and development fields. Violence against women must be prevented. The right to freely and responsibly decide upon family sizes must also be given equally to women and men. These activities will require programs to improve educational conditions for women as well as provide equal employment opportunities and equitable remuneration for formal and informal work (UNCED, 1992: 191-193).
Many of the objectives stated above have already been accomplished in Canada. Gender equality is guaranteed under Sections 15(1) and 28 of the Constitution Act, 1982 (Department of Justice, 1996: 61 & 65). Legislation prohibiting violence against women exists in every jurisdiction. Family planning assistance is also available across the country. Governments and other interested groups actively encourage women’s participation in decision-making processes, especially those involving environment and development. The New Democratic Party and the Liberal Party of Canada had quotas in place for a minimum number of women candidates seeking office in the 1997 federal election. However, women remain under-represented in these positions of authority. Government cutbacks to social programs and job training have further limited the opportunities for women in Canada (Carroll-Foster, 1994a).

Throughout the world, women hold a special place within family units. As primary caregivers and family caretakers, women must play an essential role by fusing their maternal sensibilities into decision-making processes. Women also make up approximately half of the world’s population and their participation is essential since sustainable development requires the support of the masses for its effective implementation.

*Children and Youth in Sustainable Development*

Decisions made today not only have an immediate impact on all our lives, but also hold important implications for the futures of our youths and children. It is imperative that young people in each country be given the opportunity to participate at all levels of relevant decision-making processes. After all, an integral part of sustainable development is caring for the ability of future generations to manage their lives. Governments should grant youth access to
information and establish a process so that young people may present their opinions on
government decisions affecting the environment, and economic and social development. This
will require measures to provide for appropriate secondary education, reduce current levels of
youth unemployment, and combat human rights abuses against young people. Finally,
governments must actively ensure that the interests of children, those unable to speak for
themselves, are fully incorporated into policies and strategies affecting sustainable development

Canada has ratified the Convention on the Right of the Child. Secondary education and
vocational training are provided by the provinces. The CCME’s Environmental Education and
Communications Task Group encourages the sharing of environmental education materials
across jurisdictional boundaries. Most of the objectives under this chapter have been fulfilled
though some concerns remain unresolved by governments. Hikes in tuition fees and shrinking
student loans have made post-secondary education unaccessible to an increasing number of
youths. High youth unemployment levels have persisted throughout the 1990s. The federal
government has also failed to establish a Youth Advisory Council despite the fact that a youth
council on environment and development was promised under the Green Plan. The growing
number of children and youths living in poverty is another major concern, although the two
orders of government have allocated additional funds to help eradicate this problem. There are
signs of improvement for youth participation in decision-making processes. The Youth ‘92
project brought together Canadian youth organizations to facilitate their participation at
UNCED. Canada’s delegation to Earth Summit ‘92 also included youth involvement in
negotiations related to Chapter 25 of Agenda 21. Youth ‘92 staff and Environment Canada
began working together to develop the Canadian Youth Information Management System to facilitate networking and cooperation among youth groups in this country. The project is now being carried on by the Canadian Youth Foundation. The National Round Table on Environment and Economy has developed Model Round Table for Youth kits to encourage young people to establish round tables in their communities and involve local individuals, businesses, and environmental groups (Murdoch: 1994).

The youth and children of the world represent our future. Giving them a voice today is perhaps the best way to ensure that present decisions do not permanently impair the ability of future generations to meet their own needs. In addition, youth are often a voice for radical change in society. Youthful hope and determination just may be what people require to help them realize the need to reform themselves so that they can press governments to the next level in promoting the goals of sustainable development.

*Recognizing and Strengthening the Role of Indigenous People and Their Communities*

Indigenous people and their communities have an historical relationship with their lands and are generally descendants of the original inhabitants of such lands ... Their ability to participate fully in sustainable development practices on their lands has tended to be limited as a result of factors of an economic, social and historical nature (UNCED, 1992: 196).

Most chapters in Agenda 21 offer measures aimed at providing indigenous people with the resources needed to participate in decision-making processes. However, only Chapter 26 has the specific mission of strengthening the role of indigenous communities. The human rights and fundamental freedoms that we all enjoy must be extended to indigenous people. In partnership
with these communities, governments should establish a process that empowers indigenous people and their communities. This should include the recognition that their lands must be protected from activities that are environmentally unsound or considered by concerned indigenous people to be socially and culturally inappropriate. Governments must also recognize their values, traditional knowledge and resource management practices, and their historical dependence on renewable resources and ecosystems. All of these are essential to the continued well-being of indigenous cultures. The active participation of indigenous people and their communities in decision-making that may affect them must be encouraged by governments throughout the world. Last, indigenous people must be included in resource management and sustainable development strategies at the national and local levels (Ibid.: 196-197).

"Indians, and Lands reserved for the Indians" (Department of Justice, 1996: 28) is a federal responsibility, though complex land claims and disputes over natural resources have led to provincial involvement in certain areas of native affairs. Canadian efforts to bring about the empowerment, participation, and partnership of indigenous peoples have been less than stellar. In November of 1996, the Royal Commission on Aboriginal Peoples tabled a five volume report making 440 recommendations related to a wide spectrum of Aboriginal issues. They include the creation of a third order of government and an Aboriginal parliament, the appointment of an independent tribunal to decide land claims, and an additional $2 billion infusion into current government spending on native peoples (Indian and Northern Affairs Canada, November 1996). Expectations are low concerning the possibility that these and other progressive recommendations will ever be implemented by governments in Canada. However, a number of fundamental changes have already taken place to help empower indigenous peoples and their
communities. Over seventy negotiating tables for recognizing the inherent right to Aboriginal self-government are underway. British Columbia is also highly involved in treaty negotiations over native land claims (Indian and Northern Affairs Canada, April 1997). Aboriginal peoples are increasingly participating in sustainable development initiatives and decision-making processes. The federal and Quebec governments and the Algonquins of Barriere Lake are working to develop an integrated forest and wildlife management plan (Department of Environment, 1996: 22). Overall, federal or provincial negotiations with Aboriginal groups involve one order of government dealing with a third party. As such, intergovernmental relations are often a non-issue.

Aboriginal peoples are rich in heritage and tradition with an historical dependence on renewable resources and ecosystems. They are a unique people and there is much that they can teach us about building sustainable communities. We must also remember that sustainable development is an inclusive approach to protecting the environment and advancing basic human needs. Indigenous people are often poorly treated throughout the world. Defending their human rights and granting aboriginal peoples a role in decision-making will speak volumes for the level of public participation in a nation.

_Strengthening the Role of Non-Governmental Organizations: Partners for Sustainable Development_

Non-governmental organizations (NGOs), both formal and informal groups, must be recognized as partners in the implementation of Agenda 21. Therefore, governments and international organizations should develop mechanisms that promote cooperation and
communication with these bodies. A review of all decision-making and implementation processes is needed to provide venues for NGO consultation (UNCED, 1992: 197-199).

"Governments and international bodies should promote and allow the participation of non-governmental organizations in the conception, establishment and evaluation of official mechanisms and formal procedures designed to review the implementation of Agenda 21 at all levels" (Ibid.: 199). As world leaders attended the Earth Summit, over 3000 NGOs met in Rio at the International Non-Governmental Organization Forum. They prepared parallel documents to provide alternative opinions on each issue addressed in Agenda 21 (Carroll-Foster, 1994b).

Canada actively pressed other members of UNCED to strengthen the commitments made by governments to develop relations with NGOs. The federal government promised to consult NGOs and the public on environmental issues in its Green Plan. The process has generally continued ever since. Limited funding is provided to NGOs, especially at the national level, to help them with their missions. Provincial and local initiatives also exist to allow for consultation with NGOs. They include the Saskatchewan Eco Network, and the Canadian Environmental Network (Carroll-Foster, 1994b). The latter is a network of almost 2 000 environmental NGOs which acts to coordinate NGO activities and facilitate discussions among those groups and governments (Whelton, April 8, 1998).

Additional attention is often given to NGOs such as Friends of the Earth, Pollution Probe, and GreenPeace for taking a more holistic approach to environmental considerations. These organizations generally spend a great deal of energy trying to convince the federal government to extend its role in the field of the environment and initiate nation-wide policies and legislation (Harrison, 1996: 176-177). However, the provinces have historically been the primary protectors.
of the environment. They are also the order of government most frequently blamed for delaying the process toward sustainable development. Therefore, it seems sensible to conclude that more could be accomplished if NGOs spent additional time trying to enlist provincial governments to support their recommendations. If NGOs can demonstrate that they speak for the public, then both orders of government should be prepared to listen. Environmental groups can also serve as an independent monitoring system by rating and reporting government performances in the area of environmental protection to the public. “Having won a place at the table [by gaining access to governments], environmentalists will be in a better position to serve as watchdogs over future intergovernmental agreements” (Ibid.: 177). Last, NGOs can help alter popular attitudes by appealing directly to consumers and producers for the need to promote more sustainable activities. All of these functions are important to the environmental movement. As such, governments should recognize the need for unconditional public funding of NGOs whenever possible. They deserve the same kind of considerations given to business and other special interest groups because of their important contributions to Canadian economic and social development.

Local Authorities’ Initiatives in Support of Agenda 21

Local governments are often responsible for the construction, operation, and maintenance of social and economic infrastructures. They also oversee local planning processes and environmental policies as well as assist in the implementation of national and subnational environmental strategies. “As the level of governance closest to the people, they play a vital role in educating, mobilizing and responding to the public to promote sustainable development”
To this end, 'a local Agenda 21' strategy should be developed through public consultation by the year 1996. Agenda 21 objectives will be assessed and modified based on local needs and capabilities. Cooperation between communities through the exchange of information and experiences should also be encouraged by international, national, and local authorities (Ibid: 200).

Municipalities fall under the jurisdiction of the provinces. The leading agency representing the interests of local communities is the Federation of Canadian Municipalities (FCM). Along with the CCME, the Federation prepared a municipal primer outlining strategic actions particularly relevant to municipal concerns including case studies provided by local governments across the country. Similar aids have been created by provincial Round Tables on Environment and Economy and by the Intergovernmental Committee on Urban and Regional Research. The FCM, in collaboration with the International Development Research Centre and the CCME’s State of the Environment Reporting Task Group, has also developed the Canadian Urban Research on the Environment (CURE) Project. CURE’s objectives are to gather information about municipal initiatives to improve the environment and promote sustainable urban development in Canada, and make the data available to local authorities around the world. Overall, Canadian municipalities are acting on many of the recommendations found in this section (Clifford, 1994c).

Local officials are part of the level of government closest to the people. They are best suited to receive, integrate, and respond to public input into decision-making. Initiatives are also more likely to incorporate and to adapt to local needs and capabilities when they are carried out at the level of municipalities. Ultimately, the success of sustainable development depends upon
every person doing their part to promote all of the objectives outlined in Agenda 21. If only governments were to act, the world would fail to attain the desired goal. In order to draw people into the environmental movement, they must be made to feel that they can play a significant role in the achievement of sustainable development. Empowering local officials is the best and simplest way to accomplish this basic and fundamental objective.

**Strengthening the Role of Workers and Their Trade Unions**

Agenda 21 is concerned with a person's health and general quality of life. Workers are counted among those foremost affected by unsustainable human activities and enterprises. Trade unions play a vital role in addressing industrial change, in promoting socially responsible economic development, and in protecting the working environment and, as a consequence, the natural environment. “The existing network of collaboration among trade unions and their extensive membership provide important channels through which the concepts and practices of sustainable development can be supported” (UNCED, 1992: 200). Cooperative initiatives involving trade unions, government officials, and employers must be established and exploited to promote and implement sustainable development strategies. Workers should become full participants in decision-making processes and activities related to improving living conditions in their communities as well as the health of the working and natural environment. Governments, business and industry, and trade unions should also work together to alleviate poverty and attain full and sustainable employment. In addition, governments and employers should promote the rights to freedom of association and to organize as defined in International Labor Organization conventions. Finally, workers should have access to proper training to improve their
environmental awareness, ensure their health and safety, and elevate their economic and social welfare. Governments, employers, and trade unions should collaborate in the development of these training programs to ensure that they provide the necessary skills required to promote a sustainable livelihood (Ibid.: 200-201).

Canadian workers and their trade unions have been working with both business groups and government agents to promote worker safety and environmental education in the workplace. Union representatives also took part in national and provincial Round Tables on Environment and Economy (Department of Environment, 1996: 21). Ontario’s Environmental Bill of Rights provides protection for workers dismissed or penalized by their employer for reporting environmental infractions occurring in the workplace. The burden of proof is placed on the employer to demonstrate that no form of reprisal was taken against the employee (Bill 26, 1993: 41-44). Both the right to freedom of association and peaceful assembly are protected under the Canadian constitution (Department of Justice, 1996: 58-59). Overall, intergovernmental relations has no bearing on the involvement of workers and trade unions in activities leading to sustainable development. These organizations and their membership are generally given opportunities to participate in government initiatives similar to those offered to other major interest groups found in Canadian society.

"The Canadian union movement has also worked for the establishment of environmental rights such as joint labour-management environment committees in workplaces, the legal right to refuse to pollute and ‘whistle-blower protection’ for workers reporting environmental violations" (Whelton, April 8, 1998). These three goals are essential if trade unions and their workers are going to become full participants in the move toward sustainable development.
Trade unions and workers are deeply affected by the general perception that environmental protection involves some form of economic tradeoff. They fear that protecting the environment will lead to job losses as businesses flock to other countries where environmental standards are loose or non-existent. In this age of globalization and corporate restructuring, it is difficult to ignore this problem. The only real solution is to raise environmental standards everywhere. This is ultimately a goal under Agenda 21. However, the need to meet basic human needs in developing countries makes it only a long-term goal. Of greater importance is the need to put in place legislation that will protect the rights of workers whenever they decide to exercise them. Laws providing whistle-blower protection and the legal right to refuse to pollute must be enacted in every province. Only then will trade unions and workers have the ability to contribute meaningfully to the process of promoting sustainable development in the workplace.

**Strengthening the Role of Business and Industry**

Business and industry (B&I), including transnational corporations, also have a major role to play in the promotion of sustainable development. They provide much needed trade, employment, and livelihood opportunities leading to economic growth. However, B&I must adopt more proficient and environmentally friendly production processes. They must increase the efficiency of resource utilization and reduce waste discharges throughout their product’s life cycle. In addition, B&I can contribute by adjusting prices of goods and services to properly reflect environmental costs. Governments should also encourage entrepreneurship that subscribes to and implements sustainable development policies (UNCED, 1992: 201-204).

As I stated earlier, B&I have had considerable access to government officials in Canada.
Now the focus is on ensuring that they have equal recourse to the same mechanisms being provided to NGOs and labour. Both orders of government have made efforts to ensure that B&I participate in endeavours such as the national and provincial Round Tables on Environment and Economy. Governments have also emphasized the importance of voluntary commitments to reduce environmental degradation. Governments alone cannot bring about sustainable development. B&I, as well as the general public, must take an active interest in promoting environmental considerations. Canadian companies have been world leaders in the development of and participation in voluntary programs for environmental protection. These programs include the Responsible Care program adopted by the chemical industry, the National Packaging Protocol, and the Canadian Environmental Council. The latter is an organization that brings together government officials and business leaders to develop voluntary guidelines that promote sustainable economic development (Miller, 1994).

Though B&I have come a long way in reducing their negative impact on the environment, there is still much work to do in this area. The integration of environmental costs into pricing mechanisms has not occurred in any substantive manner. There is still a belief that protecting the environment will lead to lost economic growth. The problem has been compounded in recent years by high unemployment figures and a succession of pro-business governments at both levels that have focussed more on deficit cutting than environmental protection. An excellent example of this is the Progressive Conservative government in Ontario. Their ‘common sense revolution’ is largely based on promises to lower taxes and balance the province’s budget. This has led to several rounds of cuts in the Department of Environment and Energy’s own budget and staff size. In addition, deregulation was initiated by the Ontario
government to remove impediments to economic development. The Environmental Bill of Rights no longer applies to legislation involving expenditure programs. Governments across Canada must recognize that short-term growth in exchange for long-term environmental degradation does not represent progress. The environment must be a primary consideration when reviewing policy-decisions regarding economic growth. To this end, government, B&I, other organizations, and the general public must work together to ensure that the country moves progressively toward a sustainable future.

*Scientific and Technological Community*

The scientific and technological community has an important contribution to make to the advancement of sustainable strategies that promote social and economic development while protecting the environment. The role played by science and technology in human activities must also be better understood by policy-makers and the general public. In addition, more favourable conditions are needed for training and independent research into sustainable development. The ability of the scientific and technological community to investigate and publish without restriction as well as exchange their findings freely must be assured through government legislation. At the same time, widely accepted ethical principles and codes of practice are needed to enhance the professional status of those working in the fields of science and technology. To these ends, communication and cooperation among scientific and technological researchers and decision-makers must be improved through increased interaction to identify and implement the best available strategies for sustainable development (UNCED, 1992: 205-207).

Scientific and technological innovations and improvements in efficiency are critical to
turning economic growth into sustainable development. Canada depends upon both private sector and government initiatives to provide environmentally sound technologies. Scientific staff and technical experts can be found in every federal and provincial environment department. Scientists and technologists are also hired by companies to ensure their understanding and compliance with government regulations. The field continues to grow as more and more Canadian universities offer various degrees in scientific and environmental studies. The Green Plan included funds for research into global and domestic environmental issues. There have also been significant efforts made to increase the level of interaction between the scientific and technological community and policy-makers. Science Forum I was held in 1992 bringing together Environment Canada’s scientists and technologists and senior management to set research priorities and discuss how to more effectively integrate science and decision-making (Environment Canada, 1994b). The CCME also provides opportunities for researchers to work with policy-makers toward a sustainable future. Each of its task groups employs scientists and technologists from both orders of government to complete their assigned objectives. The State of the Environment Reporting Task Group is developing a national inventory of provincial and territorial databases to complement the one collected by Statistics Canada. This ‘master database’ includes over 850 databases from 102 government agencies (CCME, March 1997). In 1994, the federal government, several provincial governments, private companies, and environmental industry associations collaborated on the establishment of three Canadian Environmental Technology Advancement Centres. They support small- and medium-sized environmental companies in various areas, including services on technology transfer and commercialization (Department of Environment, 1996: 28).
The scientific and technological community provides the expertise needed to help policy-makers understand the problems that they face and the potential impacts of their decisions. These two groups must be able to understand each other in order to achieve policy efficiency, that is adopting the proper policy decisions needed to deal with the problem at hand. This may require more policy-makers with a science-based education. We must also remember that the definition of sustainable development includes a recognition of current technological limitations. Scientists and technologists are the people that will in time extend those limitations. Governments must continue to provide funding for projects that promote social and economic developments with minimum or sustainable damage to the environment.

**Strengthening the Role of Farmers**

The importance of agriculture is self-evident and farmers are often in the unique position of being in close contact with nature. Their subsistence depends upon the continued conservation of their physical environment while being highly vulnerable to its overexploitation and improper management. Sustainable development strategies relating to agriculture are offered under different chapters in Agenda 21. The key to their successful implementation lies in enabling farmers to manage their natural resources in an efficient and sustainable manner. Therefore, government policies must provide farmers with proper incentives to motivate them toward the desired goals. The first step for governments must be to encourage the decentralization of related decision-making processes toward local and community organizations that are able to delegate power and responsibility to individual farmers. "A farmer-centred approach is the key to the attainment of sustainability in both developed and developing countries."
countries and many of the programme areas in Agenda 21 address this objective” (UNCED, 1992: 207). Government officials must also promote the use of sustainable farming practices and technologies as well as introduce policies that encourage self-sufficiency in low input and low-energy technologies, including indigenous practices (Ibid.: 207-208).

As we have seen, agriculture is a concurrent jurisdiction in Canada with a long history of intergovernmental collaboration. Privately owned farms are often organized into cooperatives. These groups and their members play an important role in promoting sustainable agriculture policies. They work with federal and provincial governments to determine priorities and establish programs based on best management practices. Low-till and no-till practices made up approximately one-third of seeded croplands in 1991 compared to negligible amounts only 20 years earlier (Department of Environment, 1995: 57). Agriculture and Agri-Food Canada’s Strategy for Environmentally Sustainable Agriculture and Agri-Food in Canada was developed in collaboration with producers and other interested groups. The Strategy focuses on: improving the sector’s capacity to integrate environmental factors into day-to-day decision-making; encouraging the sustainable use of the environment and agricultural resources; developing innovative technologies and solutions to meet the growing demand for agricultural products in a sustainable manner; and seizing market opportunities by promoting the industry’s high level of environmentally sound quality products (Agriculture and Agri-Food Canada, 1997).

Food is a basic human need. Therefore, farmers play a vital role in the modern world by providing people with the sustenance they need to survive. Most of the goals outlined in this section are already in place. Key decisions are generally made at the farm level where self-interest is expected to drive farmers to adopt sustainable agricultural practices.
GENERAL OBSERVATIONS AND CONCLUSIONS

I have demonstrated the need for the environment to be a functionally concurrent field that respects the division of powers in Canada and does not grant either order of government a consistent advantage over the other in matters of conflict. The present federal structure in this country satisfies these conditions. To a large degree, cooperative relations have developed between the two levels of government because of these conditions. Intergovernmental cooperation and collaboration is also facilitated by the presence of an institutional system that promotes information-sharing and discussion leading to consensus-based agreements on the protection of the environment. The process does not prevent governments from reverting to competition if their interests are ignored or threatened. Therefore, the players are forced to respect each other’s needs and compromise for the good of the entire country. Remember that the provinces do not want to incur federal intrusion into their traditional sphere of jurisdiction and both orders of government would prefer a political settlement over the clear-cut judgements offered by the courts.

The smooth functioning of both cooperative and competitive federalism depend upon some semblance of good will between government representatives. Otherwise, the country would spiral into confusion and turmoil. Severe periods of strife can even threaten the peace and stability enjoyed by all Canadians. Cooperation is clearly preferable to competition for these and other reasons. If nothing else, it is simply unreasonable to assume that if each government does its part, then the sum total of those efforts will achieve sustainable development despite the lack of an institutional structure with the express mission of promoting just such an outcome.
The division of powers exists for good reason. Each province or region represents a unique group of people with its own special wants and needs. Placing certain responsibilities in the hands of the provinces has allowed us to manage conflictual interests that, if left to the national government, have the potential to tear this country apart. Environmental concerns, understood in sustainable development terms, invade those jurisdictions. I refer the reader back to the words of W.R. Lederman found on page 16. It is of paramount importance that the balance between federal and provincial authority remain stable. A subject such as environmental protection must be subdivided in a manner that respects this country’s division of powers while granting both orders of government concurrent status overall. Proposed changes to Canada’s present federal structure, especially those requiring a constitutional amendment, have failed to properly meet these conditions. All of the above arguments suggest that we should strive to discover ways to achieve sustainable development through the existing system that governs federal-provincial relations in the area of environmental protection.

I have also demonstrated that the present federal structure does not represent a dangerous impediment to the goal of promoting sustainable development in this country. The analysis was divided between Social and Economic Dimensions, Conservation and Management of Resources for Development, and Strengthening the Role of Major Groups. The investigation provided ample proof of Canada’s ability to implement statutes aimed at promoting sustainable development goals even though sovereign power in the field of the environment is divided between two orders of government. Cooperative institutions aimed at facilitating federal-provincial agreements on environmental protection initiatives make a visible contribution in each of the sections within Agenda 21 relevant to intergovernmental relations.
This does not mean that there is no room for improvement. There are a variety of measures that can be implemented to extend Canada’s capacity to achieve sustainable development as well as help minimize the delays incurred from living in a federal state. More importantly, there is clearly a disassociation that takes place in this country as we move from legislating to interpreting and enforcing our laws. Harrison suggests that the parliamentary system is partly to blame for this problem. The fusion of executive and legislative functions tends to result in very general statutes which grant the executive a wide berth in which to interpret and enforce legislation while not requiring government officials to take any particular actions (Harrison, 1996: 169). “Parliamentary government thus facilitates the coexistence of strong symbolic commitments with weak or non-existent implementation” (Ibid.: 169).

In an interview, Ann Dale of the Sustainable Development Research Institute at the University of British Columbia stressed three major flaws in the way this country has gone about developing and implementing sustainable development goals (Dale, February 1997). The first is the system’s dependence upon a consensus-building approach to develop federal-provincial agreements and national standards or guidelines. This has often led to policies based upon the lowest common denominator presented in those negotiations. Adopting a structure that depends upon some form of majority support to determine policies for all Canadians is unacceptable for reasons stated earlier in this paper. An alternative may lie in having the federal government identify instances where the lowest common denominator threatens Canada’s ability to achieve sustainable development and then put the question to the people. This need not require the use of referenda. Simply opening the debate to public involvement may be enough to provide the pressure needed to instigate movement on a given issue when talks have stalled. Another
solution that is currently being pursued by both orders of government is the delineation of environmental responsibilities to the order of government best able to deal with a specific problem. The one-window approach is part of the CCME’s Canada-Wide Accord on Environmental Harmonization. The approach simplifies environmental regulations by eliminating overlap and duplication. Interested parties will also know which order of government to hold accountable whenever these policies or programs fail to protect public health and the environment.

The second problem identified by Dale involves the departmental structure established by each level of government to divide economic, environmental, political, and social concerns in this country. Most, if not all, sustainable development issues are cross-sectional by nature and their solutions require the involvement of numerous departments from both orders of government. Clearly interjurisdictional negotiations must be extended to include all of these departments in the decision-making process. Therefore, environment ministers and the CCME must expand the number of initiatives taken in collaboration with other departmental leaders. They must approach environmental concerns along ecological lines and involve all of the affected government departments and agencies to promote consistent across-the-board strategies. This may also require governments to make the environment minister a senior portfolio and turn the department into a central agency on par with the Department of Finance and the Treasury Board Secretariat. In this way, the environment department in each government would have the authority to ensure that a common framework would be used to apply environmental policies in all departments. This would be consistent with current efforts requiring government departments to include environmental considerations in their decision-making processes.
The third problem revolves around power struggles that occur at intra-provincial, intergovernmental, and interdepartmental levels. Competitions for power and control take place at both the bureaucratic and political echelons, even in a cooperative structure. These confrontations must not be permitted to exacerbate other concerns surrounding the development and implementation of environmental protection initiatives. This point was touched upon by Donald Smiley as noted on pages 41 to 44. Power and control struggles must be viewed as constant threats to the cooperative structure. The example described on page 75 was possibly resolved on August 22, 1997 when Ontario’s Environment Minister, Norm Sterling, announced the initiation of an emissions testing program in that province. Starting in the fall of 1998, a vehicle owner will have to pay for an emissions test when renewing his/her registration. If the vehicle fails the test, that person will be expected to pay for the necessary repairs or that vehicle will be forced off the road (The National, August 1997).

There are also several conclusions drawn throughout this paper that deserve to be mentioned again. Independent monitoring systems must be established in each government to ensure that the public is made aware of government activities in the field of the environment. An Environmental Commissioner could adequately play the role of a watchdog. A Commissioner’s annual report would alert the people to government failures and identify areas that could be strengthened by additional environmental regulation. With proper funding, NGOs could also serve in this capacity. An Environmental Bill of Rights in each jurisdiction would go even further by empowering people to use the courts to defend their right to a healthful environment. Public participation must also be redirected to focus more on provincial governments and their responsibilities for protecting the environment. The presumption that extending federal
powers will solve environmental problems is unreasonable and unlikely to occur. The provinces are the traditional regulators and enforcers in this area. They are also often criticised for dragging their feet in these matters, leading to low-end results. Therefore, it only makes sense to concentrate the bulk of NGO and public effort toward instigating movement at the provincial level. Promoting public awareness should also include pressing the provinces into reinstating their Round Tables on Environment and Economy. They were an invaluable tool for encouraging dialogue between governments and other interested groups. Sustainable development goals are not static. They form an evolutionary process that society must always strive to attain as economic, environmental, political, social and technological conditions continue to change around us.
CONCLUDING REMARKS

In this paper, I did not tackle the task of determining whether or not federal and provincial governments are actually doing enough to achieve sustainable development. I believe it is obvious that governments have failed to make the difficult choices that must be made to promote sustainable development. The reason why I avoided this debate is simple. I do not have the answers needed to change the direction we have chosen for ourselves. However, I am certain that the solution must begin within each of us. We must recognize the need to change our attitudes, our values and our lifestyles. Agenda 21 must become a guidebook for the individual before it can hope to effect change in governments.

The greatest challenge for the Canadian people will be to commit themselves to a society geared towards promoting sustainable economic and social development rather than to a society based upon pure economic growth. The shortage of political will that plagues both orders of government will continue to stifle this society’s ability to transform itself as long as Canadians fail to change their own hearts and minds. The entire situation is further complicated by our economic dependency on other countries. Domestic reforms can aggravate foreign relations or leave us at a serious competitive disadvantage on international markets. Globalization represents another consideration dictating the pace of change.

Agenda 21 provides governments with an action plan for achieving sustainable development. Canada and the rest of the industrialized world now require massive popular support for these initiatives. People and governments across Canada must recognize that short-term growth in exchange for long-term environmental degradation does not represent progress. Extensive planning is needed to ensure that social and economic decisions take into
consideration environmental concerns as well as our responsibility toward future generations. These endeavours should also remain centred around human-based interests. Claiming altruistic motives could jeopardize public sympathy at a time when difficult decisions must be made in the name of sustainable development. Other than this however, it seems that the transformation must involve a private commitment by every person to accept the failures of our past and embrace the type of behaviour needed to establish sustainable societies. If environmentalists are correct in their assessment that only a finite time remains before irreversible damage is done by current human activities, then we must hope that these lessons can be learned before it becomes too late.
CONSECRATION CHART

Agriculture Canada, "Environmental Issues Associated With Food and Beverage Processing", in *Environmental Profile of the Agriculture and Agri-food Canada*, [http://aceis.agr.ca/policy/strategy/sds2e.html#Food], 1996.


