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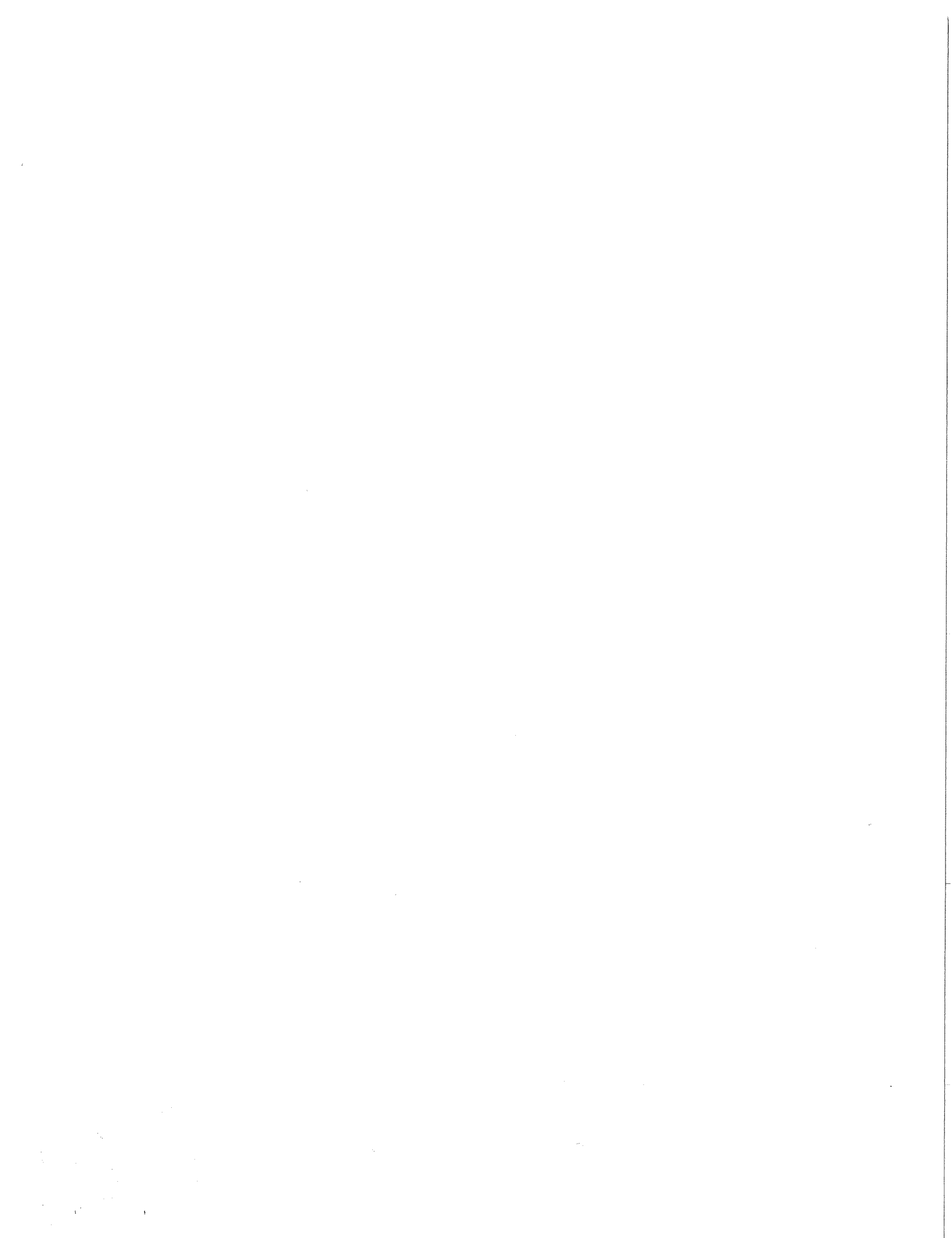
BRIEF TO THE  
JOINT - SENATE/HOUSE OF COMMONS COMMITTEE  
ON  
THE CONSTITUTION OF CANADA  
BILL C-60

VF:  
CANADIAN ENVIRONMENTAL LAW  
ASSOCIATION.  
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BY THE  
CANADIAN ENVIRONMENTAL LAW ASSOCIATION

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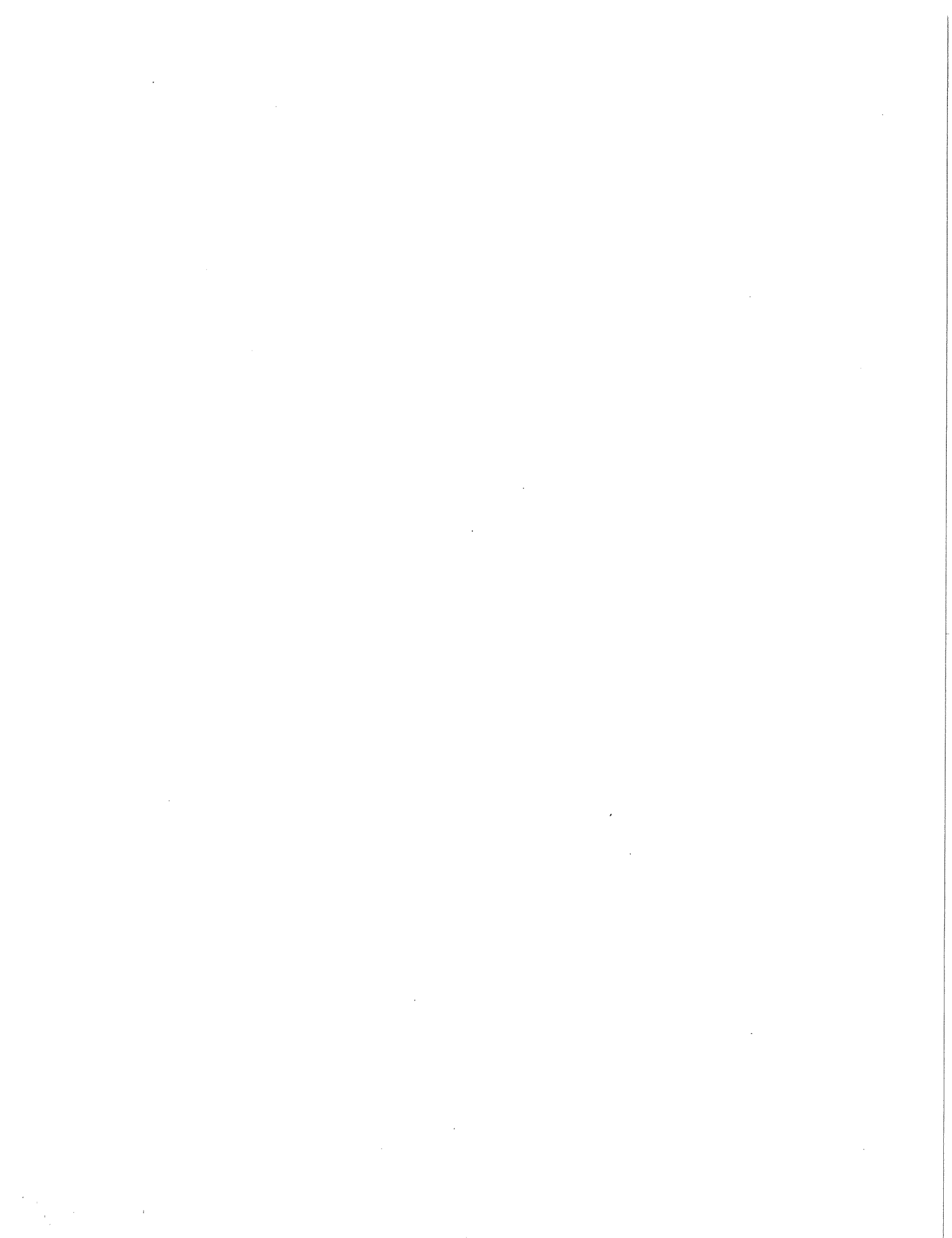
SEPTEMBER 29, 1978



## SUMMARY OF RECOMMENDATIONS TO BILL C-60

THE CANADIAN ENVIRONMENTAL LAW ASSOCIATION MAKES THE FOLLOWING RECOMMENDATIONS TO BILL C-60:

1. ADDITION TO S.6 OF THE PROPOSED CANADIAN CHARTER OF RIGHTS AND FREEDOMS OF A RIGHT OF THE INDIVIDUAL TO ENVIRONMENTAL QUALITY AND ENVIRONMENTALLY SOUND PLANNING
2. EXPANSION OF THE AIMS OF THE CANADIAN FEDERATION TO INCLUDE A COMMITMENT TO ENVIRONMENTAL PROTECTION AND SOUND ENVIRONMENTAL PLANNING
3. A NEW S.96A ENTITLED ENVIRONMENTAL PROTECTION ESTABLISHING A COMMITMENT TO
  - (A) PROTECTING ENVIRONMENTAL QUALITY ACROSS CANADA;
  - (B) ASSURING THAT ENVIRONMENTAL IMPACT STUDIES BE DONE ON UNDERTAKINGS WHICH MIGHT ADVERSELY AFFECT THE ENVIRONMENT;
  - (C) PREVENTING AREAS OF CANADA FROM COMPETING FOR INDUSTRIAL DEVELOPMENT ON THE BASIS OF MORE RELAXED ENVIRONMENTAL PROTECTION REQUIREMENTS THAN OTHER AREAS ('POLLUTION HAVENS');
  - (D) ASSURING THE RIGHT OF ALL PERSONS TO PARTICIPATE IN DECISIONS AFFECTING THE ENVIRONMENT AND TO HAVE A RIGHT OF RELIEF FROM DECISIONS WHICH DO NOT PROMOTE THE PROTECTION AND CONSERVATION OF THE ENVIRONMENT.
4. ADDITION TO S.6 OF THE CANADIAN CHARTER OF RIGHTS AND FREEDOMS OF A RIGHT OF THE INDIVIDUAL TO ACCESS TO GOVERNMENT INFORMATION.



AS PARLIAMENTARIANS, THE MEMBERS OF THIS COMMITTEE HAVE IN THE PAST DEALT WITH ENVIRONMENTAL ISSUES IN VARIOUS COMMITTEES AND IN THE HOUSE OF COMMONS AND THE SENATE. YOU ARE WELL AWARE OF THE EXPENDITURES THAT ARE VOTED EACH YEAR AND ARE ALSO AWARE THAT THERE HAS NOT BEEN A SIGNIFICANT INCREASE IN ENVIRONMENTAL QUALITY OR A SIGNIFICANT DECREASE IN POLLUTION.

THE GREAT LAKES, THE LARGEST BODY OF INLAND "FRESH" WATER IN THE WORLD, ARE SERIOUSLY CONTAMINATED BY TOXIC SUBSTANCES AND PHOSPHORUS ACCORDING TO A RECENT REPORT OF THE INTERNATIONAL JOINT COMMISSION. IT MAY COST \$ 100 MILLION A YEAR TO THE END OF THE CENTURY TO SAVE THEM.

THE TRAGEDIES OF UNHAMPERED INDUSTRIAL ACTIVITY ARE SCATTERED ACROSS THE COUNTRY. MERCURY POLLUTION FACES MANY INDIAN COMMUNITIES IN QUEBEC AND NORTHERN ONTARIO; THERE IS ARSENIC CONTAMINATION IN YELLOWKNIFE, RADIATION IN ELLIOT LAKE AND PORT HOPE AND OIL SPILLS OFF BOTH OUR COASTS. MANY SPECIES OF

PLANTS AND ANIMALS ARE IN DANGER OF EXTINCTION AS A RESULT OF UNFETTERED EXPLOITATION AND DESTRUCTION OF THEIR HABITAT. NON-RENEWABLE RESOURCES ARE USED TO SUPPORT A WASTEFUL LIFESTYLE AND MAY BECOME EXHAUSTED PREMATURELY. WILDERNESS AREAS, PARKLAND, FARMLAND, AND LANDS SUPPORTING CANADIAN NATIVE PEOPLES ARE BEING PAVED OVER, FLOODED AND RIPPED OPEN TO SATISFY URBAN AND INDUSTRIAL NEEDS.

THUS, WHILE NO PROVINCE ESCAPES THE EFFECTS OF POLLUTION AND OTHER FORMS OF ENVIRONMENTAL DEGRADATION, ENVIRONMENTAL PLANNING AND MANAGEMENT IN THIS COUNTRY SORELY LACKS ANY UNIFORMITY OF STANDARDS, AND ANY NATIONAL PERSPECTIVE.

THE BRITISH NORTH AMERICA ACT, REFLECTING THE PROBLEMS AND CONCERNS OF 1867, MAKES NO REFERENCE TO THE ENVIRONMENT OR TO POLLUTION, OR TO SUCH MODERN DEVELOPMENTS AS NUCLEAR ENERGY, AUTOMOBILES, AIRCRAFT, AND MANY OTHER MODERN SOURCES OF ENVIRONMENTAL DEGRADATION.

THIS LACK OF EXPLICIT RECOGNITION OF ENVIRONMENTAL CONCERNS DOES NOT PREVENT EITHER THE FEDERAL GOVERNMENT OR THE PROVINCES FROM PASSING LEGISLATION TO PROTECT THE ENVIRONMENT, ESTABLISHING POLICIES AND PROGRAMS FOR THAT PURPOSE, OR ENFORCING LEGISLATION AND IMPLEMENTING SUCH POLICIES AND PROGRAMS.

HOWEVER, BOTH THE FEDERAL GOVERNMENT AND PROVINCIAL GOVERNMENTS HAVE FAILED TO ACT DESPITE FREQUENT DEMANDS FROM THE PUBLIC FOR ENVIRONMENTAL PROTECTION, PROVING THE NEED TO IMPOSE SOME DUTIES ON GOVERNMENT AGENCIES AND PROVIDE SOME RIGHTS TO THE PUBLIC THROUGH AMENDMENTS TO THE CONSTITUTION. IN THE ABSENCE OF SOME OF SOME DIRECTION IN THE CONSTITUTION, THERE IS EVERY REASON TO BELIEVE THAT GOVERNMENT AGENCIES WILL CONTINUE TO BE ERRATIC AND NEGLIGENT IN THEIR RESPONSE TO ENVIRONMENTAL CONCERNS.

FOR EXAMPLE, ALTHOUGH ENVIRONMENTAL IMPACT ASSESSMENT HAS BEEN A STATUTORY PLANNING REQUIREMENT IN THE UNITED STATES SINCE 1969, ONLY ONE PROVINCE, ONTARIO, HAS PASSED A STATUTE REQUIRING ENVIRONMENTAL IMPACT ASSESSMENT. ALTHOUGH THE ONTARIO ENVIRONMENTAL ASSESSMENT ACT WAS PASSED OVER THREE YEARS AGO, THE PROVINCE HAS YET TO HOLD A SINGLE PUBLIC HEARING UNDER ITS PROVISIONS. NOR HAS THE FEDERAL GOVERNMENT PASSED ANY SUCH LEGISLATION.

ANOTHER EXAMPLE OF THE FAILURE TO TAKE OBVIOUS ACTION TO PROTECT THE PUBLIC IS THE LACK OF LEGISLATION BY THE PROVINCES AND THE FEDERAL GOVERNMENT TO ENABLE FISHERMEN WHOSE CATCH IS POLLUTED BY INDUSTRIAL CONTAMINANTS TO SUE FOR COMPENSATION FOR THEIR LOSS. THE FEDERAL AND PROVINCIAL GOVERNMENTS HAVE KNOWN ABOUT THE LACK OF LOCUS STANDI OR

"STANDING" IN SUCH CASES SINCE AT LEAST 1934 WHEN A NEW BRUNSWICK COURT DISMISSED A SMELT FISHERMEN'S CLAIM FOR COMPENSATION FOR LOSS DUE TO WASTES FROM A PULP MILL. DESPITE THAT, IT TOOK THE FEDERAL GOVERNMENT MORE THAN 40 YEARS TO AMEND THE FISHERIES ACT TO GIVE THE FISHERMEN THE RIGHT TO SUE FOR LOSS OF REVENUE. OF THE PROVINCES, ONLY MANITOBA HAS PASSED SUCH LEGISLATION. MEANWHILE, COMMERCIAL FISHERMEN IN MANITOBA, NORTHERN ONTARIO, AND LAKE ERIE - LAKE ST. CLAIR IN SOUTHERN ONTARIO, HAVE BEEN SUBJECTED TO MERCURY POLLUTION FOR WHICH THEY HAD NO RIGHT OF COMPENSATION.

WHEN GOVERNMENTS DO LEGISLATE, THEY FREQUENTLY REFUSE TO ENFORCE THEIR LEGISLATION. RECENTLY, A ROYAL COMMISSION HAD TO CRITICIZE THE ONTARIO GOVERNMENT AND RECOMMEND THAT IT ENFORCE ITS ENVIRONMENTAL PROTECTION LEGISLATION IN THE FACE OF EVIDENCE THAT THE GOVERNMENT WAS CONDONING FLAGRANT BREACHES OF THE ENVIRONMENTAL PROTECTION ACT BY A WASTE DISPOSAL COMPANY.

WHEN GOVERNMENTS DO PASS LEGISLATION, THEY INVARIABLY MAKE THE LEGISLATION DISCRETIONARY, SO THAT THEY HAVE NO LEGAL OBLIGATION TO ENFORCE IT. THIS MIGHT BE TOLERABLE IF THE PUBLIC HAD A RIGHT TO ENFORCE SUCH LEGISLATION; HOWEVER, THE BROAD POWERS, WITH NO CORRESPONDING DUTIES, PROVIDED TO THE GOVERNMENT BY THESE LAWS, ARE USUALLY UNAVAILABLE TO THE PUBLIC.



IF THE GOVERNMENT DECLINES TO USE ITS DISCRETION TO EXERCISE THESE POWERS, THE PUBLIC HAS NO RECOURSE. MOREOVER, THE LEGISLATION FREQUENTLY DEPRIVES THE INDIVIDUAL OF HIS COMMON LAW RIGHT TO PROSECUTE OR SUE. NOR HAS THE PUBLIC ANY RIGHT TO COMPEL THE GOVERNMENT TO ESTABLISH ENVIRONMENTAL STANDARDS, SUCH AS MAXIMUM PERMISSIBLE POLLUTION LEVELS, OR TO QUESTION THE ADEQUACY OF EXISTING STANDARDS. IN FACT, WITH THE EXCEPTION OF SOME RECENT LEGISLATION, ENVIRONMENTAL STANDARDS ARE USUALLY SET SECRETLY BY GOVERNMENT IN CONSULTATION WITH THE INDUSTRIES TO BE REGULATED. THE PUBLIC IS EXCLUDED FROM THE REGULATION-MAKING PROCESS.

AS A RESULT OF THE UNFETTERED DISCRETION OF GOVERNMENT TOGETHER WITH THE LACK OF RECOURSE OF MEMBERS OF THE PUBLIC, DECISIONS ARE MADE TO IGNORE THE NEED FOR ENVIRONMENTAL HEALTH AND ENVIRONMENTAL QUALITY. THE INTERNATIONAL NICKEL COMPANY OF CANADA LIMITED IN SUDBURY IS THE LARGEST SINGLE SOURCE OF SULPHUR DIOXIDE POLLUTION IN NORTH AMERICA. IN 1971 THE ONTARIO MINISTRY OF THE ENVIRONMENT ORDERED INCO TO DECREASE ITS EMISSIONS OF SULPHUR DIOXIDE TO 750 TONS A DAY BY DECEMBER 1978. IN 1978, THIS ORDER WAS SECRETLY CHANGED TO ALLOW INCO TO EMIT 3,600 TONS A DAY UNTIL 1982..

THE PROBLEM OF GOVERNMENT UNWILLINGNESS TO TAKE ACTION TO PROTECT THE ENVIRONMENT IN THE ABSENCE OF A CLEAR CONSTITUTIONAL MANDATE IS ILLUSTRATED BY PROBLEMS ARISING FROM THE DIVISION

OF POWERS AND THE WAY GOVERNMENT BODIES HAVE CHOSEN TO TREAT THIS DIVISION OF POWERS. WHILE WE REALIZE THAT THE SPECIFIC ISSUE OF THE DISTRIBUTION OF POWERS WILL BE DEALT WITH MORE EXTENSIVELY IN PHASE II OF THE DISCUSSION OF CONSTITUTIONAL CHANGE, WE WANT THE COMMITTEE TO BE AWARE OF THE LIMITATIONS OF THE PRESENT CONSTITUTIONAL ARRANGEMENT WITH RESPECT TO ENVIRONMENTAL PROTECTION.

THE FACT THAT NEITHER THE PROVINCES NOR THE FEDERAL GOVERNMENT HAVE BEEN GIVEN CLEAR JURISDICTION OVER THE ENVIRONMENT ENABLES POLLUTERS TO CHALLENGE LEGISLATION OR ENVIRONMENTAL PROTECTION ACTIVITIES OF GOVERNMENT, QUITE OFTEN SUCCESSFULLY, ON THE GROUNDS THAT LEGISLATION OR ACTIVITY IS ULTRA VIRES THE LEVEL OF GOVERNMENT WHICH INITIATED IT. ENVIRONMENTALISTS OFTEN FIND THEMSELVES IN COURT TRYING TO ENFORCE, FOR EXAMPLE, A PROVINCE'S SET OF POLLUTION LAWS WITH THE POLLUTER ARGUING SUCCESSFULLY THAT THE FEDERAL GOVERNMENT HAD SOLE JURISDICTION, OR VICE VERSA. THE RESULT IS THAT THE POLLUTION CAN CONTINUE UNABATED AND THE MERITS OF THE CASE ARE NOT DEALT WITH.

BECAUSE OF THE EXISTENCE OF CONCURRENT POWERS IN SOME AREAS AND THE LACK OF CLARITY AS TO WHICH LEVEL OF GOVERNMENT HAS JURISDICTION IN OTHER AREAS, JURISDICTIONAL BUCK-PASSING HAS BECOME A FACT OF LIFE IN ENVIRONMENTAL MATTERS IN CANADA. BOTH PROVINCIAL AND FEDERAL GOVERNMENTS WILL USE THIS TO

AVOID ACTING. ONE OF THE MOST GLARING EXAMPLES IS THE REFUSAL OF EITHER THE FEDERAL GOVERNMENT OR THE ONTARIO GOVERNMENT TO ACKNOWLEDGE JURISDICTION TO CLOSE THE ENGLISH-WABIGOON RIVERS TO SPORTS FISHING IN THE FACE OF HIGH LEVELS OF MERCURY IN THIS RIVER SYSTEM. ANOTHER EXAMPLE IS THE FAILURE OF EITHER LEVEL OF GOVERNMENT TO TAKE RESPONSIBILITY FOR PROTECTING THE HEALTH OF WORKERS EXPOSED TO RADIATION IN MINES.

BECAUSE SOME MATTERS ARE CLEARLY WITHIN THE SOLE JURISDICTION OF ONE LEVEL OF GOVERNMENT, THE LEVEL OF GOVERNMENT WILLING TO TAKE ACTION TO PROTECT THE ENVIRONMENT OFTEN FINDS ITSELF WITHOUT THE POWER TO DO SO. IN PARTICULAR, THE FACT THAT CERTAIN MATTERS ARE WITHIN THE EXCLUSIVE JURISDICTION OF THE FEDERAL GOVERNMENT HAS TIED THE HANDS OF PROVINCIAL AND MUNICIPAL GOVERNMENTS. THE USUAL JUSTIFICATION FOR SUPPORTING A FEDERAL ROLE IN ENVIRONMENTAL MATTERS IS THE NEED TO SET UNIFORM STANDARDS ACROSS CANADA TO PREVENT THE CREATION OF "POLLUTION HAVENS". HOWEVER, BECAUSE THE FEDERAL GOVERNMENT HAS REFUSED TO PASS ENVIRONMENTAL PROTECTION LEGISLATION TO REGULATE MATTERS WITHIN ITS JURISDICTION AND WILL NOT RESPECT PROVINCIAL LEGISLATION, THOSE WORKS, UNDERTAKINGS, AND LANDS WITHIN EXCLUSIVE JURISDICTION OF THE FEDERAL GOVERNMENT ARE SUBJECT TO NO LAW. CANADA'S NUCLEAR POWER PLANTS, RAILWAYS, AIRCRAFT, AIRPORTS, MILITARY INSTALLATIONS, AND HARBOURS ARE IN FACT FEDERAL "POLLUTION HAVENS". FOR EXAMPLE, THE FEDERAL

GOVERNMENT, WITH SOLE JURISDICTION OVER THE CONSTRUCTION OF HARBOURS, IS PLANNING TO DESTROY THE OSHAWA SECOND MARSH AND TURN IT INTO A HARBOUR. THE HARBOUR COMMISSION CLAIMS THAT NO PROVINCIAL ENVIRONMENTAL OR PLANNING LEGISLATION APPLIES TO THIS FEDERALLY-OWNED LAND. THE PROVINCE OF ONTARIO AND MUNICIPAL OFFICIALS ARE POWERLESS TO APPLY THE ENVIRONMENTAL ASSESSMENT ACT, THE PLANNING ACT, OR LOCAL BY-LAWS. AS A RESULT, THE PROVINCE CANNOT REQUIRE ENVIRONMENTAL OR PLANNING STUDIES, AND THE FEDERAL GOVERNMENT, WHICH CAN, REFUSES TO DO SO.

WE WILL NOW EXAMINE MORE CLOSELY THE PROPOSED CONSTITUTIONAL AMENDMENTS AS OUTLINED IN BILL C-60. HERE IS OBVIOUSLY A ONCE-IN-A-LIFETIME CHANCE TO SET DOWN THE BROAD PRINCIPLES THAT CANADIANS FEEL SHOULD GOVERN THIS VAST COUNTRY AND TO WRITE A TRULY "MODERN DAY" CONSTITUTION. A BILL WHICH THE GOVERNMENT PROMISES WILL DEAL WITH "FUNDAMENTAL PRINCIPLES REFLECTING THE BASIC REALITIES OF CANADA" SHOULD NOT IGNORE THE ENVIRONMENT OF CANADA AND THE HEALTH OF CANADIANS IN ITS PREOCCUPATION WITH ONE ISSUE: THE POLITICAL THREAT OF SEPARATION OF QUEBEC.

OTHER CURRENT CONCERNS ARE GIVEN SHORT SHRIFT IN THIS PIECE-MEAL APPROACH TO AMENDING THE CONSTITUTION.

ENVIRONMENTAL CONCERNS ARE VIRTUALLY NEGLECTED. WHILE IN 1867, THE LIMITS OF CANADA'S NATURAL WEALTH SEEMED ENDLESS, THIS IS NOT THE CASE IN 1978. WHILE OUR FOREFATHERS CAN BE FORGIVEN THE LACK OF PROVISIONS DEALING WITH THE PROTECTION OF OUR NATURAL RESOURCES, THE PROPOSERS OF THE NEW CONSTITUTION CAN HAVE NO SUCH HISTORICAL EXCUSES.

THE CANADIAN ENVIRONMENTAL LAW ASSOCIATION HAS ADVOCATED FOR A NUMBER OF YEARS THE ENACTMENT OF AN ENVIRONMENTAL BILL OF RIGHTS. IT WOULD SEEM THAT THE NEW CONSTITUTION IS THE IDEAL PLACE TO FIRMLY ENTRENCH A COMMITMENT TO THE INDIVIDUAL'S RIGHT TO A CLEAN ENVIRONMENT.

THE IDEA OF A CONSTITUTIONALLY ENTRENCHED RIGHT TO A CLEAN AND HEALTHY ENVIRONMENT IS NOT NEW OR UNUSUAL.

A NUMBER OF U.S. STATES HAVE ENACTED CONSTITUTIONAL PROVISIONS RECOGNIZING THIS RIGHT. ONE EXAMPLE IS ARTICLE I.S.27 OF THE PENNSYLVANIA CONSTITUTION:

NATURAL RESOURCES AND THE PUBLIC ESTATE: THE PEOPLE HAVE A RIGHT TO CLEAN AIR, PURE WATER, AND THE PRESERVATION OF THE NATURAL, SCENIC, HISTORIC AND ESTHETIC VALUES OF THE ENVIRONMENT. PENNSYLVANIA'S PUBLIC NATURAL RESOURCES ARE THE COMMON PROPERTY OF ALL THE PEOPLE, INCLUDING GENERATIONS YET TO COME. AS TRUSTEE OF THOSE RESOURCES, THE COMMONWEALTH SHALL CONSERVE AND MAINTAIN THEM FOR THE BENEFIT OF ALL THE PEOPLE.

THIS HAS STIMULATED THE DEVELOPMENT OF ENVIRONMENTAL LEGISLATION TO IMPLEMENT THESE RIGHTS TO ENVIRONMENTAL QUALITY. INDEED, THE ROOTS OF A RIGHT TO ENVIRONMENTAL QUALITY ARE FOUND IN THE BIBLE AND IN ROMAN LAW. ROMAN LAW PROVIDED THAT THE AIR AND WATER WERE A "PUBLIC TRUST" AVAILABLE TO ALL AND NOT THE PROPERTY OF ANY INDIVIDUAL.

BOTH THE OLD AND NEW TESTAMENTS RECOGNIZED THE BASIC IMPORTANCE OF ENVIRONMENTAL QUALITY. REVELATIONS 7:3 COMMANDS: "HURT NOT THE EARTH, NEITHER THE SEA, NOR THE TREES". DEUTERONOMY 20:19 REQUIRES THE PROTECTION OF NATURAL RESOURCES EVEN IN TIMES OF WAR, AND THEIR DESTRUCTION ONLY FOR THE PURPOSES OF SURVIVAL.

#### SECTION 6

OUR FIRST RECOMMENDATION IS THAT S. 6 OF THE PROPOSED CANADIAN CHARTER OF RIGHTS AND FREEDOMS HAVE AN ADDITIONAL SECTION THAT READS:

- THE RIGHT OF THE INDIVIDUAL TO ENVIRONMENTAL QUALITY AND ENVIRONMENTALLY SOUND PLANNING.

THE RIGHT TO ENVIRONMENTAL QUALITY SHOULD BE RECOGNIZED AS AN INALIENABLE RIGHT, FOR WITHOUT AN ENVIRONMENT CAPABLE OF SUPPORTING THE HUMAN RACE, ALL OTHER RIGHTS ARE MEANINGLESS. HAVING CLEAN AIR TO BREATHE IS A PREREQUISITE TO THE PURSUIT OF THE OTHER RIGHTS AND FREEDOMS LISTED IN SECTION 6.

THE CREATION OF A CONSTITUTIONAL RIGHT OF THE INDIVIDUAL TO ENVIRONMENTAL QUALITY DOES NOT MEAN THAT ALL DEVELOPMENT AND RESOURCE EXPLOITATION AUTOMATICALLY STOP. WHAT IT DOES MEAN IS THAT THOSE WHO WISH TO ALTER THE ENVIRONMENT MUST JUSTIFY THE NEED IN A PUBLIC FORUM.

#### SECTION 4

LINKED TO THE CONCEPT OF A CIVIL RIGHT TO A CLEAN ENVIRONMENT IS THE IDEA OF "PUBLIC TRUST": THAT GOVERNMENT-OWNED NATURAL RESOURCES AND LANDS ARE HELD IN TRUST FOR THE BENEFIT OF THE PUBLIC AND CAN ONLY BE USED FOR PURPOSES WHICH ARE DETERMINED BY THE PUBLIC.

THIS IDEA OF A TRUST IS TOUCHED UPON IN S. 4 OF BILL C-60, THE ONLY SECTION WHICH COULD BE INTERPRETED AS REFERRING TO THE ENVIRONMENT. THE RELEVANT PART OF S.4, WHICH SETS OUT THE AIMS OF THE CANADIAN FEDERATION READS AS FOLLOWS:

- TO PURSUE SOCIAL JUSTICE AND ECONOMIC OPPORTUNITY FOR ALL CANADIANS THROUGH THE EQUITABLE SHARING OF THE BENEFITS AND BURDENS OF LIVING IN THE VAST LAND THAT IS THEIR COMMON INHERITANCE, THROUGH THE COMMITMENT OF ALL CANADIANS TO THE BALANCED DEVELOPMENT OF THE LAND OF THEIR COMMON INHERITANCE AND TO THE PRESERVATION OF ITS RICHNESS AND BEAUTY IN TRUST FOR THEMSELVES AND GENERATIONS TO COME AND THROUGH THEIR COMMITMENT TO OVERCOME UNACCEPTABLE DISPARITIES AMONG CANADIANS IN EVERY REGION INCLUDING DISPARITIES IN THE BASIC PUBLIC SERVICES AVAILABLE TO THEM. (UNDERLINING OURS).

WHILE THIS SECTION IS OBVIOUSLY DIRECTED TO THE ISSUE OF REGIONAL DISPARITY, WE FEEL THAT IT PROVIDES THE BASIS FOR ESTABLISHING A PUBLIC TRUST IN REGARD TO THE ENVIRONMENT. WE WOULD RECOMMEND THAT THE UNDERLINED PART OF S. 4 ABOVE BE AMENDED TO READ:

...THROUGH THE COMMITMENT OF ALL CANADIANS TO THE BALANCED USE OF THE LAND OF THEIR COMMON INHERITANCE AND TO THE PRESERVATION OF ITS RICHNESS, BEAUTY AND ENVIRONMENTAL QUALITY IN TRUST FOR THEMSELVES AND GENERATIONS TO COME, THROUGH THEIR COMMITMENT TO OVERCOME UNACCEPTABLE DISPARITIES AMONG CANADIANS IN EVERY REGION INCLUDING DISPARITIES IN THE BASIC PUBLIC SERVICES AVAILABLE TO THEM AND THROUGH THEIR COMMITMENT TO ENVIRONMENTAL PROTECTION AND SOUND ENVIRONMENTAL PLANNING.

SECTION 96 ENTITLED "REGIONAL DISPARITIES" FURTHER DEVELOPS THE GENERAL STATEMENT OF AIMS IN S. 4 AND ESTABLISHES A NEW COMMITMENT TO REDUCING REGIONAL DISPARITIES. REGIONAL DISPARITIES SHOULD NOT BE REDUCED BY ATTRACTING POLLUTING INDUSTRY AND ENCOURAGING POOR PLANNING. MOREOVER, BASIC MINIMUM STANDARDS OF ENVIRONMENTAL QUALITY ARE A BASIC SAFEGUARD AGAINST THE CREATION OF "POLLUTION HAVENS" - IN ITSELF A FORM OF REGIONAL DISPARITY. WE WOULD RECOMMEND THAT A NEW SECTION 96A BE ADDED TO THE CONSTITUTION UNDER A HEADING ENVIRONMENTAL PROTECTION. THE PREAMBLE WOULD READ THE SAME AS S. 96 WITH A COMMITMENT TO:



- (A) PROTECTING ENVIRONMENTAL QUALITY ACROSS CANADA;
- (B) ASSURING THAT ENVIRONMENTAL IMPACT STUDIES BE DONE ON UNDERTAKINGS WHICH MIGHT ADVERSELY AFFECT THE ENVIRONMENT;
- (C) PREVENTING AREAS OF CANADA FROM COMPETING FOR INDUSTRIAL DEVELOPMENT ON THE BASIS OF MORE RELAXED ENVIRONMENTAL PROTECTION REQUIREMENTS THAN OTHER AREAS ("POLLUTION HAVENS"); AND
- (D) ASSURING THE RIGHT OF ALL PERSONS TO PARTICIPATE IN DECISIONS AFFECTING THE ENVIRONMENT AND TO HAVE A RIGHT OF RELIEF FROM DECISIONS WHICH DO NOT PROMOTE THE PROTECTION AND CONSERVATION OF THE ENVIRONMENT.

FINALLY, WE WOULD RECOMMEND THAT THE FOLLOWING SECTION BE ADDED TO S. 6 OF THE CANADIAN CHARTER OF RIGHTS AND FREEDOMS:

- THE RIGHT OF THE INDIVIDUAL TO ACCESS TO GOVERNMENT INFORMATION.

IN ITS POLICY PAPER "A TIME FOR ACTION" THE GOVERNMENT AFFIRMS THAT THE NEW CONSTITUTION MUST CONFIRM THE PRE-EMINENCE OF CITIZENS OVER INSTITUTIONS. THE RIGHT OF THE CITIZEN TO GOVERNMENT INFORMATION IS CLEARLY BASIC TO ANY SUCH PRE-EMINENCE. INFORMATION IS POWER. THE GOVERNMENTS OF CANADA AND THE PROVINCES KNOW THIS, AND HAVE REPEATEDLY REFUSED TO PASS ANY LEGISLATION THAT WOULD SHIFT THE POWER FROM THEIR BUREAUCRACIES TO THE CITIZENS WHOSE TAXES PAY FOR THE COLLECTION OF THE INFORMATION.

THE PROBLEM OF OBTAINING GOVERNMENT INFORMATION HAS ALWAYS BEEN AN OBSTACLE IN THE WAY OF OUR ORGANIZATION AND THE PUBLIC IN TRYING TO DEAL EFFECTIVELY WITH ENVIRONMENTAL ISSUES. ONE CANNOT EVALUATE THE MERITS OF A POTENTIAL CASE AGAINST A POLLUTER WHEN THE GOVERNMENT HAS THE ONLY ACCESS TO RAW DATA, SCIENTIFIC REPORTS, INSPECTION REPORTS AND OTHER TECHNICAL INFORMATION. GOVERNMENT AGENCIES OFTEN HIDE EVIDENCE OF BREACHES OF THE LAW FROM THE AFFECTED PUBLIC. PEOPLE CANNOT MAKE INFORMED DECISIONS ABOUT THE IMPACT OF A PROPOSED GOVERNMENT PROJECT UNLESS THEY HAVE A CHANCE TO EVALUATE THE SAME INFORMATION THE GOVERNMENT HAS. WE FEEL THAT A BASIC RIGHT OF THE INDIVIDUAL TO ACCESS TO GOVERNMENT INFORMATION ENTRENCHED IN THE CONSTITUTION WILL PUT CITIZENS IN A POSITION TO MAKE REASONED JUDGEMENTS ABOUT GOVERNMENTAL DECISIONS AFFECTING THE ENVIRONMENT.

THIS BILL HAS BEEN LAUDED AS "THE BEGINNING OF A PROCESS THAT WOULD LEAD TO A NEW AND WHOLLY CANADIAN STATEMENT OF CANADA'S CONSTITUTION". HOWEVER, THE BILL IN ITS PRESENT FORM IS VERY NARROWLY FOCUSED AND DOES NOT PRESENT A BLUEPRINT FOR THE FUTURE DEVELOPMENT OF THIS COUNTRY.

WE HAVE POINTED OUT THE TOTAL NEGLECT OF ENVIRONMENTAL CONCERNS IN THE PRESENT BILL AND URGE THIS COMMITTEE TO CONSIDER THE AMENDMENTS WE HAVE PRESENTED.