



David
Suzuki
Foundation

PAPER #1:

**The Importance of Constitutional Recognition
of the Right to a Healthy Environment**

EXECUTIVE SUMMARY

David R. Boyd



The Importance of Constitutional Recognition of the Right to a Healthy Environment

Canadians love this country's natural beauty, vast landscapes and diverse wildlife. We express deep concerns about environmental problems and their effect on human health and ecological integrity. Yet our environmental performance, compared to other wealthy industrialized nations, is an embarrassment. Our dismal record contradicts our core values, jeopardizing the health of Canadians and our magnificent natural heritage.

More than 140 countries have amended their constitutions to require environmental protection, including 98 countries that recognize a constitutional right to live in a healthy environment. Canada's Constitution, including the Charter of Rights and Freedoms, is completely silent about the environment. In a country where nature is such an integral element of our national identity, this is a striking oversight.

Does this constitutional lacuna matter? Absolutely. A constitution is the supreme law of a nation, establishing the rules that guide and constrain government powers, define the relationships between institutions and protect individual rights. A constitution also reflects and reinforces a society's deepest and most cherished values, acting as a mirror of a country's soul. The omission of environmental provisions in Canada's Constitution is more than a mere oversight; it is a fundamental defect that must be rectified.

Canada's poor environmental record is confirmed by experts, stacks of studies and criticism from world leaders. According to the Conference Board of Canada, we rank 15th out of 17 wealthy industrialized countries on a suite of environmental indicators. The Constitution's silence on environmental matters allows governments to pass the buck and enables corporations to delay, block and challenge environmental laws. Canada's refusal to recognize the right to a healthy environment is out of touch with the evolution of international law, which increasingly recognizes this fundamental human right.

The six main reasons why constitutional recognition of the right to a healthy environment is imperative for Canada's future include:

1. reflecting the fact that environmental protection is a core, fundamental value of Canadians;
2. strengthening Canada's poor environmental performance and preserving this country's beautiful landscapes, natural wealth and biodiversity;
3. protecting Canadians' health from environmental hazards such as air pollution, contaminated food and water and toxic chemicals;
4. clarifying the responsibility of all governments to protect the environment;
5. acknowledging that environmental rights and responsibilities are core elements of indigenous law; and
6. keeping up with the evolution of international law.

Amending Canada's Constitution to recognize the right to a healthy environment and the corresponding duty to protect the environment can contribute to fulfilling these goals through:

- unprecedented attention for environmental education and ecological literacy;
- stronger laws, regulations, standards, policies and programs;
- increased priority and resources for environmental management and protection;
- improved implementation and enforcement of environmental laws and regulations;
- enhanced public participation in decision-making;
- a barrier to future weakening or dilution of environmental laws and standards;
- protection of vulnerable populations, including future generations, from bearing a disproportionate share of the burden of environmental harm;
- increased government, corporate and individual accountability; and
- better balancing of environmental, economic and social considerations in decision-making.

Would constitutional recognition of environmental rights and responsibilities really make a substantial difference in Canada? Most of the nations whose constitutions mandate environmental protection enjoy stronger environmental laws, better enforcement of those laws, enhanced government and corporate accountability, improved access to environmental information, and higher levels of public participation in decision-making. Even more compelling is evidence that nations with environmental provisions in their constitutions:

- have smaller per capita ecological footprints (both among 150 nations globally and within five broad geographic regions including Africa, the Americas, Asia-Pacific, Europe and the Middle East/Central Asia);
- rank higher on environmental performance measured by a suite of 29 indicators (based on OECD data for 30 nations);
- rank higher on environmental performance measured by a suite of 15 indicators (among 17 wealthy industrialized nations assessed by the Conference Board of Canada);
- are more likely to have ratified international environmental agreements;
- have been more successful in targeting greenhouse gas emissions; and
- have achieved deeper cuts in emissions of nitrogen oxides and sulphur dioxide.

Constitutional recognition of environmental rights and responsibilities is not a silver bullet or a magic formula for solving all of today's environmental challenges. It would however, mark a change of course, an admission that we have not been up to the task, and an enforceable promise to do better in the future. Entrenching environmental rights and responsibilities in the constitution would force Canadians to make sustainability a genuine priority, resulting in changes that would make Canada a greener, leaner, wealthier, healthier, happier nation in the long run.

