

## 8 Systemic Weaknesses

Despite significant advances in Canada, including some progress in terms of the rehabilitation of particular sites and ecosystems, there can be no illusion about general success in bringing severe threats of continuing environmental risk under control.

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While it is encouraging to recognize that Canada has made progress in some aspects of environmental protection, the reality is that on most environmental issues Canada is performing poorly. On seventeen of twenty-five environmental indicators, Canada is among the five worst nations in the OECD. The failure of Canadian environmental laws and policies results, in large part, from six systemic weaknesses. First, Canada still lacks a number of important environmental laws that are commonplace in other industrialized nations. Second, existing Canadian laws and regulations are undermined by excessive discretion. Third, environmental laws and policies fail to reflect contemporary scientific knowledge and principles. Fourth, Canadian environmental law suffers from inadequate resources for implementation and enforcement. Weak implementation and enforcement are exacerbated by budget cuts, the downloading of environmental responsibilities (from the federal government to the provinces, and from provinces to municipalities), and excessive reliance on voluntary initiatives. Fifth, the public has insufficient opportunities to participate meaningfully in developing and enforcing environmental laws. Sixth, Canadian governments rely on an unduly narrow range of law and policy options in their efforts to protect the environment.

### **Missing Laws**

Some of the most basic, rudimentary environmental laws enacted by other

nations are still absent in Canada. The most obvious comparison is between Canada and the United States. For example, at the federal level Canada has

- no enforceable national air quality standards
- no enforceable national water quality standards
- no national law guaranteeing safe drinking water
- no national law requiring the clean-up of contaminated sites
- no national law to protect wilderness areas outside of national parks
- no law to protect wild and scenic rivers
- no law guaranteeing citizens access to information about all of the types and sources of toxic pollution in their communities
- no comprehensive law to protect whales and other marine mammals
- no national law to protect wetlands
- no national hazardous waste law
- no law requiring sustainable fishing practices
- no law to address the threat of invasive exotic species
- no national forest management law.

In contrast, at the federal level the United States has, respectively, the *Clean Air Act*, the *Clean Water Act*, the *Safe Drinking Water Act*, the *Comprehensive Environmental Response, Compensation and Liability Act*, the *Wilderness Act*, the *Wild and Scenic Rivers Act*, the *Emergency Planning and Community Right-to-Know Act*, the *Marine Mammal Protection Act*, the *Emergency Wetland Resources Act*, the *Resource Conservation and Recovery Act*, the *Sustainable Fisheries Act*, the *National Invasive Species Act*, and the *National Forest Management Act*. While Canada has policies such as the National Ambient Air Quality Objectives, the Canadian Heritage Rivers program, and the Guidelines for Canadian Drinking Water Quality, *none of these policies have any legal effect*. These nonbinding policy mechanisms are clearly less effective than enforceable national legislation, regulations, and standards.<sup>1</sup>

This comparison is not meant to suggest that by merely passing a long list of laws Canada will solve its environmental woes, or that the United States is an ecological utopia. Nor is this comparison intended to suggest that the federal government bears full responsibility for environmental protection; Canada's Constitution places more power in provincial hands than the US Constitution gives to the states. Yet none of the gaps in Canada's federal environmental law identified above are adequately addressed by provincial laws. Some provinces have endangered species legislation while other provinces do not. Some provinces have safe drinking water laws while others do not. Some provinces have air quality standards while others do not. And so on. The result of these inconsistencies is that environmental standards vary widely among Canadian provinces and territories. The patchwork of provincial laws and policies is