

# Sustainable Development and Energy Resources

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Sixteen years ago, in August 1990, the Canadian Bar Association published its report on the steps to be taken toward sustainable development entitled “Sustainable Development in Canada: Options for Law Reform.”<sup>1</sup>

The authors of that report began by noting that there is no consensus on the meaning of this concept, and quoted the simple yet elegant definition given in 1987 in the report of the World Commission on Environment and Development: “development that meets the needs of the present without compromising the ability of future generations to meet their own needs.”<sup>2</sup> The Brundtland Commission added to this definition the following precept, which speaks directly to those of us working in the judicial system:

“Human laws must be reformulated to keep human activities in harmony with the unchanging and universal laws of nature.”

Since then, we have seen that sustainable development is an idea which has led to quite different interpretations which are often incompatible with each other and which vary according to the interests of the groups claiming to base their actions on the concept.

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<sup>1</sup> Canadian Bar Association, Committee on Sustainable Development, *Sustainable Development in Canada: Options for Law Reform*, Lynne B. Huestis, ed. [Ottawa: Canadian Bar Association, 1990].

<sup>2</sup> For an evaluation of this definition which is now widespread in Canadian legislation, see the article by Shauna Finlay, “Sustainable Development and the Canadian Environmental Assessment Act” (1998) 8 J. Envtl. L. & Prac. 377.

Despite these differences, for almost 20 years the concept has been part of the common language. Sustainable development is now part of the equation, from economic, ecological and political points of view, both right and left. Although there are some, for example, who doubt global warming is real, to my knowledge the relevance of sustainable development as a concept is no longer questioned.

In short, for 25 years, pressured by public opinion, policies, national and international frameworks and laws and regulations have been adopted by states or associations of states in their respective jurisdictions. I will not dwell on this aspect—which would involve a review of how the notion of sustainable development has slowly become rooted in the legal framework both internationally and at the national level—as this would be an overly ambitious task given the time allowed and the role given to this panel.

Instead, I will limit myself to describing how the National Assembly and the Government of Quebec have tackled the issue of sustainable development over the past few years, as certain ambitious initiatives of the current government, of which you may not be aware, have allowed Quebec to move forward in a positive direction.

This being said, it must be acknowledged that, in theory at least, the Canadian constitution, with its division of powers between separate jurisdictions, is not the best ally of the planetary interdependence referred to so pertinently by the Brundtland Commission. Nonetheless, after a few years of experience, it is clear that the adoption of the series of legislative measures which, for governments, results from signing up to the concept of sustainable development, has been facilitated in Canada by refraining from playing the card of the federal government's pre-emptive right and by acknowledging these competing constitutional jurisdictions. The *Canadian Environmental Protection Act, 1999*<sup>3</sup> is an interesting example of this.

In Canada, when it comes time to implement and give some teeth to the concept of sustainable development, a series of notions which are difficult to reconcile come into conflict which has the direct effect of dampening everyone's spirits: the competing jurisdictions of the federal

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<sup>3</sup> S.C. 1999, c. 33, repealing R.S.C. 1985 (4<sup>th</sup> Supp.), c. 16.

and provincial governments respecting environmental protection,<sup>4</sup> the national dimension theory as understood by the Supreme Court of Canada regarding coastal water pollution within provincial boundaries,<sup>5</sup> and the so-called 1937 *Labour Conventions*<sup>6</sup> rule restated in the *Anti-Inflation Act Reference*<sup>7</sup> to the effect that the federal government does not constitutionally acquire national jurisdiction merely because it commits itself internationally by way of a treaty, etc. In short, rather than falling from Scylla into Charybdis—or out of the proverbial frying pan and into the fire—the federal and provincial governments, aware of the global dimension of the problems relating to sustainable development, have so far had the wisdom to settle for cooperative federalism, with the result that the advocates of a centralizing federalism respecting environmental protection and sustainable development and the advocates of full respect for the areas of constitutional jurisdiction hold each other in mutual respect.

In this context, the Kyoto Protocol, an international commitment by Canada, is raising eyebrows as provinces, including Quebec, are now trying to act on Canada's commitment while the federal government is turning its back on the undertakings it made while the international community looked on.

This being said, I would like now to turn to the current situation in Quebec, a situation which I know better than the others and which, for various reasons, is often misread in the rest of Canada, something which the linguistic barrier alone cannot explain given that all Quebec laws are enacted in both official languages. No doubt it is explained by the cultural divide separating the two solitudes which our Governor General has said she would like to exorcize during her term of office.

However, I know that this long preamble is leading me astray from our topic, which is sustainable development and energy resources, although, to set the stage, it is always necessary to establish the

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<sup>4</sup> *Friends of the Oldman River Society v. Canada (Minister of Transport)*, [1992] 1 S.C.R. 3.

<sup>5</sup> *R. v. Crown Zellerbach Canada Ltd.*, [1988] 1 S.C.R. 401 and *Re: Canada Metal Co. and The Queen* (1982), 144 D.L.R. (3d) 124.

<sup>6</sup> *Attorney-General of Canada v. Attorney-General of Ontario (Labour Conventions)*, [1937] A.C. 326 (P.C.).

<sup>7</sup> *Re: Anti-Inflation Act*, [1976] 2 S.C.R. 373.

parameters of the concept in order to consider its application to the topic. In Quebec, any discussion of energy resources necessarily involves the development of hydroelectric resources. For this reason, I will illustrate my talk with examples related to this issue.

In 1978 Quebec amended the *Environment Quality Act*<sup>8</sup> to include the environmental impact assessment and review procedure, a procedure which, although there are significant differences, resembles to that set out in the *Canadian Environmental Assessment Act* (1992).<sup>9</sup> Only projects coming within one of the categories listed in the *Regulation respecting environmental impact assessment and review*<sup>10</sup> are subject to the environmental assessment procedure. From the outset, hydroelectric power plant projects of over 10 MW were subject to it.<sup>11</sup> Also, any construction of an electric power transmission line of 315 kV or more over a distance of more than 2 kilometres as well as the construction or relocation of a control and transformer station of 315 kV or more are subject to the impact study procedure. In other words, in Quebec, it is the very nature of the project which determines whether or not the environmental assessment procedure is triggered whereas, for the constitutional reasons mentioned above, federally, the jurisdiction of the federal government over any aspect of the project is what triggers the environmental assessment procedure.

As a result, since then Hydro-Quebec and the other power producers proposing large hydroelectric projects have been subjected to the requirements that they conduct an environmental impact study and that public hearings be held before the *Bureau d'audiences publiques sur l'environnement* [office of public hearings on the environment], a permanent body of the Quebec government created by the same law which set up the environmental assessment procedure. This was the case recently with Hydro-Quebec's plan to build a natural gas power plant in a Montreal suburb which public opinion forced it to abandon, even after the Quebec government had given its approval through an Order-in-Council.

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<sup>8</sup> R.S.Q. c. Q-2.

<sup>9</sup> S.C. 1992, c. 37, as am. by S.C. 2003, c. 9.

<sup>10</sup> R.R.Q. 1981, c. Q-2, r. 9.

<sup>11</sup> In 2002 the threshold limit was lowered to 5 MW for hydroelectric power plants and thermal power plants using fossil fuels but it was maintained at 10 MW for other power plants designed to produce electricity, except for nuclear plants.

In fact, the 1978 legislative amendment had the result of subjecting all large power development projects to the authority of the Cabinet which, in each case, must either authorize the project, disallow it or give its consent subject to certain conditions or changes. In short, the environmental assessment procedure, in conjunction with other environmental authorizations resulting from various federal and provincial laws, has subjected to government approval not only large power projects but also all large development projects which otherwise would have escaped the government's authority. In the beginning, the principle of sustainable development was key and it has been invoked thousands of times over the years by the general public, the *Bureau d'audiences publiques sur l'environnement* and the government to influence or justify decisions, even though in the beginning the notion was not known to the general public and it was not until the report of the Brundtland Commission was released that it acquired the visibility it has today.

In a manner which has become increasingly obvious over the years, the decisions the government has had to make regarding energy development have attempted to reconcile both sides of the sustainable development issue: (a) meet the needs of the present without (b) compromising the ability of future generations to meet their own needs. Although it does so exceptionally, when this delicate balance has been in danger of being upset, the government has had no choice but to withdraw, either by abandoning a project or refusing to authorize it. The two most notable cases are undoubtedly the Grande Baleine project, a very large hydroelectric development project where James Bay meets Hudson Bay, and the Suroît gas plant on the outskirts of Montreal which I already mentioned.

Clearly, in Quebec the energy balance sheet is strongly influenced by the substantial contribution of the hydroelectric sector. The development of hydraulic resources requires major projects which naturally disrupt the environment in both the short and long terms. The geographic location of economically viable hydraulic resources means that with the development of hydraulic resources comes the construction of long-distance transmission lines. Any project of this type is therefore met with strong public opposition, bringing together the people directly affected by the project and national pressure groups. The unavoidable disruptions caused by hydroelectric development projects are constantly invoked to support the argument that meeting short-term needs will result in a loss for future generations. Hence there is a widespread movement in

Quebec to preserve, in their natural states, rivers which have not already been harnessed, as well as organized resistance surrounding each new project, the Eastmain-1-A Powerhouse and Rupert Diversion project being the most recent example, and the four proposed power plants on the Romaine River being the next ones. Nevertheless, during the operational phase, which is very long in the case of hydroelectric projects, a hydroelectric power plant produces little impact other than erosion downstream and rising and falling water levels upstream. However, each block of hydroelectric energy represents that much less dependence on fossil fuels. On a global scale, once we admit that energy efficiency alone cannot compensate for increased demand, the contribution of hydroelectric power, along with available wind energy, represents an unquestionable environmental gain. These are the types of issues which promote the now well-established practice in Quebec of environmental assessment, which in two years will celebrate its 30<sup>th</sup> birthday.

However, the Quebec government has considered it necessary to go further and recently had the National Assembly adopt and promulgate the *Sustainable Development Act*.<sup>12</sup> As far as I am aware, it is a first in Canada in its approach to the problem, although Manitoba already has a *Sustainable Development Act*<sup>13</sup> which was enacted on June 28, 1997, well before that of Quebec, and which came into force on July 1, 1998.

Several Canadian laws refer to the principle of sustainable development as a guideline for decision-making. At the federal level, I have found at least 15 statutes which include the notion of sustainable development, from the *Canadian Environmental Protection Act, 1999*<sup>14</sup> to the *Auditor General Act*,<sup>15</sup> from the *Standards Council of Canada Act*<sup>16</sup> to the *National Round Table on the Environment and the Economy Act*<sup>17</sup> and from the *North American Free Trade Agreement Implementation Act*<sup>18</sup> to

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<sup>12</sup> S.Q. 2006, c. 3.

<sup>13</sup> S.M. 1997, c. 61, C.S.S.M. c. S270. For an interesting comment on this statute, see the article by John O. Krowina, "Manitoba's Sustainable Development Act," (1998) 25 *Man. L.J.* 385.

<sup>14</sup> *Supra* note 3.

<sup>15</sup> R.S.C. 1985, c. A-17.

<sup>16</sup> R.S.C. 1985, c. S-16.

<sup>17</sup> S.C. 1993, c. 31.

<sup>18</sup> S.C. 1993, c. 44.

the *Canadian Foundation for Sustainable Development Technology Act*.<sup>19</sup> Nine of these statutes provide a definition of sustainable development which is uniform across federal legislation: “development that meets the needs of the present without compromising the ability of future generations to meet their own needs.”<sup>20</sup>

In Quebec, I found 10 statutes in force before the *Sustainable Development Act* was promulgated and which already referred to the notion of sustainable development, without providing a legislative definition of the term.<sup>21</sup>

Essentially all these statutes refer to sustainable development as a principle to follow in governance, policy orientations and decision-making. The *Sustainable Development Act* broaches the issue differently and warrants some discussion, as sooner or later it will have an effect on all spheres of activity in Quebec, including energy development.

Sustainable development is defined in the statute as it is in federal legislation, that is to say “development that meets the needs of the present without compromising the ability of future generations to meet their own needs.” The definition is, however, followed by an important corollary: “Sustainable development is based on a long-term approach which takes into account the inextricable nature of the environmental, social and economic dimensions of development activities.”

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<sup>19</sup> S.C. 2001, c. 23.

<sup>20</sup> *Canadian Environmental Assessment Act*, *supra* note 9, s. 2; *Environmental Protection Act, 1999*, *supra* note 3, s. 3; *Auditor General Act*, R.S.Q. c. V-5.01; *Pest Control Products Act*, S.C. 2002, c. 28, s. 4; *Canadian Foundation for Sustainable Development Technology Act*, *supra* note 19, s. 2; *Oceans Act*, S.C. 1996, c. 31, s. 30; *Department of Natural Resources Act*, S.C. 1994, c. 41, s. 2; *National Round Table on the Environment and the Economy Act*, *supra* note 17, s. 2.

<sup>21</sup> *An Act respecting the agence de l'Efficacité énergétique*, R.S.Q. c. A-7.001, s. 16; *An Act respecting commercial aquaculture*, R.S.Q. c. A-20.2, s. 2; *An Act respecting the conservation and development of wildlife*, R.S.Q. c. C-61.1, preliminary provisions; *James Bay Region Development and Municipal Organization Act*, R.S.Q. c. D-8.2, s. 4; *Act respecting La Financière agricole du Québec*, R.S.Q. c. L-0.1, s. 3; *An Act respecting the Ministère des Ressources naturelles et de la Faune*, R.S.Q. c. M-25.2, ss. 11.1, 17.1.1; *An Act respecting the Ministère du développement durable, de l'environnement et des parcs*, R.S.Q. c. M-15.2.1, ss. 10, 12, 15.1; *An Act respecting the preservation of agricultural land and agricultural activities*, R.S.Q. c. P-41.1, ss. 1.1, 59.2; *Water Resources Preservation Act*, R.S.Q. c. P-18.1, preamble; *Environment Quality Act*, R.S.Q. c. Q-2, s. 31.

This definition was not the one the government had initially intended in the draft Sustainable Development Act, which was made public in 2004 to allow public consultations before Bill 118—which later became the *Sustainable Development Act*—was tabled in the National Assembly. Initially, the definition, which I found rather convoluted, read as follows:

“[...]‘sustainable development’ means an ongoing process to improve the living conditions of the present generation that does not compromise the ability of future generations to do so and that ensures a harmonious integration of the environmental, social and economic dimensions of development.”

During these consultations, the Bar of Quebec, like many commentators, pointed out the problems which could result from a legislative definition which strayed too far from the generally understood concept of sustainable development. In the end, the definition adopted is that found in federal legislation as well as in various statutes of other Canadian provinces or territories.<sup>22</sup>

That said, the *Sustainable Development Act*, which finally came into force on April 19, 2006, is first and foremost a law which applies to the government. In other words, it will not have a direct and immediate effect on individuals and businesses and it is only over time that its effects will be felt and its precepts will become more specific.

However, we should not minimize its scope, because it is a statute of the National Assembly and, as such, it should have the longevity associated with the legislative process. The notion of sustainable development should therefore be more resilient than if it arose from a government guideline or internal policy. With the help of time and public vigilance, unless it is forgotten, the *Sustainable Development Act* should allow the notion it puts forward to percolate through the various decision-making processes and sooner or later have an effect on individuals and

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<sup>22</sup> See for example *Economic Development Act*, R.S.Y. 2002, c. 60, s. 1; *Environment Act*, R.S.Y. 2002, c. 76, s. 2; *Environment Act*, S.N.S. 1994-95, c. 1, s. 3 (aw); *Sustainable Development Act*, *supra* note 13, s. 1; *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12, s. 2(c); *Mines and Minerals Act*, S.M. 1991-92, c. 9, C.C.S.M. c. M162, s. 2(2), which proposes a series of sustainable development principles applicable to mining; *Oil and Gas Act*, S.M. 1993, c. 4, C.C.S.M. c. O34, s. 2(2), which proposes a series of sustainable development principles applicable to oil and gas.



businesses. The energy sector will no doubt be one of the most affected by this statute.

Please allow me to give you an overview of this statute, as its newness and content warrant a few moments of our time.

Section 1 provides that its object is to establish a new management framework within the Administration to ensure that its powers and responsibilities are exercised in the pursuit of sustainable development. This same section adds, in words which are similar to a statement of direction, that the measures introduced by the Act “are intended, more specifically, to bring about the necessary change within society with respect to non-viable development methods by further integrating the pursuit of sustainable development into the policies, programs and actions of the Administration, at all levels and in all areas of intervention” (emphasis added). The Act is clearly designed to ensure that government actions in the area of sustainable development are consistent and to enhance the accountability of the Administration in that area, in particular through the creation of the position of Sustainable Development Commissioner under Quebec’s *Auditor General Act*.<sup>23</sup>

“Administration” means the Government, the *Conseil exécutif*, the *Conseil du trésor*, all government departments, and government agencies and government enterprises, including Hydro-Quebec, within the meaning of the *Auditor General Act*. The Administration does not include courts of justice within the meaning of the *Courts of Justice Act*,<sup>24</sup> bodies whose membership is wholly made up of judges of the Court of Quebec, the *Conseil de la magistrature*, the committee on the remuneration of the judges of the Court of Quebec and the municipal courts, or administrative bodies established to exercise adjudicative functions, when exercising those functions. It is to be expected that later, on dates and according to schedules to be determined by the government, the *Sustainable Development Act* will also apply to municipal bodies, educational institutions and health and social services agencies.

How effective the *Sustainable Development Act* will be depends on the sustainable development strategy the government adopts. This implementation should be carried out, as prescribed by section 5 of the

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<sup>23</sup> *Supra* note 20.

<sup>24</sup> R.S.Q. c. T-16.

Act, in a manner consistent with the principles stated in the strategy and in section 6 of the Act.

The Act provides that the Administration must take into account a set of 16 principles, to which additional principles provided for in the strategy may be added. Reading these principles leads us to believe that the provincial legislature was feeling very bold, as it combined (a) health and quality of life, (b) social equity and solidarity, (c) environmental protection, (d) economic efficiency, (e) participation and commitment of citizens and citizens' groups, (f) access to knowledge, (g) subsidiarity, (h) inter-governmental partnership and cooperation, (i) the principle of prevention, (j) the principle of precaution, (k) protection of cultural heritage, (l) biodiversity preservation, (m) respect for ecosystem support capacity, (n) responsible production and consumption, (o) the polluter pays principle and (p) the principle of internalization of costs. Given the innovative nature of such a list included in a statute, I attach as a schedule a copy of the definitions of each of these principles provided in section 6 of the *Sustainable Development Act*.

The Act provides that the government's sustainable development strategy must state the government's selected approach, the main issues, the policy directions, the areas of intervention, and the objectives to be pursued by the Administration in the area of sustainable development. Where appropriate, it must also state the sustainable development principles to be taken into consideration by the Administration, in addition to those listed in the previous paragraph.

To ensure its implementation by the Administration, the strategy must identify certain means selected to foster a concerted approach that is in keeping with all the principles of sustainable development, and I emphasize the word "all"; it must also state the roles and responsibilities of each player or certain members of the Administration in order to ensure its internal effectiveness and coherence.

Monitoring is an important part of the strategy. The Act provides in this respect that the strategy must identify the sustainable development indicators and criteria to monitor or measure progress in the economic, social and environmental fields and mechanisms and methods to ensure monitoring.

The first version of the sustainable development strategy should be adopted by the government no later than April 19, 2007 and must be reviewed every five years thereafter.

The Act also changes the duties of the Minister of the Environment, who is now known as the Minister of Sustainable Development, Environment and Parks. The first of these changes means that the minister must promote sustainable development within the Administration and in the general public by promoting cooperation and cohesion to harmonize the various interventions related to it. Note that the federal *Department of the Environment Act*<sup>25</sup> does not include sustainable development in the duties and responsibilities of the Minister of the Environment.

As a corollary, the Act also sets up a procedure for implementing the sustainable development strategy and an accountability mechanism. In terms of implementation, it is provided that every government department, agency and enterprise within the Administration must identify, in a document to be made public, the specific objectives it intends to pursue in order to contribute to a progressive and compliant implementation of the strategy, as well as the activities or interventions it plans on carrying out to that end, directly or in collaboration with one or more stakeholders in society. This is important: it is specifically provided that the interventions may include a review of existing statutes, regulations, policies or programs to ensure better compliance with the strategy and the principles on which it is based.

With respect to accountability, the Act provides that each member of the Administration must state in a special section of its annual report on its activities (a) the particular objectives it had set to contribute to sustainable development and to the progressive implementation of the strategy and (b) the degree to which the target results were achieved.

The *Auditor General Act* now provides that the Auditor General shall, with the approval of the Office of the National Assembly, appoint an assistant auditor general having the title of Sustainable Development Commissioner. His duties are to assist the Auditor General in the performance of his duties relating to sustainable development auditing. However, the Auditor General remains in charge of the duties and powers of the assistant auditors general. The role of the Sustainable Development Commissioner is to see that the Administration applies the provisions of the *Sustainable Development Act* governing members of the Administration. He must prepare an annual report of his findings and

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<sup>25</sup> R.S.C. 1985, c. E-10.

recommendations, any matter or any case arising from auditing or investigations in the area of sustainable development and his comments concerning the principles, procedures and other methods used in the area of sustainable development by the Administration and by the other bodies and institutions that are subject to that Act.

Lastly, I will mention another aspect of the *Sustainable Development Act* which the government has made much of but which seems to me to have a quite limited scope in reality, and that is the amendment of the *Charter of Human Rights and Freedoms*.<sup>26</sup> The Charter has been amended in 2006 to include a section which now provides that:

“46.1 Every person has a right to live in a healthful environment in which biodiversity is preserved, to the extent and according to the standards provided by law.”<sup>27</sup>

This legislative initiative could be criticized in that, given its position in Chapter 4 of the Charter, it places the right to a healthful environment in which biodiversity is preserved in the category of economic and social rights rather than in the category of fundamental rights.<sup>28</sup> However, the fact remains that this initiative made a great impression in the media.

In short, the Act proposes an ambitious program for the public administration. In the short term, the inertia of the government machinery could mean that this program will fail, and hence the importance of vigilance on the part of the public to remind the government of its obligations.

But the Act is now in force. In a few months, the government will do the first fine-tuning of the sustainable development strategy. Thereafter, all decisions of the Administration will, in theory at least, have to take account of all the principles of sustainable development and the strategy. For example, when authorizing a large energy development

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<sup>26</sup> R.S.Q. c. C-12 [*Charter*].

<sup>27</sup> S. 46.1.

<sup>28</sup> Note that section 52 of the *Charter*, *ibid.*, provides that no provision of any Act, even subsequent to the *Charter*, may derogate from sections 1 to 38, except so far as provided by those sections, unless such Act expressly states that it applies despite the *Charter*, and hence the limited scope of the new section 46.1.

project, the Government of Quebec will have to ensure that all the principles of sustainable development included in the law and, where applicable, the strategy, have been integrated in coming to a decision. Clearly, the multiplicity of principles and the scope of the definitions will make judicial review of sustainable development difficult.

However, the Act specifically provides that statutes and regulations must in turn, as they are adopted or amended, pass the sustainable development test. What's more, sustainable development will play a role in how they evolve. The end result will probably be a slow but not insignificant transformation of the entire body of statutes and regulations which will have to integrate the parameters of sustainable development one step at a time. Hydro-Quebec's development plan, government energy strategies, and later the statutes which reflect these guidelines will gradually have to make room for the principles of sustainable development. In other words, if the trend continues, they will lead to major revisions of the legislation which will have a direct impact on people and businesses.

It is interesting to note that, in the interim, the current government has already been judged based on the principles set out in the *Sustainable Development Act*, both to applaud it, as we will see when we discuss the Quebec Action Plan on Climate Change 2006–2012, and to severely criticize it in the case of the sale of a provincial park to allow condominiums to be developed and in the case of legislative changes designed to grant immunity against civil actions to owners and users of snowmobiles and all-terrain vehicles.

The principles of sustainable development, as valid as they may be, and the development strategy itself, would lose all credibility in Quebec if Hydro-Quebec, in its dual role as a Crown corporation and a producer and distributor of electricity, did not go along with them. Hydro-Quebec's Strategic Plan 2006–2010 has just been presented to the Parliamentary Committee in Quebec City. Sustainable development is presented as its common thread. The Plan has three major orientations. The first is energy efficiency, with a goal of reaching energy savings of 4.7 billion kWh by 2010 for total savings of 8 billion kWh in 2015. For 2006, Hydro-Quebec believes that the energy savings goal should be exceeded, as it was in 2005, which is evidence of a good level of customer participation in its energy efficiency program.

The second orientation is the complementary development of hydroelectric and wind power, described as a major source of renewable

energy. The joint development of these two sources is, according to the Crown corporation, essential for sustainable development. As a result, there has been an acceleration of the completion of certain large hydroelectric projects in order to create a portfolio of hydroelectric projects totalling 4,500 MW. The Toulmoustou power plant was started up in 2005, the Eastmain-1 power plant project is in its final stages, with an expected start-up date in nine months, the Eastmain-1-A Powerhouse and Rupert Diversion project should receive government approval by the end of this year and the impact assessment report for the La Romaine project should be tabled in the spring of 2007 with the goal of beginning construction during the summer of 2009.

At the same time, the development of the installed power of Hydro-Quebec will expand the wind energy base, which is expected to contribute 4,000 MW by around 2015.

These orientations of the strategic plan of the largest Crown corporation in Quebec are related to the Quebec Action Plan on Climate Change 2006–2012<sup>29</sup> published by the Quebec government in June of this year.

It would be useful to spend a few moments discussing the plan because the general consensus of all Quebec constituent groups leads to the conclusion that this document will truly be a guide for future government action involving sustainable development from the point of view of climate change.

After pointing out that the average temperatures in western and southern central Quebec increased by 0.75 to 1.25°C between 1960 and 2003 and that, in the north, the province is now affected by the same phenomenon since the mid-1990s, after pointing out that these climate changes threaten public safety and the integrity of infrastructures and after stating that the National Assembly has, on two occasions, unanimously adopted a resolution<sup>30</sup> asking the government of Quebec to respect its international commitments and the greenhouse gas reduction objective as established by the Kyoto Protocol, the strategy includes a list of GHG

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<sup>29</sup> Quebec, *Action Plan Quebec and Climate change – A Challenge for the Future, 2006-2012*, 2006, online: Ministère du Développement durable, de l'Environnement et des Parcs <[https://www.mddep.gouv.qc.ca/changements/plan\\_action/2006-2012\\_en.pdf](https://www.mddep.gouv.qc.ca/changements/plan_action/2006-2012_en.pdf)>.

<sup>30</sup> On 21 April 2005 and 24 May 2006.

emissions in Quebec and suggests a series of actions in various fields to reduce or prevent GHG emissions in Quebec.

Speaking of GHG emissions, you may recall that Quebec's situation is quite particular, with GHG emissions of 12.1 tonnes of CO<sub>2</sub> equivalent per capita compared to 16.8 t. Co<sub>2</sub> eq. in Ontario and 71.0 t. Co<sub>2</sub> eq. in Alberta. The Canadian average in 2003 was 23.0 t. Co<sub>2</sub> eq. per capita. If Quebec is excluded, the Canadian average increases to 26.9 t. Co<sub>2</sub> eq. per capita, which is higher than that of the United States which, in 2003, stood at 23.0 t. Co<sub>2</sub> eq. per capita. In terms of GHG production, in 2003 Quebec produced 90.9 million tonnes of GHG compared to 206.2 million tonnes for Ontario and 200.4 metric tonnes for Alberta. One of the causes of this good performance is hydroelectricity. In Quebec, electricity production represents only 1.7% of emissions across the province. This is due to the fact that over 90% of electricity produced in Quebec comes from hydraulic sources.

Nonetheless, from 2001 to 2003, Quebec's GHG emissions increased by 6%. In 1990, Quebec's emissions stood at 85.3 million metric tonnes (Mt) and increased to 90.9 million metric tonnes in 2003.

The Action Plan aims to reverse this upward trend, primarily in the transportation and building fields. If it reaches its goals, the 2006–2012 Action Plan will enable Quebec to reduce its GHG emissions by 10 million tonnes, bringing it 1.5% under the 1990 level. The average reduction objective committed to by the industrialized countries is 5.2% under the 1990 level for the 2008–2012 period whereas Canada has committed itself to a reduction of 6% under this level.

Based on this energy balance sheet, the Action Plan targets a series of steps to be taken relating to energy which I will discuss in a few moments, in the construction field to amend Quebec's Building Code to improve the energy performance of new buildings, in the transportation field so that manufacturers of light-duty vehicles sold in Quebec meet a maximum GHG limit and to encourage the development and use of public transportation, as well as the development and use of alternate modes of transportation and the adoption of legislation requiring the mandatory use of speed limiting devices on all trucks.

In the industrial field, the Action Plan encourages the negotiation of voluntary agreements for the reduction of GHGs by Quebec's industries similar to what was done in 2002 when a framework agreement was signed with the Aluminum Association of Canada and specific

agreements were made with established aluminium producers in Quebec. The Action Plan provides for legislation to require the principal emitters to declare their GHG emissions and emissions of other contaminants.

Measures are also recommended relating to residual materials and the capture of biogas from landfill sites for the development of energy from agricultural biomass. Solutions are announced to confirm the government's leadership in this area.

With respect to the main subject, that is to say energy, the Action Plan aims to accelerate the development of hydroelectricity which is described as "a source of clean, renewable and climate-friendly energy," to maintain the current pace of development of wind energy, to promote wind-diesel coupling projects in Nunavik and for all independent grids not hooked up to the Hydro-Quebec grid, and to support energy efficiency measures put forward not only by Hydro-Quebec but also by the two gas distributors in Quebec—Gaz Métro and Gazifère. The expected results in terms of GHG emissions avoided by 2012 are 5.0 Mt CO<sub>2</sub> eq. for Hydro-Quebec, 2.0 Mt CO<sub>2</sub> for wind energy and 3.0 Mt CO<sub>2</sub> eq. for energy efficiency.

If the effort made under the Action Plan on Climate Change produces the expected results, the anticipated GHG emissions in 2012 should be 84.0 Mt compared to projected emissions of 94.0 Mt if things were left to themselves. The additional effort required to reach a reduction in Quebec which respects Canada's commitments under the Kyoto Protocol would be 3.8 Mt. This effort toward sustainable development may be misplaced, however, if the federal government continues to turn its back on its commitments, as the positions taken by the Minister of the Environment over the past few months suggest, and as the recent report of Canada's Commissioner of the Environment and Sustainable Development seems to confirm.

That said, and with the hope that economic conditions and the actions of the Administration do not carry us off track, we cannot deny that, in theory at least, Quebec's current government is being consistent in its approach to sustainable development. The Quebec Action Plan on Climate Change 2006–2012, measured against the yardstick of the *Sustainable Development Act*, stands up to analysis. In addition, the chapter on electricity in Hydro-Quebec's 2006–2010 Strategic Plan attempts to convey the objectives put forward for energy by the Action Plan. The Plan also announces, among other things, a series of legislative and regulatory initiatives to change its proposals into commitments. This



is the progressive adaptation of the precepts of sustainable development in the legislative and regulatory corpus as prescribed by the *Sustainable Development Act*. The next step will be the publication of the draft sustainable development strategy, which should be known next spring.

In giving this overview of the various measures put forward over the past two years in Quebec, I am not trying to bestow eulogies on the current government, as many aspects of its actions and discussions about sustainable development can be criticized. However, setting aside these criticisms, I detect a real deepening of the notion of sustainable development in terms of what it means in our daily lives. In my view, there is a set of related initiatives—an effort at consistency compared to the scattered initiatives of the recent past—which suggest that Quebec is prepared to commit itself to moving toward sustainable development. Logically, the laws should progressively be reformulated to “keep human activities in harmony with the unchanging and universal laws of nature,” to use the words of the Brundtland Commission quoted at the beginning of these notes.

In closing, I would like to quote a passage from the notes which the Honorary President of this conference wrote in the spring of 2005 and which are still relevant today:

“Thus, as a complement to the rule of law, there is the spirit of the law. The spirit of the law is not concerned so much with setting down rules. Rather, it reflects the values which a society draws upon in its development of legal rules. Sharing the logic of sustainable development, these values of the spirit of the law must include cooperation, commitment, responsibility, community, trust, fairness, security and empathy. These are constituent elements of solidarity or fraternity. These values, like liberty and equality, are fundamentally moral values, values to which we aspire though seldom attain. They interact with liberty and equality while also interacting with each other and together they weave the cloth of fraternity.”