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# Canada's 'Forgotten Forests': Or, How Ottawa is Failing Local Communities and the World in Peri-Urban Forest Protection

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# Canada's "Forgotten Forests": Or, How Ottawa is Failing Local Communities and the World in Peri-Urban Forest Protection

Stepan Wood\*

*The forests found in Canada's rapidly expanding urban fringes have been decimated by agricultural settlement and urban growth, yet they have been largely overlooked in Canadian forest policy debates. While these "peri-urban" forests fall mainly under provincial jurisdiction, this paper argues that the federal government has the authority and opportunity to negotiate a more active role for itself in this area. The paper assesses the federal government's track record of international commitments and domestic action on peri-urban forests, canvassing developments in six policy areas: general principles; forest conservation and management; biodiversity and endangered species; land securement and ecological gifts; climate change; and sustainable cities. In all these areas the federal government's international commitments relevant to peri-urban forests have been modest and its actions at home disappointing. The paper calls for a substantially enhanced federal role in peri-urban forest protection, with an emphasis on national coordination, strategic leadership and funding.*

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*Même si l'établissement de fermes et la croissance urbaine ont décimé les forêts situées en périphérie des zones urbaines canadiennes, qui sont en rapide expansion, ces forêts ont quand même été pour la plupart oubliées dans le cadre du débat canadien sur les politiques forestières. Bien que ces forêts périurbaines soient généralement de compétence provinciale, on soutient dans cet article que le gouvernement fédéral a le pouvoir et la possibilité de se négocier un rôle plus actif dans ce domaine. On étudie les résultats obtenus par le fédéral relativement à ses engagements internationaux et à ses actions à l'interne en ce qui concerne les forêts périurbaines, tout en examinant les développements dans le cadre de six domaines stratégiques : les principes généraux; la conservation et la gestion des forêts; la biodiversité*

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*et les espèces en danger; l'acquisition de terrains et les dons écologiques; les changements climatiques; les villes durables. Dans tous ces domaines, les engagements internationaux qui ont été pris par le gouvernement fédéral à l'égard des forêts périurbaines ont été modestes et les actions qu'il a entreprises, décevantes. On réclame au fédéral, dans cet article, qu'il joue un rôle plus important dans la protection des forêts périurbaines, surtout sur les plans de la coordination nationale, du commandement stratégique et du financement.*

The forest symbolizes Canada. Covering nearly half the Canadian landscape, some 418 million hectares, forests are integral to our environment, economy, culture, traditions and history. They are critical to realizing our aspirations as a society and as a nation.<sup>1</sup>

There has been a limited recognition of a growing "rural-urban" landscape, often dominated by small woodlots. The peripheral forest rings around urban centres are largely owned by "acreage" owners whose prime objective is to retain their natural forest community. . . . [T]hese forests have often been called "forgotten" forests.<sup>2</sup>

## 1. INTRODUCTION

This paper is about certain forests that have been largely neglected in contemporary Canadian forest policy debates: the highly fragmented forest remnants found in the agricultural hinterlands and suburban peripheries of many of Canada's rapidly growing cities. These "peri-urban" forests have been devastated by more than two centuries of agricultural settlement, economic growth and urbanization. Only a small fraction of the original forest cover remains in most areas that were opened to agricultural settlement.<sup>3</sup> What were once immense, continuous forest tracts have been reduced to small, scattered forest fragments in many urban,

1 Government of Canada *et al.*, *Canada Forest Accord 1998-2003* (May 1, 1998), available online at: <<http://mfsc.forest.ca/accords/accord2.html>>, (last accessed July 5, 2004).

2 David Neave *et al.*, *Canada's Forest Biodiversity: A Decade of Progress in Sustainable Forest Management* (Ottawa: Canadian Forest Service, 2002) at 31, available online at: <[http://www.nrcan-rncan.gc.ca/cfs-scf/science/biodiversity/index\\_e.html](http://www.nrcan-rncan.gc.ca/cfs-scf/science/biodiversity/index_e.html)> (last accessed July 5, 2004) [*Canada's Forest Biodiversity*].

3 In York Region, Ontario, for example, forest cover decreased from 90% to 18% of the total area since European settlement. Regional Municipality of York, *York Region Official Plan: Office Consolidation* (Newmarket: Regional Municipality of York, 1999) at 12 (copy on file with author). This is comparable to other previously forested areas of Canada that were opened to agricultural settlement. The maximum forest loss typically occurred in the late nineteenth or early twentieth century, with forest cover rebounding somewhat thereafter as some marginal agricultural lands were abandoned. See *e.g.*, Canada Man and Biosphere Program, *Landscape Changes at Canada's Biosphere Reserves* (Toronto: Environment Canada, 2000) at 42-46, 30-33 and 50 (describing historical forest cover changes near Riding Mountain, Manitoba; Long Point, Ontario; and Mont St. Hilaire, Quebec).

suburban and agricultural areas of Canada. In many places the rate of loss of forest cover has increased in recent decades, and even where total forest area has remained steady or increased in recent years this has often been accompanied by increased fragmentation and decreased interior forest area.<sup>4</sup>

The continuing fragmentation, degradation and loss of peri-urban forests have a range of negative impacts, including loss and degradation of wildlife habitat and movement corridors; increased exposure of forest species to hunting, predation, disease and invasive species; genetic isolation of forest species, which may lead to local extirpation unless species are able to disperse among forest fragments; increased soil erosion, surface runoff and flooding; impaired water and air quality; loss of shade; increased extremes of local temperatures; loss of game animals and other forest-related products; and loss of recreational, aesthetic and spiritual amenities.

The plight of peri-urban forests in Canada has been known for decades. Nonetheless, it has not excited public attention the same way that the fate of "wild" forests has. Contemporary public debates on forests in Canada centre on the large wilderness tracts that symbolize, for many Canadians, unspoiled nature and Canada itself. As a result large, relatively "wild" forests and the activities affecting them, such as large-scale commercial logging, mineral extraction, hydroelectric projects, wilderness road building and recreational development, tend to dominate the forest agenda while the problem of small-scale, continual and pervasive degradation of highly fragmented forest remnants in heavily populated, already massively altered peri-urban landscapes tends to be overlooked. Peri-urban forests are Canada's "forgotten" forests.<sup>5</sup>

In this article I examine a largely neglected aspect of this more or less forgotten problem: the role of federal and international laws, policies, institutions and programs in peri-urban woodland protection efforts in Canada. I argue that we should "think globally" about local peri-urban woodland protection efforts, by considering the ways in which local efforts are helped or hindered by federal and international laws, policies and programs. The paper is structured as follows. In Part 2 I survey briefly the range of local-level woodland protection initiatives, the main features

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4 In Ontario's Niagara Escarpment Biosphere Reserve, for example, total forest cover increased from 43% in 1976 to 44% in 1995, but in the same period the number of forest patches and the variation in shapes and sizes of forest patches both increased while interior forest area (usually defined as >100 m from forest edge) decreased from 50% to 39% of the total forest area, *ibid.* at 21-28.

5 *Canada's Forest Biodiversity*, *supra* note 2 at 31.

of the provincial legal and policy frameworks within which these initiatives are pursued and the main obstacles to such initiatives. I then argue that the federal government has the authority and opportunity to negotiate an active role for itself in this area even if the main constitutional authority over forest issues remains with the provinces. Part 2 closes with a brief discussion of how forest issues have appeared on policy agendas at the international and national levels, emphasizing the fact that these agendas tend to ignore the particular challenge addressed by this paper: how to protect and enhance fragmented, mostly non-commercially-managed forest lands in rapidly urbanizing areas of advanced industrialized countries.

In Part 3 I evaluate critically the federal government's track record of international commitments and domestic actions on peri-urban forests. This survey is intended, first, to be a useful guide for municipalities, local conservation groups, landowners and others to the international and federal legal and policy initiatives that might have an impact, positive or negative, on local peri-urban forest protection efforts, and second, an exposé showing that the federal government has failed both Canadians and the international community in this area. In the conclusion I argue for a substantially enhanced federal role in local peri-urban forest protection focussed on national coordination, strategic leadership and funding.

## **2. LOCAL WOODLAND PROTECTION EFFORTS IN CONTEXT**

Struggles over the fate of peri-urban forests are played out largely at the local level. Municipal governments, conservation authorities, local community groups, landowners, real estate developers, chambers of commerce, environmentalists, campers, hunters, foresters, First Nations, provincial government officials and other actors struggle and cooperate over the fate of particular patches of forest. This occurs in a range of relatively localized arenas including municipal land-use planning processes, local news media and community organizations. I will briefly survey some of the tools that have been used in local peri-urban forest protection before considering the provincial, federal and international legal and policy contexts for such initiatives.

### **(a) Greening Locally: Local Forest Protection Efforts**

Municipal governments and other actors have experimented with a wide range of tools for protecting or enhancing peri-urban forests. Tra-

ditional land-use planning tools such as official plans, zoning bylaws and subdivision controls have been used to set and (to a lesser degree) implement goals for peri-urban forest protection in many communities. Tree bylaws, which many municipalities have had on the books for decades, have been revived in some places to protect peri-urban tree stands against cutting. Some municipalities have also enacted bylaws restricting or prohibiting development of wildlife habitat, woodlands, stream corridors or other environmentally sensitive or naturally significant areas.<sup>6</sup> Many have experimented with public education campaigns, forest inventory programs, tree planting programs, “road tree” maintenance programs, tree designation programs (in which citizens “adopt” individual trees) and programs to promote sustainable forestry. Landowners, municipalities and conservation groups have also employed a range of tools to secure legal interests in forest lands, including conservation easements, land trusts, leases and outright transfers of title.<sup>7</sup> Finally, numerous municipalities have adopted comprehensive strategies setting out guiding visions, policies and objectives for protection and enhancement of green lands.<sup>8</sup>

### (b) The Provincial Context

These local forest protection initiatives exist in a broader legal and policy context which consists, for the most part, of provincial law and policy. The provinces have exclusive jurisdiction over forest resources, property and civil rights in the province as well as all matters of a “merely local or private nature.”<sup>9</sup> Land use planning, urban development, municipal government and forest management are all generally understood to be matters of provincial jurisdiction. Municipal governments are creatures of provincial law. Whatever they seek to do in the field of forest protection, their authority must be found in provincial legislation. In addition to specific powers to protect environmentally sensitive areas, provincial

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6 The authority to enact such measures is found in numerous provincial planning statutes. See *e.g.*, *Planning Act*, R.S.O. 1990, c. P.13, s. 34.

7 See *e.g.*, York Region’s *Land Securement Strategy*, adopted April 12, 2001, available online at: <<http://www.region.york.on.ca/Services/Environmental/Greening+Strategy/LandSecurementStrategy.htm>> (last accessed July 5, 2004).

8 See *e.g.*, Regional Municipality of York, *Greening Strategy* (Newmarket, Ontario: Regional Municipality of York, 2001), available online at: <<http://www.region.york.on.ca/Services/Environmental/Greening+Strategy/default+greening+strategy.htm>> (last accessed July 5, 2004).

9 *Constitution Act, 1867*, ss. 92A, 92(13) and 92(16), respectively.

planning statutes typically give municipalities general authority to make bylaws for health and welfare within their territories.<sup>10</sup> In its landmark *Spraytech* decision of 2001, the Supreme Court of Canada upheld a municipal bylaw banning the cosmetic use of pesticides within municipal boundaries as a valid exercise of such “general welfare” powers.<sup>11</sup> The Court ruled that general welfare powers authorize municipalities to regulate environmental and public health matters provided that such regulation is genuinely aimed at health or welfare within the municipality and does not conflict with valid provincial or federal laws.

The *Spraytech* decision gave a substantial boost to municipal environmental protection powers. The Supreme Court reaffirmed the proposition, found in several of its earlier decisions,<sup>12</sup> that environmental protection is a “fundamental value” in Canadian society and requires action by all levels of government.<sup>13</sup> The majority also endorsed several other propositions with direct relevance to local environmental decision-making: first, that laws should be made and implemented at the level of government that is as close as possible to the citizens affected by such laws, consistent with effective law-making (the principle of subsidiarity);<sup>14</sup> second, that courts must respect the judgments of elected municipal bodies about matters related to health, welfare and environmental protection within municipal boundaries and “exercise caution to avoid substituting their views of what is best for the citizens for those of municipal councils”;<sup>15</sup> and third, that local governments should be empowered to

10 See e.g., *Municipal Government Act*, S.A. 1994, c. M-26.1, ss. 3(c) and 7; *Local Government Act*, R.S.B.C. 1996, c. 323, s. 249; *Municipal Act*, S.M. 1996, c. 58, C.C.S.M. c. M225, ss. 232 and 233; *Municipalities Act*, R.S.N.B., c. M-22, s. 190(2), First Schedule; *Municipal Government Act*, S.N.S. 1998, c. 18, s. 172; *Cities, Towns and Villages Act*, R.S.N.W.T. 1988, c. C-8, ss. 54 and 102; *Municipal Act*, R.S.O. 1990, c. M.45, s. 102; *Cities and Towns Act*, R.S.Q. 2003, c. C-19, s. 410; *Municipal Act*, R.S.Y. 1986, c. 119, s. 271.

11 *114957 Canada Ltée (Spraytech, Société d'arrosage) v. Hudson (Town)*, [2001] 2 S.C.R. 241. The bylaw prohibited all outdoor pesticide use within town limits except when applied in swimming pools and golf courses or for crop protection, drinking water purification or control of dangerous animals or plants. Such measures are known as “cosmetic” pesticide bans because they ban the use of pesticides for cosmetic purposes, i.e., purposes unrelated to human health, safety, agriculture or horticulture.

12 See *Friends of the Oldman River Society v. Canada (Minister of Transport)*, [1992] 1 S.C.R. 3 at 16-17; *R. v. Canadian Pacific Ltd.*, [1995] 2 S.C.R. 1031 at 1075-1076; *R. v. Hydro-Québec*, [1997] 3 S.C.R. 213 at 293-297.

13 *Spraytech*, *supra* note 11 at 248-49.

14 *Ibid.* at 249.

15 *Ibid.* at 261-62, quoting *Shell Canada Products Ltd. v. Vancouver (City)*, [1994] 1 S.C.R. 231 at 244.



exceed provincial or national environmental standards.<sup>16</sup> Finally, the majority endorsed the “precautionary principle” of international law, which says that where there are threats of serious or irreversible damage, one need not wait for scientific certainty before taking action to anticipate and prevent environmental degradation.<sup>17</sup>

Emboldened by the *Spraytech* decision, many Canadian municipalities have enacted bylaws banning cosmetic pesticide use. Many have also relied on their “general welfare” powers to regulate industrial waste discharges into local sewers, require pollution prevention plans from local firms, regulate or ban smoking in public restaurants and bars and address a variety of other environmental and public health issues.<sup>18</sup>

A range of other provincial laws and policies also have a substantial impact on local peri-urban woodlands. Provincial governments may supervise or take control of local land use decision-making in various ways, for instance through provincial planning policies, provincial approval of official plans, creation of special planning areas (e.g. for the Niagara Escarpment in Ontario), designation of ecologically sensitive areas or areas of natural or scientific interest, and creation of parks, conservation areas or other protected areas. Provincial forestry, mining, agriculture, environmental protection and endangered species protection statutes and regulations may have significant effects on peri-urban woodland protection efforts, controlling how certain businesses may operate and certain lands may be used. Finally, of course, there is the power of the purse. Provincial governments have a high degree of influence over the financial resources available to municipal governments and other actors for local woodland protection. Provincial governments set budgets and priorities for environment, natural resources, agriculture, municipal affairs and finance ministries, conservation areas and provincial parks. Provincial laws and policies determine how municipalities may use property and other local tax revenues, for instance authorizing property tax credits for protection of environmentally significant lands<sup>19</sup> or limiting municipalities’ ability to offer tax incentives for brownfields redevelopment. Provincial governments determine, to a large degree, both the responsibilities of municipal governments and the resources available to them to fulfill these responsibilities and pursue their own priorities.

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16 *Spraytech*, *supra* note 11 at 261-262.

17 *Ibid.* at 266-67.

18 See e.g., City of Toronto, *Municipal Code*, c. 681, art. I, adopted by By-law No. 457-2000, *Sewer Use By-law* (July 6, 2000).

19 See *infra*, note 89 and accompanying text.

From the perspective of peri-urban forest protection, this framework of provincial laws and policies is both a help and a hindrance. In certain respects these provincial laws and policies foster or enable such initiatives, for instance by giving municipalities broad "general welfare" powers or providing special tools to designate and protect forest areas. In other respects they hinder and constrain local-level woodland protection initiatives, for instance by reinforcing a pro-development culture, removing decision-making authority from local communities or reducing municipalities' financial resources. On one hand, it is fair to say that provincial laws and policies confer on municipal governments the legal powers and practical tools they need to pursue a wide range of environmental protection objectives, including peri-urban woodland protection. On the other hand, in many places, municipal governments and local community members find it exceedingly difficult to translate these powers and tools into lasting and effective protection of peri-urban forest patches.<sup>20</sup> As one municipal forester complained, even the atypical "best-case scenario" of peri-urban forest protection "provides little grounds for optimism about the ability of local governments to ensure long-term woodland protection."<sup>21</sup>

One prominent obstacle is the persistence of a development-oriented culture among professional planners and in provincial administrative tribunals responsible for reviewing local planning decisions. A related obstacle is the tendency for municipal governments to see themselves primarily as service providers and only secondarily as environmental stewards or guardians of the public interest. The existence of powerful economic incentives for municipal governments to favour urban development, in the form of increased property tax revenues, is another obstacle. Often these tendencies are reinforced by provincial government policies that encourage urban sprawl, uncontrolled demographic growth and a service-delivery culture, while discouraging environmental stewardship and citizen activism.<sup>22</sup> Finally, there is the general political climate of fiscal restraint and devolution. Since the early 1980s governments throughout the industrialized world have advocated balanced budgets, reduced public spending and delegation of responsibility to lower-level

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20 Leonard Munt, former York Region Forestry Coordinator, personal communication, February 2000.

21 Melissa Jort, "Who Speaks for Trees in York Region? The Decline of Urban Forests and the Limits of Local Government," written submission to Federation of Ontario Naturalists' *Southern Ontario Woodlands E-Symposium* (October 2001) (copy on file with author).

22 Ibid.

authorities. Many municipal governments have found themselves saddled with substantially increased responsibilities at the same time that they have seen their resources reduced. In this climate serious local woodland protection initiatives, along with many other projects aimed at enhancing environmental quality and public welfare, have seemed out of reach to many communities. Although there are indications that this dual trend of "downloading" and budget cutting may have slowed or changed course since the late 1990s, municipal governments throughout Canada remain seriously strapped for cash.

To summarize, increasing numbers of municipal governments and other local interested parties are pursuing a range of innovative strategies to protect and enhance peri-urban forest fragments in southern Canada. They are pursuing these strategies in the context of a complex local and provincial policy framework which, on one hand, provides them with a relatively strong suite of powers to pursue their forest protection objectives but, on the other hand, inhibits the successful realization of these objectives in many ways.

**(c) Thinking Globally: What do Federal and International Law and Policy Have to Do with It?**

The purpose of the preceding discussion was not to examine the provincial legal and policy framework in any detail, but to lay the groundwork for asking a question that has been largely ignored in discussions of local-level forest protection efforts, namely: what have the federal government and international law got to do with local efforts to protect or enhance peri-urban forests in Canada?

The federal government makes a point of insisting that forest management is not its responsibility.<sup>23</sup> Certainly, its role in governing forests is indirect, but it is not insignificant. The provinces have ownership of forest resources and exclusive jurisdiction over land use planning and municipal government, among other things, but the constitutional division of powers in matters related to forests and environmental protection is complicated, giving federal and provincial (and, to an increasing extent, aboriginal) governments a fair amount of room to negotiate their respective roles.

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23 See e.g., Natural Resources Canada, *The State of Canada's Forests 2002-2003: Looking Ahead* (Ottawa: Natural Resources Canada, 2003) at 6 [*State of Canada's Forests*].

As the Supreme Court has said repeatedly, environmental protection cuts across many different areas of constitutional responsibility.<sup>24</sup> The federal government's role in peri-urban forest protection could be grounded in numerous constitutional heads of power. In heavily settled urban and agricultural areas, the remaining forest cover is often concentrated around water bodies, rivers and streams. This presents two possible constitutional bases for federal involvement in peri-urban forest protection. First, the federal government's exclusive jurisdiction over fisheries<sup>25</sup> gives it authority to promote or require forest protection insofar as forest protection is aimed at protection of fish or fish habitat.<sup>26</sup> Second, the federal government's exclusive jurisdiction over navigation and shipping<sup>27</sup> gives it authority over activities in the peri-urban forest that threaten navigable waters.<sup>28</sup>

Third, the federal government's exclusive jurisdiction over criminal law<sup>29</sup> provides the constitutional foundation for some of the federal government's most important environmental legislation, including those relating to toxic substances and endangered species, and could support an enhanced federal role in peri-urban forest protection.<sup>30</sup> Fourth, the pervasive threats to peri-urban forests might arguably be considered matters of "national concern" supporting federal intervention under its residual Peace, Order and Good Government power.<sup>31</sup> This is, however, an uncer-

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24 See e.g. *Hydro-Québec*, *supra* note 12 at 286; *Oldman River*, *supra* note 12 at 63-64.

25 *Constitution Act, 1867*, s. 91(12).

26 The federal government has frequently used the fisheries power to regulate forest-related activities such as logging, mining, road building and hydroelectric projects, insofar as such activities threaten fish or fish habitat. See *Fisheries Act*, R.S.C. 1985, c. F-14, ss. 35, 36; *R. v. Northwest Falling Contractors Ltd.*, [1980] 2 S.C.R. 292; *R. v. Fowler*, [1980] 2 S.C.R. 213.

27 *Constitution Act, 1867*, s. 91(10).

28 The federal government regulates a range of activities that affect navigable waters, including the construction and operation of bridges and dams. See *Navigable Waters Protection Act*, R.S.C. 1985, c. N-22.

29 *Constitution Act, 1867*, s. 91(27).

30 Toxic substances are regulated under the *Canadian Environmental Protection Act, 1999*, S.C. 1999, c. 33. The previous version of this Act was upheld under the criminal law power by the Supreme Court. See *Hydro-Québec*, *supra* note 12. The federal government has also said that the criminal law power is the main constitutional basis for its new federal *Species At Risk Act*, S.C. 2002, c. 29. In *Hydro-Québec* at *supra* note 12 at 296-297, the Supreme Court held that environmental protection and fulfillment of Canada's international obligations are "legitimate public purposes" at which federal criminal law may validly be directed.

31 *Constitution Act, 1867*, s. 91; see also Peter W. Hogg, *Constitutional Law of Canada*, 2004 Student Edition (Toronto: Carswell, 2003) at 433-464. Federal regulation of ocean pollution has been upheld on the basis of "national concern." *R. v. Crown Zellerbach Canada Ltd.*, [1988] 1 S.C.R. 401.

tain and controversial proposition and might be considered an impermissible invasion of provincial jurisdiction.<sup>32</sup> Fifth, the federal government has the constitutional authority to require environmental assessments of proposed projects, programs or policies that involve federal funds, federal lands or federal regulatory approvals.<sup>33</sup> This power can be and has been used to require environmental assessments of logging operations, hydro-electric dams, highways and other projects that affect forests.

Sixth, one could argue that the federal government's exclusive authority to conduct international affairs and conclude international treaties,<sup>34</sup> while not altering the constitutional division of powers, gives it the responsibility to exercise national leadership to ensure that Canada's international commitments are implemented. Taking this a step further, one could argue that the federal government has a general responsibility (or at least opportunity) to provide national leadership in environmental protection and promote the upward harmonization of provincial policies around high standards. Seventh, the federal government has the authority to tax and spend<sup>35</sup> and may use this power to pursue a wide range of policy goals, even if they affect matters within provincial legislative jurisdiction. The power of the federal purse may be employed to support or discourage a wide range of activities affecting peri-urban forests, as the federal government deems fit.

Finally, other possible bases for a federal role in peri-urban forest protection include the federal government's responsibility for the national economy and interprovincial trade,<sup>36</sup> national parks and other federal

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32 Courts have opined that environmental problems tend to be diffuse and widespread and that treating the environment as a "national concern" would give the federal government potentially unlimited regulatory power while effectively gutting provincial jurisdiction. See e.g., *Crown Zellerbach*, *ibid.* at 455-456 (per La Forest J, dissenting); *Oldman River*, *supra* note 12 at 72 (per La Forest J.).

33 *Oldman River*, *supra* note 12 at 44.

34 *Constitution Act, 1867*, s. 132.

35 *Ibid.* at ss. 91(3) (taxation) and 91(1a) (spending power).

36 *Ibid.* at s. 91(2).

lands,<sup>37</sup> aboriginal issues,<sup>38</sup> federal works and undertakings<sup>39</sup> and canals and harbours.<sup>40</sup> In short, the answer to “what have the feds got to do with peri-urban forest protection in Canada?” is, potentially, a great deal. They have the power and opportunity to negotiate an active role for themselves in this area even if the main authority over forest issues remains with the provinces.

#### (d) Forests in the National and International Spotlight

Forests and deforestation have received a great deal of attention both nationally and internationally in recent years. These issues figured prominently in the 1992 United Nations Conference on Environment and Development in Rio de Janeiro, better known as the Earth Summit. Global forest protection has continued to be the subject of intense and controversial international negotiations since then, with Canada taking a leading role in negotiations toward an international forest treaty. Forest management practices have received increasing attention in connection with global climate change as governments argue over the extent to which, and how, sequestration of carbon by forests should be counted toward countries' greenhouse gas emission reduction commitments. Forest protection is also widely recognized as an integral element of biodiversity and endangered species protection, which are the subject of numerous international agreements.

Perhaps the most important limitation of recent international forest protection initiatives from the point of view of the present paper is that they tend to ignore the challenge of peri-urban forests in industrialized countries: how to protect and enhance fragmented, mostly non-commercially-managed forest lands in rapidly expanding, highly developed urban fringes. Instead, attention has focussed mainly on large-scale commercial forest management practices, wilderness conservation, preservation of

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37 While federal forest lands are substantial, they represent a very small portion of the forest lands that are the subject of this paper. The vast majority of forests in urban, suburban and agricultural areas of Canada are found on municipal, provincial or privately owned lands. As a result, while they will be important in some individual cases, federal lands are not expected to play a major role in urban and peri-urban forest protection in general.

38 *Constitution Act, 1867*, s. 91(24). While some urban and peri-urban forests are found on Reservation lands and aboriginal land claims cover an even larger area of urban, suburban and agricultural Canada, aboriginal legal issues are beyond the scope of this paper.

39 *Constitution Act, 1867*, ss. 91(29), 92(10). Federal works include interprovincial shipping lines, canals, railways, telecommunication lines and highways.

40 *Ibid.* at s. 108.

forest-dwelling indigenous and peasant communities, international trade in forest products and massive deforestation in developing countries.

The same is true of federal forest policy in Canada. As I hope to show in the remainder of this paper, while the need for sustainable forest management has galvanized considerable activity at the federal level, peri-urban forests remain largely invisible in federal forest policy.

### **3. THE FEDERAL GOVERNMENT'S TRACK RECORD ON PERI-URBAN FORESTS**

In this section I critically evaluate the main international commitments the federal government has made and the main actions it has taken at home relevant to peri-urban forest protection. This exercise has two objectives: first, to survey the international and federal legal and policy initiatives that might either facilitate or constrain such local efforts, and second, to show that the federal government has, on the whole, failed Canadians and the international community in peri-urban forest protection. In short, while Canada has been a leader in seeking international agreements on forests and deforestation, neither Canada nor the international community has paid much attention specifically to the issue of peri-urban forest fragments in industrialized countries. Where Canada has made commitments relating to peri-urban forests on the international stage, its actions to fulfil these commitments at home have been wanting. Finally, even setting aside its international commitments, the federal government has done much less than it could do to provide meaningful support for local peri-urban forest protection. The discussion is organized around six subject areas: general principles; forest management and conservation; biodiversity and endangered species; land securement and ecological gifts; climate change; and sustainable cities.

#### **(a) General Principles**

The 1992 Earth Summit produced an unprecedented global consensus and action plan for sustainable development. The general principles of

the Earth Summit, as embodied in the Rio Declaration<sup>41</sup> and Agenda 21,<sup>42</sup> are reflected in almost every recent environmental protection initiative, whether local, national or international. The federal government committed itself publicly to these principles at Rio and has reiterated its commitment to them repeatedly in international instruments and domestic policy pronouncements. These general principles range from an entitlement to a healthy environment<sup>43</sup> and an obligation to protect the environment for the benefit of future generations,<sup>44</sup> to the integration of environmental protection into all development decisions<sup>45</sup> and recognition of the vital role of local governments and local communities in the achievement of sustainable development.<sup>46</sup> When it comes to putting these principles into action, Agenda 21 specifically calls on countries to make the financial commitments necessary to give effect to its provisions.<sup>47</sup>

While the Rio Declaration and Agenda 21 are not technically binding legal documents, they have some value to local forest protection initiatives. The Rio principles tend to be simple, elegant propositions that make effective slogans, attract near-universal agreement and allow mobilization of widespread support for particular initiatives. They are often incorporated as guiding principles in environmental policies and programs in both the private and public sectors and at all levels, from local to international. Furthermore, Canada and other countries put a great deal of effort into

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41 The Rio Declaration on Environment and Development, in Report of the United Nations Conference on Environment and Development (Rio de Janeiro, June 3-14, 1992), Annex I, U.N. Doc. No. A/CONF.151/26 (Vol. I) (August 12, 1992), available online at: <<http://www.igc.apc.org/habitat/agenda21/rio-dec.html>> (last accessed July 5, 2004).

42 Agenda 21: Programme of Action for Sustainable Development, in Report of the United Nations Conference on Environment and Development (Rio de Janeiro, June 3-14, 1992), Annex II, U.N. Doc. No. A/CONF.151/26 (Vol. I-III) (August 12, 1992), available online at <<http://www.igc.apc.org/habitat/agenda21/index.html>> (last accessed July 5, 2004).

43 Rio Declaration, *supra* note 41, Principle 1.

44 *Ibid.* at Principle 3

45 *Ibid.* at Principle 4.

46 *Ibid.* at Principles 20-22; Agenda 21, *supra* note 42 at Chapters 23-32. Other principles endorsed in the Rio Declaration include the precautionary principle (Principle 15), the polluter pays principle (Principle 16), public participation and access to information (Principle 10), environmental impact assessment (Principle 17), elimination of unsustainable patterns of production and consumption (Principle 8), and responsibility to cooperate to protect and restore the health and integrity of the Earth's ecosystem (Principle 7).

47 Although the bulk of the discussion of finances is aimed at developing countries, the developed countries, including Canada, committed themselves to maximize the availability of new and additional resources, use all available funding sources and mechanisms, facilitate increased voluntary contributions through non-governmental channels, make use of economic and fiscal incentives, and otherwise make the financial commitments necessary to give effect to Agenda 21. Agenda 21, *supra* note 42 at para. 33.2.



negotiating the Rio Declaration and Agenda 21 and accepted them as solemn political commitments: commitments both to endorse the principles enshrined in these documents and to take concrete action to implement those principles in law and policy. Actors interested in local forest protection can employ these documents to assess the federal government's performance and to press the federal government into more effective action to honour its international commitments.

## **(b) Forest Management and Conservation**

Forest management and conservation is the policy area that would appear to be the most relevant to peri-urban forest protection efforts. At both the domestic and international levels, however, the challenge of protecting and enhancing peri-urban woodlands has been overshadowed by other pressing issues such as large-scale deforestation, clear-cut logging, desertification and so on. National and international forest policy have, at best, paid lip service to peri-urban forests.

### *(i) International Commitments*

The Canadian government has participated in or committed itself to numerous international initiatives for forest management and conservation. Of these, only Agenda 21 recognizes the problem of peri-urban forests. Chapter 11 of Agenda 21 is devoted to forests. This Chapter acknowledges that loss and degradation of forests through conversion to other land uses have serious adverse environmental, social and economic impacts and that the current situation demands urgent action to conserve and sustain forests.<sup>48</sup> Specifically, it encourages the "development of urban forestry for the greening of urban, peri-urban and rural human settlements for amenity, recreation and production purposes and for protecting trees and groves."<sup>49</sup> More generally, it calls on governments to protect and rehabilitate all forests, sustain and expand areas under forest and tree cover, prevent uncontrolled conversion of forests to other land uses, develop and implement national forestry action programs and promote public education and participation in forest management and protection.<sup>50</sup> The chapter calls on national governments to cooperate with

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48 Agenda 21, *supra* note 42 at paras. 11.10 and 11.11.

49 *Ibid.* at para. 11.13(h).

50 *Ibid.* at paras. 11.3, 11.11-11.13.

local communities to achieve these goals.<sup>51</sup> These commitments show clearly that Canada and the international community recognized forest fragmentation and loss in urban and peri-urban settings as a pressing global problem.

Unfortunately, this consensus has not been translated into concerted international or national action on this problem, as governments have focussed their efforts on large-scale commercial forestry issues and the intense challenges facing forests in developing countries. The 1992 Forest Principles, also adopted at Rio, are a good example.<sup>52</sup> These are a set of hortatory principles intended to guide forest management and protection around the world. They are stated in general, abstract terms and tend to emphasize each country's sovereign right to determine its own forest policies. The document makes no mention of urban or peri-urban forests, although it states some general principles that might support peri-urban forest protection.<sup>53</sup>

International negotiations on forest management and conservation have continued in various multilateral fora since the Earth Summit.<sup>54</sup> Canada has taken a leading role in this area, advocating the adoption of a legally binding multilateral forest treaty. The specific issue of peri-urban

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51 See *e.g.*, *ibid.* at para. 11.13.

52 Non-legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of All Types of Forests (The Statement of Forest Principles), in Report of the United Nations Conference on Environment and Development (Rio de Janeiro, June 3-14, 1992), Annex III, U.N. Doc. No. A/CONF.151/26 (Vol. III) (August 14, 1992), available online at <<http://habitat.igc.org/agenda21/forest.htm>> (last accessed July 5, 2004).

53 The document declares, for example, that national-level policies and strategies should provide a framework for increased efforts for the management, conservation and sustainable development of forests and forest lands; that all countries, especially developed countries, should take action to "green" their landscapes through reforestation, afforestation and forest conservation; that forests should be managed sustainably to meet the social, economic, ecological and spiritual needs of present and future generations; that forest management should be integrated with the management of adjacent areas; and that the vital role of forests in maintaining ecological processes at local, national and global levels should be recognized. *Ibid.* at Principles 2(b), 3(a), 4, 8(a) and (b).

54 Such fora include the Intergovernmental Panel on Forests, the main forum for negotiation toward a multilateral forest agreement from 1995 to 1997; the Intergovernmental Forum on Forests, which continued the IPF process from 1997 to 2000; the United Nations Forum on Forests, which was established in 2000 to continue the IPF/IFF process; the Montreal Process, an intergovernmental forum formed in 1994 to develop criteria and indicators for the conservation and management of temperate and boreal forests; the 2002 World Summit on Sustainable Development, which devoted one section of its Plan of Implementation to forests; and the G8 group of leading economies (of which Canada is a member), which launched a forest action program in 1998 to implement some IPF recommendations.

forest protection has, however, been overlooked almost completely in international forest negotiations since Rio.

(ii) *Federal Action*

The federal government has developed several programs relating to sustainable forestry. These programs concentrate on gathering and disseminating forest data and supporting forest-related science and technology. In general they provide little direct support to on-the-ground forest protection initiatives. Moreover, as with international initiatives, these programs focus overwhelmingly upon commercial forestry and wilderness forests rather than non-commercially-managed forest fragments. This focus is understandable given the importance of the forest industry to the Canadian economy,<sup>55</sup> but it ignores the needs of urban and rural residents whose primary goal is not to manage a commercial timber harvest but to protect and enhance the diminishing forest fragments in their communities.

A. The National Forest Strategy

Canada was among the first countries to develop a national forest plan. The current *National Forest Strategy 2003-2008*<sup>56</sup> is the fifth in a series of plans dating back to the 1980s. It was developed by a coalition of federal and provincial government officials, forest scientists, industry, aboriginal groups and civil society organizations. While the focus of the National Forest Strategy has evolved over the years to include non-commercial forest interests, the emphasis remains on ensuring the sustainability and economic viability of the commercial forest sector and forest-based communities. Until recently, peri-urban forests featured only tangentially, but there is now some reason to hope that they will be recognized as strategic priorities.

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55 Canada's forest product exports were valued at \$39.7 billion in 1998, the largest in the world. The forestry sector accounts for 877,000 jobs (1 out of every 16 jobs in Canada), generating over \$11 billion in wages. Approximately 377 communities in Canada depend on forestry. Government of Canada, *Action Plans of the Federal Government in Response to the National Forest Strategy* (Ottawa: Government of Canada, 1999) at 1 [*Federal Action Plans 1998-2003*].

56 National Forest Strategy Coalition, *National Forest Strategy (2003-2008), A Sustainable Forest: The Canadian Commitment* (April 23, 2003), available online at <<http://npsc.forest.ca/strategy.html>> (last accessed July 5, 2004) [*National Forest Strategy 2003-2008*].

The current Strategy concentrates on eight strategic themes: ecosystem-based forest management (including maintenance of forest biodiversity); sustainable forest-based communities; accommodation of aboriginal rights; diversification of the forest industry; enhancement of forest science and technology; active engagement of the public; commercial viability of private woodlots; and creation of a national forest reporting system. As with previous Strategies, the emphasis remains on commercial forestry, large forest tracts and communities economically dependent on forests. A few portions of the Strategy are, however, directly relevant to peri-urban forests. The current Strategy for the first time recognizes urban forests as a strategic priority and defines the urban forest broadly enough to include some peri-urban forests. Private woodlots, many of which are found in peri-urban settings, also feature prominently in the Strategy. Finally, some elements of the Strategy, including those dealing with ecosystem-based management and biodiversity, are tangentially relevant to peri-urban forests although this connection is seldom recognized explicitly.

Implementation of the Strategy is up to each of the signatories, acting within its own powers and responsibilities. In this section I assess the federal government's implementation of the portions of the National Forest Strategy most directly relevant to peri-urban forest protection. Unfortunately, at the time of writing the federal government had not yet released its action plans for implementing the current Strategy.

### *Urban Forests*

The most promising innovation in the current National Forest Strategy is the inclusion of urban forests as a strategic priority.<sup>57</sup> In response to sustained pressure from municipalities and non-governmental groups, the Strategy recognizes that "The forest is not confined to rural or wilderness areas, but is also found within municipal boundaries. Eighty percent of Canadians live in or near the urban forest. This forest is the major connection between them and the forest's environmental benefits and services. . . ."<sup>58</sup> The Strategy sets out several action items related to urban forests, the most important of which are to develop and implement a national urban forestry strategy, to develop guidelines and tools to help municipalities maintain and enhance their urban forest, to develop guidelines and tools to protect surrounding forests and watersheds from urban

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57 Ibid. at 19-20.

58 Ibid. at 4.

pollution, and to identify unique and threatened habitats in and near municipalities and develop and implement strategies to ensure their conservation.<sup>59</sup>

Implementation of these action items has barely begun. Consultations toward a national urban forest strategy are just getting underway. The federal role in the development and implementation of such a strategy is as yet unclear. Whether and to what extent the strategy will focus on peri-urban forests is also unclear, although “urban” forests are discussed in broad enough terms in the National Forest Strategy to include peri-urban forests. It may still be possible for interested parties to urge both an active federal role and the inclusion of peri-urban forests in the urban forest strategy. As to development of guidelines and support tools to help municipalities protect surrounding forests and unique habitats, these action items present an opportunity for municipalities and other actors to urge the federal government to exercise some leadership and initiative in this long-neglected policy area.<sup>60</sup>

### *Private Woodlots*

While private woodlots account for only 6% of Canada’s forest area, they make up a significant portion of the peri-urban forest.<sup>61</sup> They have been on the national forest agenda for years, mainly because of the serious economic difficulties faced by many private woodlot businesses.<sup>62</sup> The main objective of the current and previous National Forest Strategies for private woodlots has been to ensure their economic viability. Among other things, the current Strategy calls on its signatories to create incentives for environmental protection on private woodlots, expand educational programs for woodlot owners and remove obstacles to sustainable private woodlot development with particular attention to market incentives, silviculture programs and tax policies.<sup>63</sup>

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59 Ibid. at 20 (Action Items 6.1, 6.2, 6.3 and 6.7).

60 Such leadership and initiative might include nationwide collection and dissemination of information on best practices, enhanced support for peri-urban forest research, and, most importantly, substantial new federal funding for local-level woodland protection efforts.

61 While 94% of Canada’s forest lands are publicly owned, the private woodlots that make up the remaining 6% are concentrated in the agricultural, suburban and urban areas of southern Canada. *National Forest Strategy 2003-2008*, *supra* note 56 at 21.

62 See e.g., *National Forest Strategy 2003-2008*, *ibid.* Strategic Theme 7; National Forest Strategy Coalition, *National Forest Strategy, 1998-2003: Sustainable Forests—A Canadian Commitment*, available online at: <<http://npsc.forest.ca/strategy.html>> (last accessed July 5, 2004), Strategic Theme 8.

63 *National Forest Strategy 2003-2008*, *supra* note 56 at 22.

The federal government has taken a narrow view of its own role in this area, opining that "private forestry is not a federal jurisdiction or responsibility."<sup>64</sup> It has set modest goals and its implementation of these goals has been half-hearted. Its main action has been to offer modest income tax incentives to woodlot owners. In 1999, in response to the previous National Forest Strategy, the Canada Customs and Revenue Agency (CCRA) issued an interpretation bulletin to clarify existing federal income tax rules applicable to private woodlots.<sup>65</sup> The bulletin offered no new incentives for sustainable woodlot management.

The two principal taxation issues addressed by the bulletin are the deductibility of woodlot-related expenses and the taxation of capital gains. Without going into detail, only expenses related to *commercial* woodlots are deductible; expenses related to woodlots that are not operated with a reasonable expectation of profit are not deductible.<sup>66</sup> As for commercial woodlots, expenses related to commercial tree *farms* are treated more favourably than those related to commercial *non-farm* woodlots,<sup>67</sup> while the deductibility of commercial tree farm expenses is limited where the tree farm is not the taxpayer's main source of income.<sup>68</sup> Woodlot expenses are treated the same as any other business or farming expenses, but because woodlots often take many years to produce income, these rules make some woodlot-related expenses effectively non-deductible. Private woodlot owners have lobbied the federal government without success to relax these rules and enhance the deductibility of woodlot expenses.

The CCRA's interpretation bulletin also clarifies the rules regarding taxation of capital gains on woodlot properties. Woodlots are generally subject to the same capital gains rules as other properties. Commercial

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64 *Federal Action Plans 1998-2003*, *supra* note 55 at 19.

65 Canada Customs and Revenue Agency, Interpretation Bulletin IT 373R2, "Woodlots" (July 16, 1999), available online at <<http://www.ccr-a-drc.gc.ca/E/pub/tp/373r2et/i373r2e.html>> revised by Canada Customs and Revenue Agency, Release IT 373R2-PR1, "Woodlots" (February 21, 2001), available online at <<http://www.cra-arc.gc.ca/E/pub/tp/it373r2-consolid/README.html>> (last accessed July 5, 2004) [IT 373R2].

66 *Ibid.* at ¶ 11. IT 373R2 clarifies the factors the CCRA will use to determine whether a woodlot is operated with a reasonable expectation of profit. *Ibid.* at ¶ 7.

67 The distinction between farm and non-farm woodlots turns on whether the main focus of the woodlot operation is planting, growing, managing, nurturing and harvesting forest stands (farm woodlots) or cutting and removing trees (non-farm woodlots). Farm woodlot expenses may be reported using the cash method while non-farm woodlot expenses must be reported on an accrual basis, often making deduction more difficult. *Ibid.* at ¶¶ 13, 15 and 22. See also Peter W. Hogg, Joanne E. Magee and Ted Cook, *Principles of Canadian Income Tax Law* (3d ed.) (Toronto: Carswell, 1999) at 207-209, 273.

68 *Income Tax Act*, R.S.O. 1990, C.1.2, s. 31; see also Hogg, Magee and Cook, *ibid.* at 417-419.

tree farms, like other farms, are eligible for a \$500,000 lifetime capital gains exemption and an intergenerational rollover (which allows farmers to transfer farm property to descendants without triggering a capital gain).<sup>69</sup> Owners of non-farm woodlots, however, whether commercial or hobby, must report the entire capital gain realized on the disposition of woodlot property at the applicable inclusion rate.<sup>70</sup> Woodlots are given no special tax treatment, with one minor exception: in response to sustained pressure from commercial woodlot owners, the federal government recently extended the intergenerational rollover to all commercial woodlots, provided they are operated in accordance with a prescribed forest management plan.<sup>71</sup> This makes it possible for all commercial woodlot owners to transfer woodlots to their descendants without having to harvest the timber prematurely in order to pay the capital gains tax. The federal government estimates the cost of this tax expenditure at \$10 million per year.<sup>72</sup>

These fiscal measures provide modest tax incentives to some woodlot owners, but they have substantial flaws from the perspective of peri-urban forest protection. First, by restricting tax benefits to commercial woodlots, federal tax rules leave out the large fraction of peri-urban forest fragments that are not operated for commercial gain. Second, these rules help only some commercial woodlot owners and even then only modestly. Third, with the exception of the new rules on intergenerational rollovers, federal woodlot taxation policy is not tied to forest stewardship or sustainability. Finally, fiscal policy can only do so much to support private woodlot conservation. If the federal government wants to get serious about supporting private woodland stewardship it should consider employing a more direct and comprehensive, less reactive and piecemeal approach.

All these actions related to private woodlots were taken under the previous National Forest Strategy. While the federal government had not, at the time of writing, released its action plans under the new Strategy, it is a safe bet that its action on private woodlots will continue to be modest. Its new action plans are not likely to go much beyond fulfilling commit-

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69 On the \$500,000 lifetime exemption, see IT 373R2, *supra* note 65 at ¶¶ 16-18; *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp), s. 110.6(2). On intergenerational rollovers, see IT 373R2, *ibid.* at ¶¶ 19-21; *Income Tax Act*, *ibid.* at ss. 70(9)-(9.3), 73(3).

70 IT 373R2, *supra* note 65 at ¶ 22(e).

71 See S.C. 2001, c. 17, s. 53; S.C. 2002, c. 9, s. 28, amending *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp), s. 73.

72 Canada, Department of Finance, *The Budget Plan 2001* (Ottawa: Public Works and Government Services Canada, 2001), available online at: <[http://www.fin.gc.ca/toce/2001/budlist01\\_e.htm](http://www.fin.gc.ca/toce/2001/budlist01_e.htm)> (last accessed July 5, 2004), chapter 6 (unpaginated).

ments it made under the previous Strategy but did not fulfil, such as development of a federal policy statement and comprehensive strategy for the sustainable development of private woodlots. This modest assessment of what we can expect from the federal government is reinforced by the Strategy itself. Whereas the previous Strategy committed its signatories to establish targets and funding commitments for private woodlots and to encourage afforestation of marginal agricultural lands,<sup>73</sup> both of these commitments were dropped from the current Strategy. It seems that all parties have scaled back their expectations for private woodlots.

### B. The Model Forest Program

Another federal initiative with potential relevance for peri-urban forest protection is the Canadian Model Forest Program, established in 1992 by the Canadian Forest Service.<sup>74</sup> There are currently 11 Model Forests across the country. They represent a wide range of forest types and land use patterns, including small private woodlots, huge wilderness forest tracts, large and small scale commercial forestry operations, parks and protected areas, farmland, cities and suburban areas. They are intended to act as working laboratories for sustainable forest management, promoting diverse forest values and bringing together a variety of actors from government, industry, science and civil society. The Model Forests get their funding primarily from the federal government.

Some Model Forests have developed programs and tools directly applicable to urban and peri-urban forest protection, such as maple sugarbush management, sustainable forestry certification for small woodlots, shelterbelt and riverside tree planting, forest mapping, biodiversity data collection, urban tree preservation and schoolyard naturalization. Unfortunately, the benefits of these programs are enjoyed primarily by communities and forests within Model Forest boundaries. There are some "trickle-down" effects beyond those boundaries as knowledge is disseminated to the broader community, but the Model Forests still have some distance to go toward sharing Model Forest activities and benefits with

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73 *National Forest Strategy 2003-2008*, *supra* note 56, Strategic Direction 8.

74 The Program is currently in its third five-year phase, which runs from 2002 to 2007. The Model Forest Program's official home page is <[http://www.nrcan.gc.ca/cfs-scf/national/what-quoi/modelforest\\_e.html](http://www.nrcan.gc.ca/cfs-scf/national/what-quoi/modelforest_e.html)> (last accessed July 5, 2004). See also the Canadian Model Forest Network web site, <<http://www.modelforest.net>> (last accessed July 5, 2004).



the wider community in a direct and substantial way.<sup>75</sup> While the Model Forests provide substantial support for some peri-urban woodland protection efforts within their borders, they provide relatively little support for such efforts outside the Model Forests, mostly in the form of knowledge about tools and techniques rather than direct material support for forest protection efforts.

### (c) Biodiversity and Endangered Species

The challenge of conserving biological diversity has direct implications for local peri-urban forest protection efforts. Well-functioning forest ecosystems are crucial for the maintenance and restoration of biodiversity and the survival of many endangered species. This is a policy arena in which the federal government has made strong commitments on the global stage but has faltered in translating these commitments into effective action at home.

#### (i) *International Commitments*

Canada is a party to numerous international conventions requiring it to take action to preserve biological diversity and identify and protect threatened and endangered species within its borders. Such agreements include the 1973 CITES convention<sup>76</sup> and the 1992 Convention on Biological Diversity.<sup>77</sup> Yet the federal government has come under sustained criticism since the 1970s for the lack of an effective legal framework for endangered species protection at the federal level.<sup>78</sup> To be fair, biodivers-

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75 The national model forest network recently took a step in this direction by launching a Private Woodlot Strategic Initiative. The initiative is designed to encourage more direct participation by members of the broader woodlot community in Model Forest activities, but it is too early to assess its effects. See *State of Canada's Forests*, *supra* note 23 at 10.

76 *Convention on International Trade in Endangered Species of Wild Fauna and Flora*, March 3, 1973, 27 U.S.T. 1087, 993 U.N.T.S. 243, (1973) 12 I.L.M. 1085 (entered into force July 1, 1975).

77 *The United Nations Convention on Biological Diversity*, in Report of the United Nations Conference on Environment and Development (Rio de Janeiro, June 3-14 1992), vol. I, Resolutions adopted by the Conference, resolution 1, annex II, U.N. Doc. No. E.93.I.8, available online at < <http://www.biodiv.org/convention/articles.asp> (last accessed July 5, 2004).

78 See *e.g.*, James A. Burnett, *On the Brink: Endangered Species in Canada* (Saskatoon: Western Producer Prairie Books, 1989); Lynn P. Marshall, "Canada's Implementation of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES): the Effect of the Biodiversity Focus of International Environmental Law"

ity and wildlife protection fall mainly within the provinces' constitutional authority, so there is only a limited role for federal regulation in this area. Nonetheless, provincial endangered species legislation forms a partial, inconsistent and inadequate patchwork<sup>79</sup> and there is clearly room for a greater federal role in promoting and regulating biodiversity conservation and endangered species protection.

(ii) *The Long-Awaited Species at Risk Act*

The federal government finally enacted the *Species at Risk Act* (SARA) in 2002.<sup>80</sup> Among other things, the legislation gives the federal government the power to protect critical endangered species habitat through regulation and criminal prosecution, even against the will of the provinces or private landowners. Notwithstanding this potential "stick," the federal government intends to rely primarily on voluntary stewardship arrangements to achieve species and habitat protection. In this section I assess briefly the federal government's Habitat Stewardship Program from the perspective of peri-urban forest protection. I also discuss briefly the federal government's plans to compensate landowners for the effects of critical habitat protection measures, which while purporting to promote wildlife habitat protection might prove to be a double-edged sword.

A. The Federal Habitat Stewardship Program

Under SARA, stewardship is the federal government's "first response" to threats to critical wildlife habitat protection.<sup>81</sup> The federal Habitat Stewardship Program supports a wide range of wildlife habitat protection initiatives undertaken by conservation groups, municipalities, landowners and other actors. Habitat Stewardship Program grants have funded many of the kinds of activities involved in peri-urban woodland protection, including conservation agreements with landowners, infrastructure development (e.g. trails, signs and fences), educational cam-

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(1999) 9 J.E.L.P. 31; Karen Beazley and Robert Boardman, eds., *Politics of the Wild: Canada and Endangered Species* (Don Mills, Ont.: Oxford University Press, 2001).

79 See e.g., Colin Rankin and Michael M'Gonigle, "Legislation for Biological Diversity: A Review and Proposal for British Columbia" (1991) 25 U.B.C. L. Rev. 277; P.S. Elder, "Biological Diversity and Alberta Law" (1996) 34 Alta. L. Rev. 293.

80 *Species At Risk Act*, S.C. 2002, c. 29 [SARA]. The bulk of the Act came into force June 5, 2003, but the prohibition and enforcement provisions came into force June 1, 2004.

81 *State of Canada's Forests*, *supra* note 23 at 59; SARA, *ibid.* at ss. 10-11.

paigns, stakeholder consultation processes and development of habitat conservation plans.<sup>82</sup>

Given the paucity of federal funding for woodland protection efforts in Canada's urban fringe, this program may be one of the most promising federal initiatives in this area. It does, however, require proponents of peri-urban forest protection to define (or redefine) their proposals in terms of protecting critical habitat for endangered species. Unfortunately, not many peri-urban forest patches will meet the Program's eligibility criteria. Few of the woodlots, riparian forests, hedgerows, parks and other tree stands that make up Canada's peri-urban forest represent the kind of at-risk biodiversity hotspots and endangered species refuges at which the Habitat Stewardship Program is aimed. Moreover, the funds allocated to this program are modest, amounting to approximately \$5-10 million per year.

#### B. Landowner Compensation: A Double-Edged Sword

One of the least noted but most troubling provisions of SARA is one that authorizes the federal government to compensate private landowners if mandatory habitat protection measures reduce the value of their property.<sup>83</sup> The purpose of this provision is to compensate landowners for the private burdens of providing a "public" good and to avoid a situation where landowners have economic incentives to destroy wildlife habitat on their land rather than face costly habitat protection orders. To the extent that it encourages landowners to protect rather than destroy wildlife habitat, this provision ought to be welcomed by proponents of peri-urban forest protection. On the other hand, there are strong reasons to be wary of it.<sup>84</sup> First, it may be the thin end of a wedge: if there is an entitlement to compensation for mandatory wildlife habitat protection measures, why not for other government measures that affect property values, such as zoning or subdivision decisions, forestry or pollution regulations, or mandatory riparian buffer zones for farmland? Second, landowners' incentives to agree to voluntary stewardship arrangements might actually be reduced by the prospect of compensation for mandatory measures. Third, the compensation provision reflects and reinforces the erroneous assump-

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82 See generally Canadian Wildlife Service, *Habitat Stewardship Program*, available online at: <[http://www.cws-scf.ec.gc.ca/hsp-pih/default\\_e.cfm](http://www.cws-scf.ec.gc.ca/hsp-pih/default_e.cfm)> (last accessed July 5, 2004).

83 SARA, *supra* note 80 at s. 64.

84 See generally Stepan Wood, "The High Price of Habitat Protection" (2001) 27(3) *Alternatives: Environmental Thought, Policy and Action* 9.

tion that habitat protection measures necessarily reduce property value, when the opposite may often be true. It also reinforces a narrow conception of value that disregards the non-pecuniary values of wildlife habitat and biodiversity. Fourth, it would introduce a novel principle into our legal system, borrowed from American "regulatory takings" jurisprudence, that taxpayers ought to compensate individual property owners when the decisions of democratically elected governments have the effect of reducing the market value of their property yet fall short of expropriating or "sterilizing" the property altogether. Finally, local communities, through their municipal governments, are likely to bear a heavy share of the burden of a broadened right to compensation, since municipalities bear increasing responsibility to provide public goods and make decisions that affect property values, all too often without increased resources to pay for the cost of exercising these responsibilities. In short, SARA's landowner compensation provisions are a double-edged sword which municipalities and other proponents of peri-urban forest protection should regard with caution.

#### **(d) Land Securement and Ecological Gifts**

Another area of law and policy relevant to peri-urban woodland protection efforts concerns donation or sale of ecologically sensitive land by private landowners. Acquisition of property interests in privately owned forest land is an important tool for peri-urban forest protection. Such interests may sometimes be acquired by gift but often must be purchased at substantial cost. Forest stands are often lost or degraded because municipal governments and others who wish to protect them lack the funds to secure interests in such lands. One of the most important things senior governments can do to help local woodland protection is to provide financial support for the acquisition of interests in forest lands. The federal government has responded modestly to this challenge, focussing its attention on fiscal incentives for gifts of ecologically sensitive land.

Acquisition of ecologically sensitive land may involve transfer of outright title or the creation of a range of lesser interests such as leases or covenants. Government policies toward such transactions can have a significant impact on woodland protection efforts. In many cases government intervention is necessary to make such transactions feasible for recipients and attractive to landowners. Such intervention typically takes two forms: first, laws authorizing the creation of "conservation covenants," and second, fiscal incentives for gifts of land. The first falls within

provincial jurisdiction. Numerous provinces have enacted legislation enabling the creation of conservation covenants or similarly named interests in private land. Such legislation makes possible highly flexible, detailed, site-specific arrangements to protect ecological features of the land in perpetuity while allowing the landowner to retain ownership of the land and some key benefits of private ownership (*e.g.* certain beneficial uses, the right to exclude the general public and the ability to transfer the land by will), all without falling afoul of the well documented drawbacks of common law rules governing easements and covenants.<sup>85</sup> Conservation covenants are also attractive because they are cheaper than outright acquisition, they do not remove the land from local tax rolls, and it may be easier to persuade landowners to donate conservation covenants than outright title.

Second, both the federal and provincial governments offer fiscal incentives for donation of land for conservation purposes.<sup>86</sup> The federal government's "Ecogifts" program provides federal income tax incentives for gifts of ecologically sensitive lands.<sup>87</sup> The program was a response to a 1992 report which concluded that tax disincentives made it almost impossible to give away conservation lands.<sup>88</sup> In 1996 the federal government increased the maximum allowable deduction for charitable donations of ecologically significant lands from 20% to 100% of the donor's income in any single year.<sup>89</sup> While this change was welcome, many ob-

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- 85 See *e.g.*, *Conservation Land Act*, R.S.O. 1990, c. C.28; Arlene J. Kwasniak, "Facilitating Conservation: Private Conservancy Law Reform" (1993) 31 *Alta. L. Rev.* 607; Arlene J. Kwasniak, ed., *Private Conservancy: The Path to Law Reform* (Edmonton: Environmental Law Centre, 1994); Thea M. Silver *et al.*, *Canadian Legislation for Conservation Covenants, Easements and Servitudes: The Current Situation. Report No. 95-1* (Ottawa: North American Wetlands Conservation Council (Canada), 1995).
- 86 Several provinces offer property tax reductions or exemptions for environmentally sensitive lands or lands held by designated non-governmental conservation organizations. Ontario's Conservation Land Tax Incentive Program, for instance, provides a 100% property tax break for eligible lands, including provincially significant wetlands, provincially significant areas of natural and scientific interest, certain parts of the Niagara Escarpment, conservation lands held by non-profit conservation groups and designated endangered species habitat.
- 87 Information about the Ecogifts program is available online at <<http://www.cws-scf.ec.gc.ca/ecogifts>> (last accessed July 5, 2004).
- 88 See Marc Denhez, *You Can't Give It Away: Tax Aspects of Ecologically Sensitive Lands. Sustaining Wetlands Issues Paper Series No. 1992-4* (Ottawa: North American Wetlands Conservation Council (Canada), 1992).
- 89 Previously charitable donations of ecologically sensitive land to municipalities and registered charities were deductible against a maximum of 20% of the donor's annual income for the current year plus up to five additional years. Even with this five year rollover, many donors were unable to claim the full value of the gift.

servers believed that federal tax policy still made it too difficult to donate ecologically significant land. Conservation groups demanded that such gifts be exempted completely from capital gains tax, like gifts of Canadian cultural property.<sup>90</sup> Eventually the federal government met this demand half way, reducing the inclusion rate for capital gains on ecological gifts to one half of the usual inclusion rate.<sup>91</sup> Finally, to make ecogifts even more attractive, the federal government recently announced amendments to the *Income Tax Act* to allow "split-receipting," which allows a donor to receive consideration in return for an ecogift and still get a charitable tax receipt for the difference between the total value of the gift and the value of the consideration received.<sup>92</sup>

Ecological gifts must meet four criteria to be eligible for either the charitable deduction or the capital gains tax reduction. First, the land must be certified as "ecologically sensitive." Such land may include areas designated as such by government bodies, sites that have potential for enhanced ecological value as a result of their proximity to other significant land, lands zoned for biodiversity objectives, natural buffers around water bodies or wetlands, and sites that contribute to the maintenance of biodiversity or environmental heritage.<sup>93</sup> This list is substantially broader than the federal Habitat Stewardship Program's eligibility criteria and should give hope to many advocates of peri-urban forest protection. The categories of "potential for enhanced ecological value," "natural buffer" and "environmental heritage" may be particularly attractive for degraded peri-urban forest ecosystems which do not currently possess high or unique ecological value. Second, the gift must take the form of a donation of outright title or of a conservation easement where permitted by provincial or territorial legislation. Third, the gift must be made to a municipality,

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90 For the tax treatment of capital gains on gifts of Canadian cultural property see Canadian Revenue Agency, *Gifts and Income Tax* (Publication P113), available online at <<http://www.cra-arc.gc.ca/E/pub/tg/p113/README.html>> (last accessed July 5, 2004).

91 This brought ecological gifts into line with the treatment of capital gains on charitable gifts of Canadian securities. At the same time the government reduced the general inclusion rate for capital gains from 75% to 50%, decreasing the effective inclusion rate for ecological gifts to 25%. See *ibid*.

92 Canadian Wildlife Service, *Confirmation that Ecogifts are Eligible for Split-Receipting* (Ottawa: Environment Canada, 2004), available online at: <[http://www.cws-scf.ec.gc.ca/ecogifts/split\\_e.cfm](http://www.cws-scf.ec.gc.ca/ecogifts/split_e.cfm)> (last accessed July 5, 2004).

93 Canadian Wildlife Service, *Ecosensitivity Criteria*, available online at <[http://www.cws-scf.ec.gc.ca/ecogifts/eco\\_e.cfm](http://www.cws-scf.ec.gc.ca/ecogifts/eco_e.cfm)> (last accessed July 5, 2004). Ontario, Quebec, New Brunswick and Prince Edward Island also have their own ecosensitivity criteria which must be fulfilled before a property can be certified. *Ibid*.

charitable organization designated by the federal government<sup>94</sup> or Crown agency. Finally, the monetary value of the gift must be appraised by a qualified land appraiser and the appraised value must be certified by Environment Canada.

The federal Ecogifts program has been quite successful. From its inception in February 1995 to March 31, 2003, 325 ecological gifts received tax incentives under the program, covering more than 24,000 hectares and valued at over \$67 million.<sup>95</sup> Although it is not a centrally directed program for land conservation, the Ecogifts program can contribute to peri-urban forest protection. In a climate of continuing constraints on the funding and capacities of municipal governments and conservation authorities, private ecological gifts play a significant role in achieving land stewardship. Nonetheless the Ecogifts program has important limitations. First, it is reactive and decentralized, driven by the decisions of individual landowners. What we need are strategic, coordinated programs to foster peri-urban woodland protection. The federal government is uniquely positioned to take a leadership role in such efforts, coordinating cooperation among local and provincial governments and non-governmental interests. Second, the Ecogifts program may not provide sufficient incentives. Farmers, for instance, already have a \$500,000 lifetime capital gains exemption. A reduced inclusion rate for ecological gifts offers no incentive to those who will not use up this exemption, while farmers who will exceed the lifetime exemption (such as those in the urban fringe) face even stronger incentives to sell to developers. Third, woodland protection cannot rely on gifts alone. To ensure systematic protection of peri-urban woodlands, it will often be necessary to *purchase* legal interests in ecologically sensitive land. By allowing split-receipting, the Ecogifts program provides some incentives for such purchases, but there is still a need for proactive, direct federal funding programs for purchase of property interests in woodlands.

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94 There are more than 150 eligible charitable organizations, including several national conservation groups and dozens of provincial and local environmental groups and land trusts. Canadian Wildlife Service, *Eligible Environmental Charities*, <[http://www.cws-scf.ec.gc.ca/ecogifts/recip\\_e.cfm](http://www.cws-scf.ec.gc.ca/ecogifts/recip_e.cfm)> (last accessed July 5, 2004)

95 Canadian Wildlife Service, *The Ecological Gifts Program: Progress Report 1995-2003* (Ottawa: Environment Canada, 2003), available online at: <[http://www.cws-scf.ec.gc.ca/ecogifts/rpt95-03\\_e.cfm](http://www.cws-scf.ec.gc.ca/ecogifts/rpt95-03_e.cfm)> (last accessed July 5, 2004).

**(e) Climate Change**

Forests play a significant role in global climate change policy because they act as carbon sinks. In December, 1997, Canada signed the Kyoto Protocol to the 1992 United Nations Framework Convention on Climate Change.<sup>96</sup> Canada and other developed countries agreed to achieve specific greenhouse gas emission limits (in Canada's case, a reduction of 6% below 1990 levels by the first commitment period of 2008-2012). One of the main issues under the Kyoto Protocol is whether and how carbon sequestration by forests should be counted toward the achievement of greenhouse gas emission reduction targets.<sup>97</sup> Forest conservation and management have thus become important issues in climate change policy both domestically and internationally.

The federal government has devoted substantial attention and resources to climate change policy. It supports scientific research into climate change, development of new technologies, development of new transportation infrastructure, public education, and a range of on-the-ground greenhouse gas emission reduction projects. It has signalled its interest in playing a leading role in achieving greenhouse gas emission reductions, whether through voluntary action, regulation or market instruments (e.g. emissions trading).<sup>98</sup> It appears to be more willing to assume a leadership role in this area than on other forest-related issues. It has spent hundreds of millions of dollars in climate change funding initiatives. Nonetheless peri-urban forests have, as in other policy areas, largely slipped below the radar of federal climate change policy.

Numerous federal climate change policy initiatives are potentially relevant to forests. Among these, it is worth singling out four: the Climate Change Action Fund; the Green Municipal Funds; the Agriculture Policy Framework; and the proposed Greenhouse Gas Offsets System. The Climate Change Action Fund<sup>99</sup> was established in 1998 and is in its final

96 Kyoto Protocol to the United Nations Framework Convention on Climate Change, December 11, 1997, reprinted in U.N. Doc. FCCC/CP/1997/7/Add.1, available online at <<http://www.unfccc.de/resource/docs/convkp/kpeng.pdf>> (last accessed July 18, 2001).

97 For a discussion of these issues see e.g., Dayna Scott, "Carbon Sinks and the Preservation of Old-Growth Forests under the Kyoto Protocol" (2000) 10 J.E.L.P. 105; Tim Cadman, *The Kyoto Effect: How the Push for Carbon Sinks by Industry and Government has become a Driver for Deforestation*, report prepared for Greenpeace International and WWF (November 8, 2000), available online at: <[http://www.panda.org/downloads/climate\\_change/carbonsinks.rtf](http://www.panda.org/downloads/climate_change/carbonsinks.rtf)> (last accessed July 5, 2004).

98 See e.g., Government of Canada, *Climate Change Plan for Canada* (Ottawa: Government of Canada, 2002).

99 The Fund's web site is: <<http://www.climatechange.gc.ca/english/ccaf/>> (last accessed July 5, 2004).



year of operation. It administered a total budget of approximately \$350 million over its lifespan. While most of the projects funded by the Fund had nothing to do with peri-urban forests, at least one was potentially relevant: Partners for Climate Protection, a project of the Federation of Canadian Municipalities and the International Centre for Local Environmental Initiatives (ICLEI). The project encouraged greenhouse gas emission reductions in dozens of participating municipalities across Canada. Unfortunately, while the project was designed broadly enough to include afforestation and tree planting, the main thrust was on reducing emissions rather than enhancing carbon sinks. Furthermore, with the termination of the Fund in 2004 the federal government has shifted its attention to technology development, which has little direct relevance to peri-urban woodland protection.<sup>100</sup> In sum, the Climate Change Action Fund was a missed opportunity to support peri-urban forest protection.

The Green Municipal Funds, which consist of the Green Municipal Enabling Fund and the Green Municipal Investment Fund, were created in 2000 to support municipal climate change abatement efforts and have received \$250 million from the federal government. They provide grants and loans to projects that improve air, water or soil quality, protect the climate or promote the sustainable use of resources in participating municipalities, while improving the energy intensity or environmental effectiveness of municipal service delivery. Whereas eligible projects cover a wide range of topics including land use planning and watershed management, the Funds do not appear to have supported any projects aimed directly at tree planting or forest protection.<sup>101</sup>

The Agricultural Policy Framework is a joint federal-provincial-territorial framework agreement aimed at enhancing the profitability of the agriculture and agri-food sector.<sup>102</sup> Environment is one of five key elements of the Framework. The Framework's environmental goals are to reduce agricultural risks and provide benefits to Canada's water resources, soils, air and biodiversity.<sup>103</sup> Greenhouse gases, including carbon seques-

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100 The Technology Early Action Measures (TEAM) funding program was recently renewed for a five year term. Environment Canada, "Climate Change Action Fund," <<http://www.climatechange.gc.ca/english/ccaf/>> (last accessed July 5, 2004).

101 The only forest-related projects that have been supported are projects to generate energy from wood waste. See Federation of Canadian Municipalities, *Green Municipal Funds: Summary of Feasibility Study Grants and Projects 2000-2004* (Ottawa: Federation of Canadian Municipalities, 2004).

102 See Federal-Provincial-Territorial Framework Agreement on Agricultural and Agri-Food Policy for the Twenty-First Century, available online at: <<http://www.agr.gc.ca/cb/apf/>> (last accessed July 5, 2004)

103 Ibid. at para. 24.1.

tration by soils and trees, are a priority under air quality. Habitat availability is a priority under biodiversity. Both priorities are potentially relevant to peri-urban forests. The federal government's main initiative in this area is Greencover Canada, a five-year, \$110 million initiative to help farmers increase perennial cover on farmland.<sup>104</sup> The program pays farmers between \$45 and \$100 per acre for converting environmentally sensitive land to perennial cover. Such cover may include trees and shrubs, but the program emphasizes forage plants such as grasses and legumes, probably due to the cost of tree seedlings. The program also encourages shelterbelts, *i.e.* the planting of trees on farmland, but this component has yet to be implemented in any substantial way. So the program has room to encourage afforestation on peri-urban agricultural land, but this potential has not yet been realized.

Finally, the federal government is designing a Greenhouse Gas Offsets System which would encourage projects that increase carbon sinks in the agriculture and forest sectors.<sup>105</sup> Credits for such projects could be purchased and used by greenhouse gas emitters toward meeting their emission reduction targets. Unfortunately, peri-urban forests have been completely ignored in the planning of the offsets system. The entire focus has been on the commercial forestry sector. This is understandable, since small-scale peri-urban reforestation and afforestation projects are likely to be much more expensive than large-scale commercial tree plantations per unit of carbon sequestered. Nonetheless, it is unfortunate from the perspective of furthering peri-urban forest protection.

In summary, the federal government has thrown a great deal of money into climate change initiatives, but these initiatives have little to offer peri-urban forests. When it comes to forests and climate change, the federal government's main focus is on huge wilderness forest tracts and fast-growing, high-yield commercial plantations.<sup>106</sup> It is somewhat surprising that the connection between peri-urban woodlands and climate change abatement has not been made in federal policy. Peri-urban forests are, unfortunately, small fry in the climate change policy game. Nevertheless, some of the federal initiatives discussed above might be made to support peri-urban forest protection if applicants and program administrators are imaginative enough.

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104 See Agriculture and Agri-Food Canada, "Greencover Canada," available online at: <<http://www.agr.gc.ca/greencover-verdir>> (last accessed July 5, 2004).

105 See Climate Change Secretariat, "Designing a Greenhouse Gas Offsets System for Canada," available online at: <<http://www.climatechange.gc.ca/english/offsets>> (last accessed July 5, 2004).

106 See *e.g.*, *State of Canada's Forests*, *supra* note 23 at 60-61.

**(f) Sustainable Cities**

Finally, urban policy has obvious implications for peri-urban forests. What is not obvious is whether and how the federal government might use this policy area to foster or hinder peri-urban forest protection. At the international level, Agenda 21 calls on national governments to promote sustainable human settlements.<sup>107</sup> It also acknowledges the vital role of local governments in achieving sustainable development.<sup>108</sup> Agenda 21 declares that sound urban management is essential to ensure that urban sprawl does not expand resource degradation over an ever wider land area and increase development pressures on open space, agricultural/buffer lands, forests and ecologically sensitive areas.<sup>109</sup> Among other things, it calls on national governments, with the assistance of local authorities and nongovernmental organizations, to support integrated land-use planning approaches that reconcile development priorities with the need for green spaces and preserves, develop national frameworks and guidelines for environmentally sound urban development, develop policies and laws to protect ecologically sensitive areas from disruption by construction, and review urbanization processes and policies in order to assess the environmental impacts of growth.<sup>110</sup>

Many of these issues are, of course, primarily within provincial jurisdiction. The federal government has been loath, for instance, to tread on the provinces' toes in the area of land use planning. There is room, however, for federal initiative and leadership on urban environmental issues, including forest issues. The closest the federal government has come to the sort of integrated urban policy framework contemplated by Agenda 21 is the 2002 report of former Prime Minister Chretien's task force on urban issues, *Canada's Urban Strategy: A Blueprint for Action*.<sup>111</sup> The report says absolutely nothing, however, about forests, urban or peri-urban.

Cities have remained on the federal government's policy agenda. Prime Minister Paul Martin has given even greater priority to cities than his predecessor did, proclaiming a "New Deal for Communities" in his

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107 *Supra* note 42 at Chapter 7.

108 *Ibid.* at Chapter 28.

109 *Ibid.* at paras. 7.18 and 7.27.

110 *Ibid.* at paras. 7.16, 7.19, 7.30 and 7.69.

111 Prime Minister's Caucus Task Force on Urban Issues, *Canada's Urban Strategy: A Blueprint for Action* (Ottawa: Public Works and Government Services Canada, 2002).

2004 federal budget.<sup>112</sup> This New Deal involves GST relief, gasoline tax sharing, accelerated infrastructure funding, a parliamentary secretary for urban issues and an External Advisory Committee, but nothing indicates that peri-urban forests will receive any more federal attention in this New Deal than they did in the old. Furthermore, the 2004 budget did not put much priority on environmental protection and was received unfavourably by many environmental groups.<sup>113</sup>

On the other hand, the federal government's new-found commitment to cities, combined with its commitment to participate in the development of the national urban forest strategy, discussed earlier, might signal an opportunity to redirect federal attention and resources toward forest protection and enhancement in Canada's urban fringes. Sustainable cities represent a potentially fertile federal policy area, but one that remains largely untested from the perspective of peri-urban forest protection.

#### 4. CONCLUSION

It is time for the federal government to take seriously the challenge of protecting and enhancing beleaguered forests in Canada's urban fringe. Canada has made numerous international commitments with implications for peri-urban forests, even if those implications are seldom recognized explicitly. Its record on implementing these international commitments is spotty, exhibiting a tendency to "commit globally" and "delegate locally," to rephrase a well known environmental slogan. There is room for a more assertive federal role in peri-urban forest protection even if primary legislative authority over forest issues, urbanization and land use planning remains with the provinces.

As I have hinted throughout the paper, such an enhanced federal role should focus on three themes: national coordination, strategic leadership and substantially increased provision of resources, especially financial. The challenge for the newly elected Martin government, and the other political parties which might be in a position to influence the decisions of this minority government, is to reverse the past pattern of timidity and neglect in this policy area and forge a more ambitious role for the federal government in peri-urban forest protection. The promised national urban

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112 Department of Finance Canada, *The Budget Plan 2004: New Agenda for Achievement* (Ottawa: Department of Finance Canada, 2004) 165-174, available online at: <<http://www.fin.gc.ca/budtoce/2004/budliste.htm>> (last accessed July 5, 2004).

113 See e.g., Jeff Sallot, "Cleanup spending falls short, critics say," *Globe and Mail* (March 24, 2004) at A10.

forest strategy will be an important part of this process, but only one part. The federal government is uniquely positioned to coordinate national policy making on peri-urban forests, acting as a clearing house for scientific knowledge, practical experiences and best practices and as a facilitator of national dialogue. It is also uniquely positioned to exercise strategic leadership, exerting an upward influence on environmental, forestry and urbanization policies and practices by urging upward harmonization of provincial policies, exercising its own constitutional authority in this complex policy field, and empowering local governments, through funding and other support, to exceed provincial and federal environmental standards and become leaders in peri-urban forest protection. For the sake of Canada's "forgotten forests," let us hope that the Martin government is up to this challenge and that there are enough interested individuals and organizations to make sure that the government rises to it.