

APPENDIX A

The Impact of The Oldman River Decision on the Recommendations of the Committee's Study on the Division of Powers on Environmental Issues¹

INTRODUCTION

In a judgment handed down on 23 January 1992 in the case of *Friends of the Oldman River Society v. Canada*, the Supreme Court of Canada ruled that, under the terms of the federal Environment Assessment and Review Process Guidelines Order, the federal Minister of Transport was required to conduct an environmental impact assessment with respect to Alberta's Oldman River dam project.²

Apart from any impact this decision may have on the Oldman River dam project itself, it is significant because the Court, although divided eight to one on the actual disposition of the case, was unanimous in upholding the constitutional validity of the federal Guidelines Order (hereinafter the "Guidelines"). The Court also unanimously confirmed that the Guidelines were binding and mandatory in nature, such that, in all cases to which they applied, the federal government was legally obliged to comply with them and conduct an environmental impact assessment, as prescribed.

It should be stressed that the Court's ruling was largely confined to an analysis of the Guidelines in their existing form. These Guidelines, however, may soon be replaced by new measures. Indeed, Bill C-13, the Canadian Environmental Assessment Act, is currently before the House of Commons, at the stage of third reading. As the measures proposed in Bill C-13 differ materially from those contained in the Guidelines, not all of the Court's findings will therefore remain relevant, if this proposed legislation is enacted.

There are, however, at least two aspects of the judgment that are likely to retain their significance in the years to come and become the yardstick by which environmental initiatives are likely to be judged. The first has to do with the Court's liberal interpretation of what comprises the "environment" and "environmental quality". The second deals with the Court's assessment of how far each level of government can go in enacting measures relating to the environment, while still remaining faithful to the constitutional division of powers.

¹ This appendix was prepared by the Library of Parliament, at the request of the Committee. The Library compared the Oldman River decision with the Committee's written presentation to the Special Joint Committee on a Renewed Canada. References to pages in "the Committee's report" in this appendix are therefore references to page numbers in that presentation, not to the text of the present report *Environment and the Constitution*. However, references to Conclusions and Recommendations of the Committee have been changed to conform with the numbering used in *Environment and the Constitution*.

² Although acknowledging that the project was all but complete at this stage, the majority of the Court nevertheless felt that the Guidelines should be complied with, as there might still be time for mitigative measures to be taken to ameliorate any adverse environmental effects the dam might have on areas of federal jurisdiction. In an unusual move, the majority of the Court also awarded costs on a solicitor-client to the respondent Friends of the Oldman River Society.