

The Court rejected this argument, noting that the Guidelines cannot be used “as a colourable device to invade areas of provincial jurisdiction which are unconnected to the relevant heads of federal power.” (p. 72)

Under Recommendation 7, reference is made to the concern that the current constitutional division of powers causes frequent overlap and duplication of regulatory powers. It is unlikely that short of giving responsibility for the environment exclusively to one level of government or the other this can be constitutionally solved. It is a matter for negotiation and resolution at the political and administrative levels. The Oldman River decision appears to leave open the potential for some duplication and overlap, but it does not otherwise seem to affect the recommendation. As is also noted in the Report, joint or shared jurisdiction can also lead to complementary activities. The federal government is responsible for ensuring environmental assessments of areas of federal legislative power, and the provincial governments for those of provincial power.

The balance of the Committee’s recommendations pertain quite specifically to the federal government’s proposals for political renewal and do not appear to be adversely affected by the Oldman River decision. A number of points, however, can be made.

In Recommendation 8, which deals with the transfer or delegation of powers by the federal government to the provinces, the Committee notes that there is widespread doubt in the environmental community about the government’s commitment to a strong federal role in environmental issues. This involves fundamentally a political judgment; insofar as the Supreme Court’s decision strengthens Ottawa’s hand, by unequivocally stating that it has jurisdiction over the environmental aspects of federal legislative powers, it should assist the federal government in its discussions with the provinces.

Recommendation 9 deals with proposals on administrative and legislative delegation. The Oldman River decision would appear to provide authority for the federal government to assume jurisdiction over environmental aspects of its constitutional legislative powers. Thus, one could argue that even if such powers are delegated, the ultimate environmental responsibility remains with Ottawa.

Recommendation 12 involves the federal residual power, and argues that it is one of the basic foundations for federal action to protect the environment and promote sustainable development, while Recommendation 10 deals with the “declaratory power.” There does not appear to be anything in the Oldman River decision that would contradict these.

C. Conclusion

Mr. Justice La Forest says in his judgment: “It must be recognized that the environment is not an independent matter of legislation under the Constitution Act, 1867 and that it is a constitutionally abstruse matter which does not comfortably fit within the existing division of powers without considerable overlap and uncertainty. . . . [I]n exercising their respective legislative powers, both levels of government may affect the environment, either by acting or not acting.” (pp. 63-64)