

conversely, the provinces the power to deal with the environment insofar as provincial legislative powers are concerned. The description of the present jurisdictional responsibility remains accurate. (In the sense that the Supreme Court seems to find that the EARP Guidelines are supportable in part under the residual power to make laws for the peace, order and good government of Canada, the statement in the last paragraph on page 5 is strengthened.)

In Conclusion 3, the Committee urges cooperation among jurisdictions, rather than a new division of powers. It is stated that "practically every aspect of modern life has an environmental dimension," and this is certainly consistent with the Court's judgment. A comment is also made to the effect that "the need for a strong central authority . . . seems unarguable." The Oldman River decision, by upholding the federal government's power and responsibility to conduct environmental impact assessments regarding areas of federal jurisdiction (at least if a federal decision is involved), would appear to buttress this statement. The decision clarifies some of the uncertainty that previously existed in this area.

The Supreme Court decision does not remove or reduce any provincial jurisdiction or power over environmental matters. The decision in fact gives weight to the concept of shared or concurrent jurisdiction, and could provide further impetus for "mechanisms . . . to develop partnership and cooperation." Since the federal government is required (in certain cases) to become involved, there will be a desire to avoid duplication or overlap by establishing joint environmental assessments and other systems.

The Nova Scotia Minister of the Environment is quoted (p. 7): "Environment is not a line department function. . ." This is entirely consistent with the Oldman River judgment, in which the environment is seen as an overarching concern, that permeates all of the legislative heads of power, and is ancillary to them rather than being a distinct or separate one.

Conclusion 13 deals with public access and involvement. There is nothing in the decision that affects this. (If anything, by authorizing federal environmental assessments, the decision could permit greater public participation, but this is an indirect result.)

Recommendation 4 is an important one: it urges that the environment be regarded as an area of shared jurisdiction, in which concurrency and partnership are the appropriate and effective bases for governmental action. As noted above, there is nothing in the Supreme Court judgment that is inconsistent with this proposal, and, in fact, the decision may provide additional support for such an approach. If the decision had rejected the idea of a federal role in such projects as the Oldman River dam, this would have weakened Ottawa's claims in environmental matters, and diminished the potential for partnership. As it is, the federal government is now in a position to argue that it must be involved in environmental matters. Mr. Justice La Forest's view of the environment as a "diffuse subject" means that both the federal and provincial levels of government have responsibilities and should work together.

It is important to appreciate that the Oldman River decision does not emasculate provincial powers over the environment. As mentioned earlier, the Attorney General for Saskatchewan characterized the EARP Guidelines as a "Trojan horse," enabling the federal government to conduct a far-ranging inquiry into matters that are exclusively within provincial jurisdiction.