

## **PART II: IMPLICATIONS FOR THE RECOMMENDATIONS OF THE COMMITTEE ON THE DIVISION OF POWERS ON ENVIRONMENTAL ISSUES**

### ***A. General***

As the above discussion illustrates, the Supreme Court's decision will have major implications for environmental assessments, but it does not primarily or directly concern or impact on the division of legislative powers. The Committee's brief to the Special Joint Committee on a Renewed Canada focuses on this latter issue. Accordingly, it is not affected in any significant way by the judgment. Nevertheless, the following comments may be of some assistance to members of the Committee.

In paragraph 4, reference is made to Bill C-13, the Canadian Environmental Assessment Act. It is noted that in recent years "there has been disagreement about the respective roles of federal and provincial governments in regard to environmental assessments of major development proposals." The Oldman River decision is the classic example of this, and goes some way towards resolving the conflict.

The Committee also notes that "the prospect of new legislative arrangements explains why the Standing Committee did not, in its study and in its findings, focus on the issue of environmental assessment to the extent that it would have done in the absence of such legislation." As a result, the decision's impact insofar as the Committee's recommendations are concerned is also lessened.

It is possible that an additional comment could be added to the effect that the Committee's study was conducted and its recommendations made prior to the handing down of the Oldman River decision by the Supreme Court of Canada, and that the full implications of this decision have not yet been determined or incorporated into the report.

### ***B. Recommendations***

Conclusion 1 deals with the concept of sustainable development and is unaffected by the decision. (Since the Supreme Court adopted a very broad definition of "environment," this would appear, if anything, to support the Committee's position.)

Conclusion 2 states that the "present responsibility for the environment in Canada rests clearly with all levels of government." This point is developed in the commentary. Mr. Justice La Forest of the Supreme Court says the same thing: "I agree that the Constitution Act, 1867 has not assigned the matter of 'environment' sui generis to either the provinces or Parliament. The environment, as understood in its generic sense, encompasses the physical, economic and social environment touching several of the heads of power assigned to the respective levels of government." (p. 62) He also notes that the environment is a "diffuse subject."

The Oldman River decision supports the view that all levels of government have constitutional responsibility and authority for environmental issues. It gives the federal government the power to deal with the environmental aspects of federal powers, and,