

### *C. Constitutional Validity of the Guidelines*

The last issue decided by the Court was whether the Guidelines were so sweeping as to offend the provinces' exclusive areas of jurisdiction under section 92 and 92A of the Constitution Act, 1867.

In this regard, the province of Alberta argued that the Guidelines were overbroad, for they purported to give to the federal government general authority over the environment in such a way as to trench on the province's exclusive legislative domain. In the province's view, Parliament did not have the constitutional authority to regulate the environmental effects of matters largely within the control of a province; in particular, it was incompetent to deal with the environmental effects of provincial works such as the Oldman River dam. The province of Saskatchewan, in turn, characterized the Guidelines as a "constitutional Trojan Horse" that enabled the federal government, on the pretext of some narrow ground of federal jurisdiction, to conduct a far ranging inquiry into matters exclusively within provincial jurisdiction.

The Court was unanimous in upholding the constitutional validity of the Guidelines. Recognizing that the "environment" was not an independent matter of legislation assigned to either level of government under the Constitution Act, 1867, and describing it as an "abstruse" matter that did not comfortably fit within the existing division of powers without considerable overlap and uncertainty, the Court stated that, in its generic sense, the environment encompassed the "physical, economic and social environment" and touched several heads of power assigned to the respective levels of government.

It went on to hold that the solution to the problem was first to look at the catalogue of powers under the Constitution Act, 1867 and to consider how these might be employed to meet or avoid environmental concerns. When viewed in this manner, the Court stated, it could be seen that both levels of government, in the exercise of their respective legislative powers, could affect the environment, either by acting or not acting. It stressed, however, that while both levels of government could act in relation to the environment, the exercise of legislative power had to be linked to an appropriate head of power, adding that, since the nature of the various heads of power differed under the Constitution Act, 1867, the extent to which environmental concerns could be taken into account in the exercise of a power might vary from one power to the next.

In the Court's view, Alberta's effort to characterize a work, such as the Oldman River dam, as a "provincial project" or an undertaking "primarily subject to provincial regulation" was not particularly helpful in sorting out the respective levels of constitutional authority. What was important, the Court held, was to determine whether either level of government could legislate. While local projects would generally fall within provincial responsibility, federal participation could be required if, as in this case, the project impinged upon an area of federal jurisdiction. The Court further held that, in enacting legislation in a given area, it was sufficient that the legislative body legislate on that subject. The practical purpose that inspired the legislation and the implications this body had to consider in making its decision were another matter. Absent a colourable purpose or a lack of bona fides, the Court held that these considerations would not detract from the fundamental nature of the legislation.