

This paper is divided into two parts. The first part outlines some of the Supreme Court of Canada's key rulings in the Oldman River case. Since the existing Guidelines may soon be superseded, the emphasis in this part will be placed on the constitutional issues dealt with by the Court, rather than on those issues that are largely specific to the Guidelines. The second part discusses what implications this case may have with respect to the Committee's proposed recommendations, as set out in its report, *The Committee's Study of the Division of Powers on Environmental Issues*.

## **PART 1: THE COURT'S FINDINGS**

### ***A. The Statutory Validity of the Guidelines***

The Court first upheld the statutory validity of the Guidelines, and confirmed their binding and mandatory nature. It found that, despite their title, the Guidelines were not purely administrative directives, as contended by the government of Alberta. Rather, they had the force of law, and were enforceable as such in the courts, since under their enabling legislation—i.e., section 6 of the Department of the Environment Act—the Guidelines had to be formally enacted by “order”, with the approval of cabinet.

The Court also disagreed with Alberta's contention that, by calling for socio-economic considerations to be taken into consideration by the relevant decision makers, the Guidelines far exceeded the authority conferred under the above-noted Act to establish guidelines for the purposes of carrying out the Minister's duties related to “environmental quality”. Characterizing Alberta's interpretation of “environmental quality” as “unduly myopic,” since it was limited to biophysical elements alone, the Court emphasized that the “environment” was a diffuse subject-matter, and stated that, subject to the constitutional imperatives, consideration of such things as the potential consequences for a community's livelihood, health and other social matters engendered by environmental change was surely an integral part to decision-making on matters affecting environmental quality.

Finally, the Court was unconvinced by the argument advanced by both the federal government and the government of Alberta that, by requiring the decision maker to take environmental factors into consideration, the Guidelines were inconsistent with, and therefore had to yield to, the requirements set out under the Navigable Waters Protection Act, which were limited exclusively to considerations pertaining to marine navigation. In rejecting this argument, the Court held that the duties imposed under the Guidelines were not in any way in conflict with those prescribed under the Act. Rather, the former were to be regarded as supplemental to the latter, and the Minister could not escape his obligations under the Guidelines by resorting to an excessively narrow interpretation of the authority conferred upon him under the Act.

### ***B. Applicability of the Guidelines Order and Crown Immunity***

The second series of issues considered by the Court involved a determination on which projects or undertakings were in fact subject to the Guidelines, such as to “engage the process”, i.e., the environmental impact assessment and review process.