

CANADIAN ENVIRONMENTAL LAW

SECOND EDITION

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COMMENTARY

CASE DIGESTS

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QUEBEC CASE DIGESTS

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²*Friends of the Oldman River Society v. Canada (Minister of Transport)* (1992), 88 D.L.R. (4th) 1, [1992] 1 S.C.R. 3 at 63-65, 3 Admin. L. R. (2d) 1, 7 C.E.L.R. (N.S.) 1, [1992] 2 W.W.R. 193, 84 Alta. L. R. (2d) 129, 132 N.R. 321.

³*R. v. Hydro-Québec*, (1997), 151 D.L.R. (4th) 32 (S.C.C.).

⁴*R. v. Hydro-Québec*, (1997), 151 D.L.R. (4th) 32 at 93 (S.C.C.); *Friends of the Oldman River Society v. Canada (Minister of Transport)*, [1992] 1 S.C.R. 3 at 63-64.

⁵*R. v. Hydro-Québec*, (1997), 151 D.L.R. (4th) 32 at 94 (S.C.C.).

§3.6 Both levels of government lack some environmental management flexibility because of their inability to encroach upon the jurisdiction of the other.¹ While co-ordination between provincial and federal governments may be difficult to achieve politically, there is no serious constitutional impediment if both levels of government are in agreement on complementary legislation or administration of statutory schemes.

¹A number of very useful works may be found in the literature, particularly J. LeClair, "Aperçu des virtualité de la compétence fédérale en droit criminal dans la contexte de la protection de l'environnement" (1996), 27 R.G.D. 137; *Environmental Protection and the Canadian Constitution*, D. Tingley, ed. (Edmonton: Environmental Law Centre, 1987); F. Chevette, "Fédéralisme et protection de l'environnement," in *Le droit à la qualité, de l'environnement: un droit en devenir, un droit à définir*, sous la dir. de N. Duplé, (Montréal: Québec-Amérique, 1988); D. Gibson "Constitutional Jurisdiction over Environmental Management in Canada" (1973), 23 U.T.L.J. 54; G.V. La Forest, *Natural Resources and Public Property Under the Canadian Constitution* (University of Toronto Press, 1969); G.V. La Forest, *Water Law in Canada — The Atlantic Provinces* (Ottawa: Information Canada, 1973), Chapter 1, pp. 3-72; B. Laskin, "Jurisdictional Framework for Water Management" (1961), 1 Resources for Tomorrow 211.

§3.7 In *Friends of the Oldman River*, the jurisdiction of the federal government to conduct an assessment under the *Environmental Assessment and Review Process Guidelines Order* (EARPGO) was upheld. La Forest J., writing for the majority, held that environmental matters related to a matter within a head of power may be considered to be part of the jurisdiction under that power. The federal environmental assessment could thus be undertaken with respect to "matters directly related to the areas of federal responsibility affected."¹ Therefore, the federal government has jurisdiction to assess the environmental effects of aspects of the project related to a federal head of power, but cannot use an environmental assessment process as a colourable device to assess subjects within provincial jurisdiction.² While construction of dams is not within exclusive federal jurisdiction, the federal government can legislate with respect to the environmental effects of dam construction to the extent that the construction has effects on matters that fall under federal heads of power. The Oldman dam was a provincial work,