

The 1990 Alberta Metis Settlements Legislation: An Overview

by Letha MacLachlan*

INTRODUCTION

On November 1, 1990, an unprecedented event in the history of aboriginal-government relations took place quietly in Alberta. On that date, the provincial government granted fee simple ownership of lands, rights to management of the subsurface resources and local self-government in relation to those lands to 8 Metis Settlements. The transfer of 1,875 square miles of land was accompanied by a \$310 million financial commitment allocated over the next 17 years, and a package of legislation and agreements.

This represents the first time in Canada that the Metis people have ever been granted ownership over lands on a collective basis. It is also the first time a provincial government has taken the initiative to issue such rights to aboriginal peoples, a role which up until now has been

the exclusive domain of the federal government, pursuant to s.91(24) of the *Constitution Act, 1867*, which grants exclusive legislative authority over "Indians and Lands reserved for the Indians" to the Parliament of Canada.

HISTORY OF THE METIS PEOPLE IN ALBERTA

Despite its inclusion in s.35(2) of the *Constitution Act, 1982*, the term "Metis" has not been defined nationally.¹ The first definition to be found in legislation was in the 1938 *Metis Population Betterment Act* of Alberta which defined Metis as "persons of mixed white and Indian blood".² That was later amended to persons with a minimum of one quarter Indian blood who are not status or treaty Indians as defined by the *Indian Act*.³ During the late 1800s when the Crown was entering into treaties with Indians, it was also seeking to extinguish any aboriginal title which Metis people might have had. Depending on their lifestyle, individual Metis were offered treaties "if they lived like Indians" or scrip if they "live[d] as the white men do".⁴ "Scrip" is a certificate providing the holder with the right to receive payment (usually later) in the form of cash, goods or land. Acceptance of or

"taking" scrip was intended to extinguish aboriginal title. In the case of the Metis, scrip was redeemable for land or money. However, due to a variety of factors, it proved dismally inadequate as a mechanism for providing self-sufficiency for the Metis, and by the turn of the century, most Metis were impoverished and without a land base.

Résumé

Le 1^{er} novembre 1990, un événement innovateur et sans précédent dans l'histoire des relations entre les autochtones et le gouvernement s'est produit tranquillement en Alberta.

Ce jour-là, le gouvernement provincial a accordé à huit (8) colonies métis la propriété en fief simple de certaines terres, des droits de gestion des ressources souterraines et l'autonomie locale par rapport à ces terres. Au transfert de 1 875 miles carrés de terres, s'ajoutaient un engagement financier de 310 millions de dollars répartis sur une période de 17 ans ainsi qu'un ensemble de lois et de conventions.

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In 1932 the Metis Association of Alberta (now more commonly known as the Metis Nation) was formed to pursue requests for assistance "in obtaining land, education, medical care and free hunting and fishing permits".⁵ In 1934 the Alberta legislature took its first step in assuming responsibility for the well-being of the Metis by appointing the Ewing Commission to inquire into "the problems of health, education and general welfare of the half-breed population of the Province".⁶ Although invited to participate in this inquiry, the federal government refused, stating "all half-breeds are citizens and do not come under the Department of Indian Affairs or any other federal Department".⁷

In 1938, following the recommendations of the Ewing Commission, *The Metis Population Betterment Act* was passed and lands were set aside by the Alberta Crown for the use of 12 Metis Settlements (over time, 4 Settlements reverted to the Province). The Act allowed for the establishment of Settlement Associations, each of which was authorized to formulate a constitution and by-laws prescribing conditions of and qualifications for membership in the Settlement Association, and to elect a Board to work with the provincial Minister in improving the socio-economic conditions of the Metis on the Settlements.

In 1968 a representative action on behalf of the Metis Settlements was commenced in the Alberta Supreme Court against the Province of Alberta.⁸ It sought a declaration that monies received from the sale and lease of petroleum and natural gas rights under Metis Settlement lands, as well as the fees and royalties therefrom, be paid to the Metis Population Betterment Trust Fund account rather than into the general revenue fund of the province.

The Metis alleged that, pursuant to the *Metis Population Betterment Act*, R.S.A. 1942 (as amended in 1955), they were entitled to the monies and benefits from resources extracted and developed on lands set aside for their own well being. Although the court ruled in favour of the Province, the case turned on technicalities. Justice Riley commented that he was reluctant to grant the motion applied for by the Crown and chastised the executive and administrative branches of government for defying the rule of law and all principles of equity and fairness. He also clearly stated that if the plaintiffs could properly bring the matter before the courts, then "this decision does not fetter them in any way and is without prejudice to their rights to do so".⁹

This ruling, and subsequent legal actions, clearly had an impact on the bureaucrats, because in 1984 a joint Metis/Government body, the MacEwan Commission, was struck by the provincial legislature to examine potential revisions to the Act in order to provide greater autonomy to Settlement members. As a result of their recommendations, in 1985 the legislature endorsed a Resolution to Amend the *Alberta Act* to constitutionally entrench the Settlement Lands. This was followed by the Alberta-Metis Settlements Accord, signed by the Province and the Metis on July 1, 1989. The Accord anticipated the four statutes proclaimed on November 1, 1990 which provide the Metis with a secure land base, a structured financial package, and local government structures flexible enough to allow for the unique nature and needs of the Settlements as well as the more conventional aspects of municipal law.

THE LEGISLATIVE PACKAGE

On November 1, 1990, fee simple title to 1.25 million acres of land

was transferred from the Crown in Right of Alberta to the Metis Settlements General Council by way of Letters Patent. At the same time, four statutes which had been introduced in the legislature in the spring of 1990 were proclaimed: the *Metis Settlements Land Protection Act*¹⁰, the *Metis Settlements Act*¹¹, the *Metis Settlements Accord Implementation Act*¹² and the *Constitution of Alberta Amendment Act, 1990*¹³. Finally, a Co-Management Agreement providing the framework for the development of mineral resources under the Settlements was signed between the provincial Minister of Energy and representatives of the Metis Settlements.

The lands transferred to the Metis Settlements General Council are in a block surrounding and including each of eight Metis Settlements: Paddle Prairie, Peavine, Gift Lake, East Prairie, Buffalo Lake, Kikino, Elizabeth and Fishing Lake. The first four Settlements are in the northwest of the province near High Prairie. The remaining four are in the east central area near St. Paul and Lac la Biche. The Province retains a right of management with respect to roads, specified fixtures and improvements, subsurface ownership and royalties from the disposition of those mineral rights. Existing interests and rights to subsurface resources will not be disturbed or affected per se. However, access to and removal of those resources, as well as provisions for compensation and socio-economic benefits packages, are now covered by the new legislation.

(a) Corporate Framework - *Metis Settlements Act*

The overall framework created by the legislative package includes the creation of a number of corporate and administrative entities. There is one Settlement Council for each of the 8

Settlements. It consists of 5 elected councillors and represents the eligible members of the particular Settlement. Additionally, there is the General Council, a corporation composed of the councillors of all the Settlement Councils plus four elected officers. A Metis Settlements Appeals Tribunal is also established, to resolve a wide range of appeals and references. *The Metis Settlements Act* sets out the rules and procedures governing the activities of each body.

Each Settlement Council has conventional powers of local government including the power to make municipal type by-laws throughout the patented lands occupied by its Settlement. It can impose development levies to help pay for provision of Settlement or other services or facilities to a development or subdivision.¹⁴ It also has authority to make decisions regarding its own membership and land allocation. All such decisions must be consistent with existing legislation and General Council Policies.

The General Council may make Policies in matters affecting the collective interests of Settlements. These Policies must receive varying degrees of approval by all eight Settlement Councils. In the case of Policies affecting Metis land, timber or subsurface rights, financial matters, commercial activities, or amendments to the legislation, approval must be unanimous. Approval of only six Settlement Councils is required in relation to Policies affecting membership, procedural requirements, land use planning and rights of non members residing on Settlement lands. Both levels of policy are subject to a veto by the Minister.

And why must General Council Policies be subject to the veto power of the Minister? Like a by-law or regulation, a General

Council Policy has the force of law, and if there is a conflict between an approved Policy and the Act or "any other enactment, the Policy prevails". The General Council is obliged to publish every Policy and every amendment or repeal of a Policy in the Alberta Gazette.

The Metis Settlements Appeal Tribunal must hear all appeals and references required by legislation, by-law or General Council Policy. It may also hear and decide a wide range of disputes between and among Settlement members, Settlement Councils, and the General Council as may be brought before them in writing by the affected parties. The Tribunal is to be composed of not less than seven members, consisting of three appointees of each of the General Council and of the Minister, and the remainder by mutual consent. The Chairman may strike panels of no less than three from time to time, but weighting of their composition varies depending on the nature of the deliberation before the panel. If the matter is related primarily to membership, the majority of panellists must be Ministerial appointees. However, the majority of panellists must be General Council appointees if the dispute concerns allocation of land.

Two panels of the Tribunal are permanently established by legislation: the Land Access Panel and the Existing Leases Land Access Panel. Their role is related solely to issuing Rights of Entry Orders, where applicable, to subsurface rights holders and Compensation Orders for damages incurred by the surface owner.

(b) Land Management - *Metis Settlements Land Protection Act*

Title to the Metis Settlements lands was issued to the General Council by way of Letters Patent.

Confirmation of this grant in fee simple, as well as the constraints on disposition of these lands, is set out in the Letters Patent and the *Metis Settlements Land Protection Act*. These "patented lands" can not be expropriated, used as security, or subjected to seizure. Nor can they be alienated except with the consent of the Crown, the General Council, a majority of the Settlement members of all the settlements and a majority of the Settlement members of the settlement in which the land is to be alienated. Even though title to the subsurface remains with the provincial Crown, no person can enter onto these lands to explore, work or develop minerals without the consent of the affected Settlement Council and the General Council, in accordance with provisions of the Co-Management Agreement.

The rights and procedures for approval of disposition of subsurface rights and proposed development activities on patented lands are contained in the Co-Management Agreement (Schedule 3 to the *Metis Settlements Act*). The Co-Management Agreement provides the Metis with the right to prevent and control mineral exploration and development activity on patented lands to ensure compatibility with Metis land use priorities. It also provides them with certain economic development rights in relation to development of those subsurface resources.

The Agreement provides the Metis Settlement Access Committee (MSAC) of the affected Metis Settlement with powers to deny the disposition of any mineral rights on patented lands or to set the terms and conditions for any such disposition. Those terms and conditions can relate to:

- environmental, socio-cultural and land use impacts;
- employment and business opportunities; and
- overriding royalties, participation options or both, which are to be reserved to the General Council.

If the MSAC approves the disposition and the terms of the Notice of Public Offering, involvement by the Metis shifts to the General Council and the Affected Settlement Council. They have the power to reject bids which do not meet terms and conditions of the MSAC, to approve the bids which do get awarded by the Minister of Energy, to negotiate with the successful bidder for a royalty override, and to negotiate for up to a 25% equity participation in all future petroleum and natural gas agreements. With respect to subsurface resources other than oil and gas, the General Council also reserves the right to negotiate participation on a case-by-case basis with the Province.

The procedures for issuance of entry rights to the patented lands to existing mineral lease holders and operators are set out in the *Metis Settlement Act*. The jurisdiction which was formerly exercised by the Surface Rights Board is replaced by the Existing Leases Land Access Panel or, in the case of an operator, the Land Access Panel, for the purpose of adjudicating disputes in relation to terms of entry and compensation.

(c) Implementation - *Metis Settlements Accord Implementation Act*

One of the pieces of legislation in the package is devoted solely to creating a temporary mechanism to oversee the orderly and effective implementation of the Accord. The *Metis Settlements Accord Implementation Act* establishes a number of entities designed to have a seven-year

life span. The Metis Settlements Transition Commission (MSTC) is established as a corporation composed of the Transition Authority. It is composed of three people: one appointee from the provincial Cabinet, one from the General Council and the "Commissioner", a person who is appointed by the Cabinet at the recommendation of the other two appointees. The role of the Authority is similar to that of a Board of Directors: monitoring the performance of the Commissioner and the Commission. A Metis Settlements Transition Fund is also established by way of this Act.

The role of the Commissioner is all-encompassing. (S)he is to facilitate achievement of the Act's purposes and the Accord's objects by initiating, organizing and administering the development of policies, programs, services and structures of the General Council and Settlement councils. (S)he receives and disperses all funds from the Provincial Treasury and is responsible for management and control of financial affairs of the Settlements excepting preparation of their budget by-laws. (S)he must take direction from the General Council regarding the collective local government interests of Settlement councils and submit an annual activity report, inclusive of an audited financial statement of Commission funds, to the General Council and the Minister, who must in turn lay a copy of the report before the Legislative Assembly.

The Commissioner is an employee and chief executive officer of the Commission. (S)he is responsible for the Commission's activities and has control over its organization, administration, management, staff and staff activities. (S)he must also ensure that its administrative practices are consistent with

General Council Policies. (S)he is responsible through the Transition Authority, to both the Minister and the General Council. The Commission itself is the professional and administrative resource organized by the Commissioner to assist him/her in overseeing the establishment and development of structures and systems for local government of the Settlements in accordance with principles set out in the Act. The Commission has a fixed life of seven years and is to be dissolved on May 31, 1997 unless otherwise directed by way of Proclamation mutually agreed to by the Minister and the General Council.

This same Act sets out the schedule of payments to be paid from the Province to the Commissioner for capital projects, operations and maintenance, annual grants to each Settlement and a future developments fund. It amounts to a \$310 million financial package over the next 17 year period, after which the Alberta government hopes that "the Settlements will have developed economically to the point where they will function financially in the same way as other local governments."¹⁵ This Act also states that all legal actions initiated by the Metis to date are stayed and that the actions and claims made in them, as well as any which might arise in future in relation to the *Metis Betterment Act* or in "respect of trust or fiduciary obligations of the Crown in right of Alberta", are extinguished.¹⁶

(d) Constitutional Amendment - *Constitution of Alberta Amendment Act, 1990*

The last piece of legislation in the package confirms the details of the land grant in the Alberta Constitution until such time as it is protected by the Constitution of Canada. The *Constitution of Alberta Amendment Act, 1990*

affirms the nature and constraints associated with the fee simple title of the Metis as well as any amendments to the legislation protecting those lands¹⁷. It also confirms that the provincial laws of general application and the jurisdiction of the provincial legislature still apply to Metis lands.

COMMENTS

This is not the first time the Alberta government has seized the jurisdiction to transfer title of provincial Crown lands to Metis people¹⁸, but Alberta is certainly the only province to have done so to date. Linked with limited self-government provisions and rights to control subsurface development, this appears a remarkably progressive and healing step in light of this summer's events at Oka.

However, the Alberta government is careful not to link this initiative to aboriginal claims of the Metis; rather it asserts that it is rooted in the legal actions and long standing negotiations to "usher in a new era of self determination and autonomy to the Settlements and bring the Settlements into the mosaic of local government in Alberta".¹⁹

Indeed, it would appear that based on a strict reading of s.91(24) of the *Constitution Act, 1982* and the *Dominion Lands Act*²⁰ a province would be precluded from "satisfying any claims existing in connection with the extinguishment of the Indian title preferred by half-breeds resident in the Northwest Territories outside of the limits of Manitoba".²¹ Nonetheless, Alberta had by 1938 paved the way for the full and formal transfer of land ownership and self-government rights under the *Metis Population Betterment Act* — rights which were then entrenched in the 1982 amendments to the Canadian Constitution by way of Section 35.

This new package consists of provisions which are significantly similar to those in other aboriginal claims except that the Metis have not been provided with ownership of the subsurface. They have, however, been provided with a right that may prove more potent and more compatible with their aspirations — control over the rate and pace of subsurface development through the power to reject access altogether or to set the terms and conditions of that access. They will not be forced, as are other aboriginal people currently negotiating comprehensive claims with the federal government, to select acres of subsurface lands underlying biologically or traditionally sensitive areas as the only means available to protect traditional, social and economic well being.

This new package creates certainty of land tenure, rights to self government, right to domestic and commercial fishing, control over access to the subsurface of the transferred lands, economic opportunities and financial support to implement these rights for the 4,000 to 5,000 Metis resident in these communities. Within the Province of Alberta it is not the only endeavour aimed at enhancing the social, economic and political self-sufficiency of Metis people. Progress is also being made on implementing a Framework Agreement²² designed to facilitate improved delivery of provincial programs to approximately 60,000 Metis people residing "off-settlement". Both of these provincial initiatives are progressive; however, the legislative package establishing the Metis Settlements clearly represents a refreshing and meaningful development to which the Canadian government should be paying heed.

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Notes

1. The Canadian Charter of Rights and Freedoms as contained in Schedule B to the *Constitution Act, 1982* states
35.(1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.
(2) In this Act, "aboriginal peoples of Canada" includes the Indian, Inuit and Metis peoples of Canada".
2. *The Metis Population Betterment Act*, S.A. 1938 (2nd Sess.), c.6, s.2(a).
3. R.S.A. 1980, c. M-14, s.1(b).
4. C. Mair and R. MacFarlane, *Through the MacKenzie Basin* (Briggs undated) at 24. See also J. Sawchuk, P. Sawchuk and T. Ferguson, *Metis Land Rights in Alberta: A Political History*, Edmonton: Metis Association of Alberta, 1981.
5. *Metis Land Rights in Alberta: A Political History*, *id.*, at 188.
6. *Id.*, at 190.
7. *Id.*
8. *Poitras et al v. Attorney-General for Alberta* (1969), 68 WWR 224.
9. *Id.*, at 239.
10. S.A. 1990, c. M-14.8.
11. S.A. 1990, c. M-14.3
12. S.A. 1990, c.M-14.5
13. S.A. 1990, c.C-22.2
14. The Provincial Cabinet may limit the maximum amount of off-site levies by way of regulation.
15. November 1, 1990 Government of Alberta News Release.
16. Sections 50, 51.
17. The Act prohibits expropriation of the fee simple estate in Metis settlement land (s.3) and restricts the Legislative Assembly from passing any Bill that would amend or repeal the *Metis Settlement Land Protection Act* (s.5(a)).
18. May, 1973, The Grand Cache Land Settlement, Chapter 7, *supra*, note 3, at 215-241.
19. *Supra*, note 15.
20. 1879, 42 Victoria, c.31 and 1883, 46 Victoria c.17.
21. *Id.*, ss.125 and 81 respectively.
22. "Metis Association/Province of Alberta Framework Agreement" between Her Majesty the Queen in Right of the Province of Alberta and the Metis Association of Alberta, signed the 21st day of December, 1988.

Environmental Jurisdiction under the Australian Constitution

by Sheila McAllister

Introduction

Australia is a federal state and, consequently, has constitutional problems similar to Canada with respect to the allocation of jurisdiction for environmental matters. As in Canada, there is currently a very live question as to whether the existing division of powers in Australia appropriately protects the environment, and whether a constitutional amendment is required to give the Commonwealth government specific powers with respect to the environment. It is symbolically appropriate to consider these matters in 1991, as the Australian legal community is reviewing the decade-long process that resulted in the Constitution of the Commonwealth of Australia, which came into force on 1 January 1901.

For present purposes, the Australian Constitution, in s.51, sets out the relevant legislative powers of the Commonwealth: The Parliament shall, subject to this Constitution, have power to make laws for the peace, order, and good government of the Commonwealth with respect to: [and a list of 40 specific powers follows].

Powers not specifically allocated to the Commonwealth remain with the State legislatures as a single corpus of power; no list of specific State powers is provided. There are some heads of s.51 that are exclusive to the Commonwealth (e.g., s.51(iv), borrowing money on the public credit of the Commonwealth). Otherwise, the powers are concurrent with the State powers over the same matters, subject, however, to s.109, which provides that, "When a law of a State is inconsistent with a law of the Commonwealth, the latter shall prevail, and the

former shall, to the extent of the inconsistency, be invalid." Given this constitutional context, reasons suggested for why the Commonwealth government should not legislate on the environment include: no specific power with respect to the environment is given to the national government; the States retain a single corpus of land use legislation, which includes the power to legislate on any environmental matter within their boundaries; and the States are the ultimate owners of land within their boundaries.

Constitutional Principles of Interpretation

Some general principles have been used to interpret Constitutional grants of power in Australia:

1. The Australian Constitution, like the Canadian one, is not frozen, and the s.51 power to legislate for the peace, order, and good government of the nation is to be interpreted as unfolding with changing circumstances.
2. Powers are conferred broadly, "with respect to" certain persons or fields of activity and, as such, they cast a wide net. "With respect to" is interpreted to be broad and flexible, encompassing peripheral areas and requiring only an indirect and minimal connection to the stated subject matter. It is the widest grant of legislative power which can be conferred.
3. Commonwealth powers are generally not purposive; that is, the character of a law is determined solely by reference to legal rights and duties, and

not by reference to its practical effect (e.g., the power to tax can be used to break up large land holdings).

4. A law may have many characteristics, but as long as even one insignificant

Résumé

En tant qu'état fédéral, l'Australie a des problèmes constitutionnels semblables à ceux du Canada eu égard à la répartition des compétences en matière environnementale. L'article 51 de la Constitution australienne autorise le gouvernement du Commonwealth à légiférer relativement aux échanges et au commerce avec d'autres pays et entre états. Le gouvernement du Commonwealth peut ainsi imposer à toute exportation de produits des conditions relatives, par exemple, à l'utilisation durable des terres. De même, le Commonwealth peut légiférer à l'égard des sociétés étrangères et des sociétés commerciales et financières (a. 51(29)).

Historiquement, en matière d'environnement, le gouvernement du Commonwealth, comme le gouvernement fédéral canadien, considérait que son rôle consistait à établir un consensus; ce rôle devra peut-être devenir plus agressivement directeur. Ce n'est toutefois que si le gouvernement du Commonwealth, en utilisant pleinement ses pouvoirs actuels, était encore incapable de protéger suffisamment l'environnement, qu'il faudrait envisager de modifier la Constitution, étant donné les dangers associés à une démarche aussi sérieuse.

characteristic is within jurisdiction ("within power"), the law will be validly enacted; the Commonwealth was thus able to enact a law prohibiting a trading corporation (within power) from building a dam (not within power, but not prohibited).

5. There exists, in s.96, a power to make grants to the States on conditions, the exercise of which the High Court is loathe to interfere with.
6. The Commonwealth can legislate within its heads of power to "cover a field", and this power includes the ability to legislate that there will be no law in a given field.

Existing Powers With Respect to the Environment

Before determining whether an Australian constitutional amendment with respect to the environment is required, it is appropriate to review the existing powers of the Commonwealth to legislate in this area. Section 51(i) gives the central government the power to legislate "with respect to ... Trade and commerce with other countries and among the States." In the *Noarlunga Meat*¹ case, Commonwealth public health regulations governing abattoirs in Australia which slaughter animals for the export market were held to be within the scope of s.51(i). These regulations were not direct controls on overseas trade and commerce, but they had a relation to that head of power, and although incidental, it was sufficient to bring them within federal jurisdiction — within power. Similarly, the Commonwealth government could make any export of produce or minerals conditional upon, for example, the sustainable development of the land from which the produce or minerals come, and such regulation could be valid to cover

activities taking place wholly within Australia.

Parliament also has power to make laws with respect to foreign corporations and trading or financial corporations formed within the limits of the Commonwealth (s.51(xx)). The power is broadly construed; the Tasmanian Hydro-Electric Commission was found to be a trading corporation, carrying out development for the purpose of its trading activities, even at the stage of undertaking preparatory work to construct a dam to provide electrical energy for sale. As a result of this wide test of validity, the Commonwealth could regulate such corporations in all respects including the environmental respect².

The tax power in s.51(ii) cannot be used to prohibit activities, but it can be used to tax them (as a disincentive) or to provide tax deductions (as an incentive).

Parliament has power to make laws with respect to external affairs (s.51(xxix)). This is a purposive power; the law will certainly be valid if it is conducive to fulfilling some international obligation. For example, Australia is a signatory state to the *Convention for the Protection of the World Cultural and Natural Heritage 1972*, and enacted legislation, in combination with regulations, which designated part of the Tasmanian wilderness area as a World Heritage Site. Subsequently, when it was proposed to construct a hydroelectric dam in the area - normally a matter totally within State jurisdiction - the Commonwealth was able to prohibit the construction pursuant to its legislation implementing the Convention³. The majority of the Court held that Australia's acceptance of an international obligation was sufficient to support the Commonwealth power

to enact implementing domestic legislation. The test of the law is whether it conforms to the provisions of the international obligations, but such conformity is only required to be "reasonably appropriate" or "reasonably conclusive" with respect to the main purpose of the convention. However, the treaty must not be a sham — an artificial device designed to gain power for the Commonwealth.

The Commonwealth also has the power of the purse. It can grant money under s. 96 on any conditions it thinks fit; as this power is almost entirely non-justiciable, the Commonwealth has virtually unlimited constitutional power to use its funds to influence the environmental and land-use policies of the States.

In sum, then, the Commonwealth has a range of existing authority to legislate to protect the environment. Furthermore, the consequence of these powers and the above principles of interpretation is that a constitutional power "with respect to" the protection of the environment might result in a Commonwealth law which sets lower emission standards for industry than State laws. It would override State law because of the inconsistency. Therefore, if the Commonwealth government can adequately protect the environment by the effective use of its existing powers, this would be preferable to an approach based on amending the Constitution.

Effective Use of Existing Powers

Historically, the Commonwealth government's approach to environmental issues, like that of the Canadian federal government, has been and still is largely one of consultation, co-operation, and

consensus-building with the seven State and Territorial governments. Such a process is time-consuming and, in view of the pressing needs and global nature of current environmental concerns, the Commonwealth government may need to act more aggressively to develop and institute an Australian-wide regime of environmental management, protection, and regulation. Only if the Commonwealth government is fully using its existing powers, however, and is still unable to protect the environment adequately should the serious step of a constitutional amendment be considered, in view of the attendant dangers that it will be used by a pro-development government.

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Notes

1. *O'Sullivan v. Noarlunga Meat Ltd.* (1954) 92 C.L.R. 565.
2. *The Commonwealth v. State of Tasmania* (1983), 158 CLR 1.
3. *Id.*

5th Institute Conference on Natural Resources Law

The 5th Institute Conference on Natural Resources Law entitled "Growing Demands on a Shrinking Heritage: Managing Resource Use Conflicts" will be held in Ottawa on May 9-11, 1991. Programme information and registration forms are available in the enclosed Conference brochure.

Scholarship Winners

The Institute recently awarded five \$700 scholarships to University of Calgary Law students Ingrid Liepa, Scott Paul, Jane Sidnell, Terry Hutcheon and Susan Bocoock to attend the Fifth Institute Conference on Natural Resources Law.

Institute News

Owen Saunders presented a paper on the "Legal Aspects of International Diversions" at an International Symposium of Water Diversions and Pipelines in the Great Lakes Basin held in Waterloo on March 12, 1991.

IBA Seminar

Owen Saunders will be giving a paper on "Evolving North American Trade and Investment Arrangements - The Mexico Factor" at a seminar on **The Future of International Energy Markets**. Other speakers will include: Roland Priddle, Chairman of the National Energy Board, Canada; Peter Borre, President of Boston Energy Associates, David Jackson of Powergen, England; Leigh Hancher, Professor of Public Economic Law at Erasmus University Rotterdam; Alan Gottlieb, formerly Canadian Ambassador to Washington and other leading energy lawyers. Speakers will look particularly at the trading rules established under the General Agreement on Tariffs and Trade (GATT) and its incorporation into the Canada-US Free Trade Agreement and the rapid integration of European energy markets. They will discuss how evolving trading relationships - particularly those being discussed with Mexico - will affect energy trade in the 1990s.

The seminar, sponsored by the International Bar Association's Section on Energy and Natural Resources Law will be held in Montreal on June 3 and 4, 1991. For further information about the seminar, please contact Rowland Harrison, Ottawa (613) 234-4555 or Hilary Jennings, London (071) 629-1206. Programme and registration forms are available from Gillian Pilkington, SERL Administrator, IBA, 2 Harewood Place, London W1R 9HB, England Tel: (071) 629-1206. FAX: (071) 409 0456.

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