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Canadian/Australian Legal Perspectives

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Symposium Towards the 21st Century: Canadian/Australian Legal Perspectives

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Introduction

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Symposium Towards the 21st Century: Canadian/Australian Legal Perspectives

SYMPOSIUM TOWARDS THE 21ST CENTURY: CANADIAN/AUSTRALIAN LEGAL PERSPECTIVES

INTRODUCTION

Although occupying distinct geo-political positions, Australia and Canada are social, political, and economic systems with much in common. Each nation can claim an inheritance of Anglo-European legal and political institutions. Each nation has an economy moulded by a combination of free market and public regulatory forces. Each has a society that blends (none too smoothly) diverse ethnic groups—descendants of the indigenous inhabitants and of several centuries of European migration, and more recent arrivals from the developing nations. Each nation has adopted the federal system; Canada's variation is more diffused than Australia's relatively cohesive one.

At the end of the twentieth century, each nation is facing daunting challenges in its attempt to respond to the pressures generated by the new world order—to find a way to live within a global economy where: trade and investment move rapidly across national borders; opportunities for economic advancement appear to be limited to those nations that can lower labour costs; the environment is under acute stress but is treated as an asset to be traded against growth; human rights are similarly seen as a “problem” to be solved in the interests of economic development; and where a federal system's diffusion of political and economic forces appears to be a substantial weight to bear in international competition.

As Australia and Canada consider their positions in the emerging world economic order, this last consideration may be seen to transcend the other issues. Can a nation, whose political and economic institutions are formally divided between the national and the regional, respond creatively and effectively to the challenges of international investment and trade and respond in ways that ensure that critical social values are not at risk? How does a political system, constructed on the values of diffused power and the priority of regional over national

interests, pursue national goals and present cohesive policies in the negotiations required by the new world order?

In June 1991, leading scholars from Canada and Australia assembled in Toronto to review these issues. Under the auspices of the York University Centre for Public Law and Public Policy of Osgoode Hall Law School, and the Comparative Public Policy Research Unit of Monash University (now located at the Schools of Law at Deakin and Griffith universities), and sponsored by a Canada-Australia Bicentennial Fellowship, the conference featured twenty speakers from Canada and Australia—experts in human rights law, industrial relations, corporate and investment regulation, environmental law, taxation and revenue law, and federal studies. The diversity of viewpoints was provocative, but the process was instructive. At the end of the three days of debate and discussion, many of us were persuaded that the diversity between Canada and Australia was insignificant compared to the common structural problems, dynamic challenges, and competing interests confronting the two nations.

No doubt, the geographical location of Canada and its relationship with the North American superpower differentiate it from Australia, whose region is dominated by the vigorous East Asian economies. But the economic, political, and social values and structures of the two nations present many common features. For every example of challenge and response that can be drawn from the Canadian context there is a parallel example at the other end of the world—in Australia. Dominating the common features are the political structures, Canada's confederation and Australia's federation: the systems which divide political and economic powers between national and regional political institutions.

The rapidly changing international context demands prompt, realistic, and cohesive policy responses to the pressures generated by international investment, trade, and communications. Those responses arise in the areas of industrial relations, the rights of indigenous peoples, women's interests, protection of the environment and ecology, corporate and investment regulation, and revenue collection. But effective responses are severely handicapped by the federal diffusion of authority, nurtured by "provincialists" in Canada and "states' righters" in Australia. Processes of negotiation and compromise between autonomous national and regional governments may, from time to time, produce realistic and functional policies, which integrate with and respond to the demands of international economic forces. Much of the Australian and Canadian experience, however, demonstrates that

federal structures are imperfectly adapted to the process of anticipating and responding to international pressures.

The nature of the challenges posed by the new world order, the commonality of the economic and social pressures, and the similarities in the designs of the political structures are such that Canada and Australia can only learn from each other's experiments, successes, and failures. In the interest of that learning process, the principal papers from the conference are published here.

The conference was organized and managed by the York University Centre for Public Law and Public Policy of Osgoode Hall Law School. Particular mention should be made of the efforts of the Centre's staff—Denise Boissoneau, Nicola Cunningham, and Glyde Hone—in ensuring the success of the event. Financial support was provided by the Government of Canada through its Canada-Australia Bicentennial Fellowship, the Social Sciences and Humanities Research Council, and Osgoode Hall Law School. Finally, we would like to thank the editors of the *Osgoode Hall Law Journal*, who have patiently nursed the papers through their transition from conference presentations to journal articles.

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