Resources
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Recent Developments Affecting Canada Lands

Introduction

Over the past decade, much of Canada's attention has focused upon energy developments in the Arctic and the offshore. Until recently, various federal government policies encouraged petroleum exploration on these federal lands. The relatively rapid pace of exploration in the frontier areas meant that activities were conducted pursuant to a legal regime that was incomplete, immature, and untested. This state of affairs created many problems for petroleum operators and others affected by frontier exploration activities.

It is somewhat ironic that, as this legal regime is becoming more complete, changing government policies and other factors (such as the world oil market) may contribute to a declining interest in the Canada lands. Nevertheless, this situation could provide an opportunity for legislators and policy-makers to fine-tune the Canada lands legal regime outside an atmosphere of pressure and haste.

In this issue of *Resources,* two new legal developments concerning the Canada lands are examined. These articles form part of the Institute's ongoing research into petroleum activities on federal lands. Institute researcher Christian Yoder looks at the recently-announced Eastcoast Fishermen's Compensation Policy, and considers its effect upon existing legal arrangements. Toronto law professor Paul Emond expresses his views about several policy issues raised by the Atlantic Accord, entered into between the federal and Newfoundland governments in February 1985.

Eastcoast Fishermen's Compensation Policy

by Christian Yoder

In November 1984, the Offshore Operators Division (OOD) of the Canadian Petroleum Association, in conjunction with major eastcoast fishermen's groups, announced the implementation of a Fishermen's Compensation Policy (FCP). The notion of establishing a voluntary compensation plan had been raised at an Institute-sponsored workshop in May of 1983, and representatives of the fishing and oil industry have been discussing the matter since. Various types of fishermen's compensation schemes are found in other offshore jurisdictions; the OOD's action marks the first implementation of a Canadian scheme. The policy is reviewed below.

The Practical Problem

Eastcoast fishermen suspend various equipment in the ocean. Gill nets, longlines, and traps – both for fish and lobsters – are used, depending on the area and season. Often, the only indication of the presence of these underwater devices is a small marker buoy. This equipment can be damaged in a number of ways by the technology used in offshore oil and gas operations. Nets and lines can be damaged by vessel traffic, as well as by underwater fixtures such as capped wells, pipelines, or discarded drilling equipment. In addition, oil spills can damage equipment and interrupt operations.

From an economic point of view, the damage falls into two broad categories. First is the loss of or damage to equipment. This is a relatively tangible category. Here, questions of compensation usually revolve around the establishment of fair market value and depreciation. The second category is less easily quantifiable. It is described as loss of fishing, which includes loss of income (or fishing time) and loss of access (drilling units have 500 m safety zones which fishermen cannot enter and there has been speculation that fish may tend to cluster around the legs of drilling units). Quantification of this type of loss has involved the use of a number of concepts such as "gross income", "net days lost or down time", and "expected value".

Quantifiable damage is the first half of a basis for compensation. The other half is an identified compensator. It is often difficult for fishermen to establish who caused the damage. The discovery of damage

The opinions presented are those of the authors and do not necessarily reflect the views of the Institute.

may not be immediate. Moreover, if it was caused by underwater debris, it may be difficult or impossible to identify either the debris or the party responsible for it. The difficulty of pointing to a specific culprit makes achievement of compensation through the legal system problematic. The Fishermen's Compensation Policy seeks to address this problem.

The Legal Backdrop

The common law does not provide fishermen with a viable means for obtaining compensation for losses they suffer at the hands of the oil industry. Parliament has not yet extended domestic jurisdiction with respect to the law of torts to offshore oil and gas operations. The practical ramification of this fact is that if fishermen wish to use the common law of negligence, they may be faced with a jurisdictional argument based upon the premise that the situs of the alleged tort is outside the court's jurisdiction. While the problem might be circumvented by characterizing the incident as a maritime tort, this could lead to the difficulty of serving ship owners in foreign jurisdictions. Regardless of whether domestic or admiralty jurisdiction were established, proving negligence would be a difficult and, no doubt, expensive proposition.

The *Oil and Gas Production and Conservation Act,* R.S.C. 1970, c.O-4 as am. (OGPCA) and the *Canada Shipping Act,* R.S.C. 1970, c.S-9 as am., Part XX (CSA), provide statutory avenues to compensation. However, for reasons given below, the compensation schemes provided by these statutes, like the common law, do not offer satisfactory solutions for the average fisherman whose business is affected adversely by offshore oil and gas operations.

Oil and Gas Production and Conservation Act

The OGPCA provides two routes to compensation – one judicial, the other administrative. Either route gives a claimant a better toe-hold than the common law from which to acquire compensation.

The judicial avenue avoids any jurisdiction argument based on the premise that the alleged tort occurred outside the court's common law jurisdiction, since the OGPCA explicitly extends (for purposes related to the statute) domestic judicial jurisdiction to the offshore area [s.2,s.19.2(3)]. Further advantages are created by the OGPCA. It imposes absolute liability. It establishes a broad ambit for recovery by defining "actual loss" to include loss of income, including future income. These positive aspects, however, do not completely resolve a prospective claimant's difficulties. The Act requires that damage be attributed to someone. And the Act's definition of "debris" precludes recovery for losses resulting from authorized seabed fixtures such as capped wells, pipelines, and pipeline-related installations.

The Act's second route to compensation – the administrative one – requires the claimant to divine how the following subsections of s.19.3 of the OGPCA might be implemented by the Canada Oil and Gas Lands Administration (COGLA), the administrative arm of the federal departments of Energy, Mines and Resources and of Indian and Northern Affairs in oil and gas matters:

> 19.3 (2) The Minister may require that moneys in an amount not exceeding the amount prescribed by the regulations for any case or class of cases or determined by the Minister in the absence of regulations, be paid out of the funds available under the letter of credit, guarantee or indemnity bond or other form of financial responsibility provided pursuant to subsection (1), in respect of any claim for which proceedings may be instituted under section 19.2, whether or not such proceedings have been instituted.
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> (3) Where payment is required under subsection (2), it shall be made in such manner, subject to such conditions and procedures and to or for the benefit of such persons or classes of persons as may be prescribed by the regulations for any case or class of cases, or as may be required by the Minister in the absence of regulations.

Regulations have not been made to provide details of this prospective compensation scheme; neither have guidelines establishing procedures been issued.

Although the procedures and criteria for applying to COGLA are obscured by the mists of Ministerial discretion, there is one clear condition of any such application: the claim must be one that could be brought before the court pursuant to s.19.2. The critical implication of this fact is the loss must be attributable.

Canada Shipping Act, Part XX

The compensation regime provided by the OGPCA is available to fishermen who suffer losses as the result of incidents that occur in the relatively stationary, industrial phase of offshore operations. Part XX of the CSA establishes a compensation scheme for losses arising from a later phase of oil and gas operations, namely, the transportation of oil by tankers. The scheme is known as the Maritime Pollution Claims Fund (MPCF).

From the fisherman's standpoint, the positive aspects of the MPCF are that proof of fault or negligence is not required, that loss of income is potentially recoverable, and that there is the possibility of recovering compensation for unattributable losses. The negative aspects of the regime are more numerous. It only covers losses related to oil pollution. Losses related to debris are not compensable. Unlike the OGPCA with its choice of judicial or administrative routes, the MPCF necessarily involves court proceedings. The Fund compensates for unpaid judgments rendered pursuant to Part XX claims. It pays the difference between any damage that may be judicially determined and the amount to which the shipowner is able to limit his liability under the provisions of Part XX. Part XX also requires a claimant to take reasonable measures to attribute the loss to a specific ship owner. (Ship owners, especially ones with assets, can be difficult to find in oil pollution litigation.) To a fisherman, these factors spell time and expense.

These statutory routes to compensation are uncertain and potentially time-consuming. Nevertheless, they

improve upon the common law. However, what a fisherman really wants from a compensation scheme is quick, fair payment, for all reasonable losses arising from unattributable damage, without procedural complexity. Neither of the statutory regimes provides such a solution. The Fishermen's Compensation Policy is a voluntary attempt by the OOD to do so.

The Policy

The Policy's operating rules and procedures have been formalized in a twenty-one page document with three appendices. There are at least three points of interest. First, the administrative framework established is flexible and informal. Second, no attempt is made to set parameters on the difficult concept of "unattributable damage". Third, though not itself a binding contract, the Policy purports to alter the legal rights of fishermen.

Administrative Framework

The nature of eastcoast fishing practice apparently suggested that compensation matters could best be dealt with by an administrative structure comprising an umbrella management committee with responsibility (exercised through the offices of an appointed chairman) for overseeing the granting of compensation by three small, regional boards. The management committee is to consist of representatives of the major eastcoast fishermen's organizations and the OOD. This committee will appoint a person to be the chairman of all three regional boards. Each board will have two additional members, one appointed by the OOD and the other by the fishermen's organizations.

Claims arising from incidents in waters lying landward of the baseline from which the territorial sea is measured (inland waters), and which involve vessels of less than 100 ft. length, will be assigned by the chairman to either the Newfoundland Inshore Board or the Maritime Inshore Board. Claims arising from incidents involving vessels of more than 100 ft. length will be referred to the Atlantic Offshore Board. The chairman will have unfettered discretion in determining which board will handle a particular claim. This discretion might have to be exercised in relation to incidents involving small vessels beyond inland waters.

The claims process is to be relatively short. A claimant must report the incident giving rise to the claim to a federal fisheries officer, a provincial fisheries field representative or a Newfoundland Justice of the Peace no later than the fifth day following discovery of the damage. These people are to forward promptly any such reports to the chairman. In addition, the claimant must file a claim form with the chairman within seven days of the discovery of the damage. The claim form requests as much information about the incident as can reasonably be provided, including the identification of the debris and photographic evidence. The Board is to assess the claim within two weeks (with the option of taking a further two weeks if necessary) and then issue compensation. The Board is to give written reasons for its determination.

The seven day filing deadline referred to above may be difficult to meet where a fisherman thinks he knows who caused the loss. In such a situation, he is required first to submit his claim to the suspected party. Only if it is rejected (within a mandatory five-day period falling within the seven-day time frame) may he submit it to the Board. Implications of this factor will be discussed below.

The Policy contemplates compensation for losses related to equipment and to loss of catch. Compensation is not available for loss of access, though this topic is at present the subject of further discussions between oil and fishing industry officials. The Policy does not state the size of the compensation fund nor how it is to be constituted and replenished. Reference to an "annual budget" suggests that the OOD contemplates a specifically-sized fund. Because the fund is voluntary, fishermen might like to know whether there is any limit to the OOD's potential contribution to very large claims.

Unattributable Losses

The Policy is flawed by the fact that the very category of loss that it purports to cover – unattributable damage – is not defined. Instead of defining "unattributable", the Policy defines "attributable damage" ("damage for which the responsible party can be identified readily") thereby raising a presumption that unattributable damage is to be a residual category by which "left-over" damage is to be caught. Although this presumption is raised by the peculiar way in which the Policy's target is left undefined, it does not reflect the OOD's intention. There are two aspects of the Policy – one explicit, the other implicit – that suggest that unattributable damage is meant to have fairly specific parameters. The Policy explicitly precludes recovery for oil spill-related losses. This narrows unattributability to debris and vessel-related losses. Furthermore, the Policy implicitly assumes that there will be a link between the petroleum industry and the loss. The OOD does not intend to cover unattributable damage arising from naval, fishing, and traditional shipping activities, not to mention iceberg movements. These implicit limitations to the concept of unattributable damage should be identified explicitly in the Policy.

Having failed to define clearly the ambit of coverage, it is not surprising that the Policy's procedures are also vague. They do not provide clear answers to the critical questions of who will determine the issue of attributability versus nonattributability, and with what criteria they will work. The onus of establishing attributability is initially on the fisherman. He must approach a suspected operator within five days, to obtain either an acknowledgement or denial of responsibility. An operator may be reluctant to admit responsibility for two reasons. First, his prospects before a court or COGLA might be jeopardized, should efforts at settlement fail. Second, if responsibility could reasonably be denied, the claim would be paid out of the Policy's fund and not out of the operator's pocket.

If an operator denies responsibility, the fisherman may return to the Board. The Board, however, is apparently powerless to determine that an operator was right or wrong in denying responsibility. The Board is left with the question of whether to compensate or not, in the

absence of public criteria and presumptions.

The slipperiness of unattributability could have been reduced in several ways. It could have been defined with greater precision. The Board could have been empowered to determine the issue, thus saving the fisherman from being caught between the Board and a suspected operator. And finally, the linkage of damage to petroleum-related activities could have been dealt with openly by giving the Boards the responsibility to define geographical areas – such as drilling areas and supply vessel routes – in which a rebuttable presumption of oil industry causation would operate.

It is interesting to contrast this compensation scheme with one that applies in certain American waters. There, regulations permit a fisherman to raise a rebuttable presumption of oil industry causation with respect to losses in prescribed waters. (See Federal Register, Vol. 47, No. 211 at 49601.)

Legal Characterization of Policy

A threshold question of interest to lawyers is: does the Policy document represent an enforceable agreement between the parties, or is it a gratuitous declaration of intent on the part of the OOD?

Although its language and form suggest that it might be a contract, there is little in the substance of the document to support such a conclusion. It has always been assumed by the parties concerned that the plan was to be voluntary. Signatures do not appear at the end of the Policy's body of terms. Rather, signatures of various representatives are affixed to a "Memorandum of Understanding" which is itself appended to the Policy document. The Memorandum merely states that the parties "agree that the Fishermen's Compensation Policy reflects the desire of our two industries to maintain an harmonious co-existence." Furthermore, the Policy provides for unilateral termination by the OOD. These factors, plus the fact that the OOD and fishermen's groups probably do not have the authority to bind their respective constituents, lead to the conclusion that the Policy is merely a declaration of the OOD's good intention.

This conclusion is not surprising. It reflects the desire of the OOD to voluntarily compensate fishermen. Voluntariness implies the lack of contractual obligation. What is surprising and puzzling is language in the Policy that purports to affect the legal rights of fishermen. Examples of such terms are:

- a declaration that a claimant who accepts an award from the Board must discontinue any concurrent court proceedings and waive the right to future action;
- a declaration that a fisherman who accepts an award from the Board must submit any subsequently -discovered evidence to the Board before instigating legal proceedings; and
- a declaration that all negotiations conducted and evidence disclosed with respect to a claim shall be "without prejudice and inadmissible adverse to the interests of the disclosing party in any court action."

Fishermen cannot have their legal rights determined by a gratuitous declaration of intention. Either they are party to a binding agreement in which they agree to forego certain rights, or they are free of such constraints.

This language clouds the Policy's voluntary nature. It suggests that the parties have agreed to bind themselves contractually – which they clearly have not. The OOD is merely telling fishermen that it will compensate them in spite of the fact that it could not be compelled to do so. If a loss is truly unattributable, no litigation is possible and hence the terms about concurrent lawsuits, without -prejudice evidence and Board approval seem out of place.

If the Board compensates a claimant, it would be reasonable to expect the claimant to acknowledge receipt of the funds and to agree that the issue between himself and the Board has been settled. This could be done through the use of a specific settlement agreement incorporating details of the particular incident. But the Policy itself, as a voluntary expression of intention, cannot effectively determine the rights of fishermen *vis-à-vis* other parties – in particular, an oil company that a fisherman might want to sue. Given the considerable difficulties that litigation entails, it is highly unlikely that a fisherman who has received compensation will decide to sue. If, however, new evidence arose and he does, the receipt of compensation will be exposed in court – probably to the fisherman's detriment.

Conclusion

The Fishermen's Compensation Policy reflects a commendable sense of fair play on the part of the Offshore Operators Division. The Division is going to give money to people who could not get it otherwise. In so doing, the Division is entitiled to define the ambit of losses it is willing to cover. The emphasis of the Policy should be upon fair procedures and criteria for determining if a loss is truly unattributable – and therefore beyond legal redress. Unfortunately, the Policy is vague about determining unattributability, and confuses matters by purporting to limit fishermen's legal rights.

A Critical Evaluation of the Atlantic Accord

by D. Paul Emond
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The Atlantic Accord, entered into between the federal and Newfoundland governments in February 1985, has been praised as ushering in a new era of cooperative federalism in Canada, and as a cornerstone of national reconciliation. Notwithstanding this, it is suggested here that the agreement has come at high price, a price that will be paid by those who benefit least from the Accord and who must negotiate future federal-provincial agreements. Several concerns raised by the Accord are discussed below.

The Ownership Question

The ownership and management provisions of the Accord stand in sharp contrast to the legal position of the parties.

Both the Newfoundland Court of Appeal ((1983), 145 D.L.R. (3d) 9) and the Supreme Court of Canada ((1984), 5 D.L.R. (4th) 385) have ruled that Canada alone possesses proprietary and legislative authority over the continental shelf. The Accord gives aspects of both to Newfoundland. What principles, if any, determine the terms and conditions under which Canada may transfer property rights and legislative power to a province? This question invites consideration of the federal spending power, and perhaps even the public trust doctrine. The former suggests certain principles that restrict the extent to which the federal "largesse" may distort provincial priorities; the latter views government as trustee of public resources with an obligation to manage resources for the benefit of the public beneficiaries of the trust. Whether or not either analogy is helpful, Canadians have a right to know the principles under which their government is prepared to make deals such as the Atlantic Accord. It would be unfortunate if one principle existed for Newfoundlanders, and another for other Canadians.

Policy-Making and Dispute Resolution

A second point concerns the process by which offshore exploration and development policy is set. Clause 3 of the Accord establishes the Canada-Newfoundland Offshore Petroleum Board (the Board), and empowers it to make all decisions, and hence policy, relating to exploration, production and management of the offshore. The degree of Board independence in such a crucial area is most disconcerting. The Board is almost completely divorced from government policy. By clause 4, members of the Board may not be civil servants, and by clause 12 they are not to act as nominees of the government that appointed them. The Board's political accountability is limited to the tabling in the Legislature of its *Annual Report* and to the member reappointment process. Its functions parallel and may duplicate or conflict with government regulatory functions in other parts of the offshore. These characteristics and functions, and the fact that the Board will have a close, continuing relationship with the industry it regulates without the countervailing pressures of strong, clearly enunciated government policy, may make the Board more prone to adopting an "insider perspective", and embracing policies that reflect the needs of the regulated industry instead of the public.

Clause 12 of the Accord anticipates Board decision -making based on consensus. However, this does not guarantee that consensus will be reached. And, in the absence of consensus, the Accord lacks provisions to ensure that disputes are resolved in favour of either government policy or the public interest. If a majority of Board members is unable to agree upon a proposed course of action, the decision may be made by someone who is neither a government appointee nor a person acceptable to the other members of the Board. This result could arise because of the method set out in the Accord for selecting the chairman. Under clause 5, the chairman of the Board will be chosen by one nominee from each government. Failing agreement between the nominees, the Chief Justice of Newfoundland will select the chairman. The result is that, in the event of a deadlock between opposing viewpoints, a judicially-appointed, politically-unaccountable chairman could cast the deciding vote.

There is something seductive about a Board and a process that guarantees resolution of any dispute, even the most difficult and intractable. But this is false security. Disputes do not disappear simply because a non -governmental board has pronounced on them. To the extent that federal-provincial disputes reflect fundamentally different policy positions, it is almost inconceivable that either government would concede arbitral powers to an unaccountable board, chaired by someone who may be neither appointed by government nor acceptable to the government appointees. Indeed, it would be difficult to design a less satisfactory approach to the problem. The parties referred their ownership and jurisdictional dispute to an independent body for resolution, but neither side accepted the court decision on the matter. The Board is unlikely to have more success than the courts in relation to highly contentious issues.

Jurisdiction

Concerns can also be raised about the respective powers conferred on the Board and the provincial and federal Ministers, and about the relationship between them. Under clause 21, decisions are divided into 4 types: federal decisions, Newfoundland decisions, Board decisions subject to no ministerial review or directive, and Board decisions subject to ministerial review or directive. Federal decisions are those related to Canadianization policy, those made under legislation of general application, and those related to the application of federal taxes (clause 22). Newfoundland decisions are confined to the royalty regime and the occupational health and safety field (clauses 61 and 23). The Board holds the residual powers. It shall make all other decisions relating to the regulation and management of petroleum -related activities in the offshore (clause 24). Of these decisions, some are described as "fundamental" and hence subject to some degree of governmental input; the balance are subject to no review. Fundamental decisions are divided into two categories: those primarily affecting the pace and mode of exploration and the pace of production, and those primarily affecting the mode of development (clause 25). All fundamental decisions are transmitted to each government for its consideration and advice. If either or both governments disagree with the Board's decision and the governments are unable to reach agreement as to disposition of the matter within thirty days, then the decision is made by one of the governments pursuant to clause 26.

At this point the distinction between the two types of fundamental decisions becomes relevant. If the governments cannot agree, Board decisions affecting exploration and pace of production are approved by the federal Minister until self-sufficiency and security of supply are reached, after which time the provincial Minister will have the power to approve such decisions, subject to the federal government's authority over exports. Board decisions affecting the mode of development are approved by the provincial Minister, subject to a federal override if the decision unreasonably delays the attainment of self-sufficiency and security of supply (clause 26(b)). Thus, federal override powers are confined to those fundamental decisions that are made before

self-sufficiency and security of supply are reached. Once those objectives have been met, federal authority over fundamental decisions is limited to its ability to reach consensus. Self-sufficiency and security of supply are defined in clause 28; unreasonable delay is not defined. If the governments are unable to agree on the existence of either event, the issue will be decided by an arbitration panel. Under these circumstances, the final decision may be very far removed from *any* government policy, let alone the policy of the government having ownership of and jurisdiction over the offshore resources.

Equalization

Perhaps the most significant and potentially controversial clause of the Accord deals with Equalization Offset Payments. Here, the Accord expresses a policy that diverges sharply from past federal policy. Equalization payments, as originally conceived, were designed to achieve a rough parity among the provinces, or to ensure that the prosperity of one or more parts of the country was shared with the less affluent parts. Not only is this consistent with the principle that all Canadians are entitled to a minimum level of government services; it also helps to facilitate consensus on difficult issues. In other words, those provinces that do not benefit from a particular policy may derive some solace from the fact that there is a safety net below which provincial well-being will not fall. Under this principle, as petroleum revenue makes Newfoundland a "have" province, it would be expected to contribute its share of equalization payments.

This principle is apparently lost in the Accord, or at least so distorted that it may no longer apply. Under clause 39, the governments recognize that there should not be a dollar for dollar loss of equalization payments as a result of offshore revenues flowing to Newfoundland. Rather, as petroleum revenue grows and equalization payments fall, the federal government will make offset payments to Newfoundland equal to 90% of any decrease in the fiscal equalization payment to Newfoundland as compared with the previous year. The second aspect of the offset payments may be the most contentious. The Accord requires the federal government to make, in *addition* to the payments described above, offset payments *equivalent* to the loss in future equalization payments resulting from any future changes in the floor provisions of the equalization entitlements. Under this provision, Newfoundland is protected from legislative changes to equalization arrangements, thereby distorting the impact of the normal legislative process.

It is disturbing to consider how fragile the principle of equalization really is. When confronted with a determined province, the federal government seems prepared to sacrifice principles in return for agreement. The offset scheme sets a very unhappy precedent, both for future federal-provincial negotiations and for negotiations between governments and other Canadians.

Market Distortions

Another major concern with the Accord relates to its impact on the petroleum industry and other interests that may be affected by exploration and development. The Accord is structured to facilitate rapid development of the Newfoundland offshore. For example, it is in the Newfoundland government's interest to expedite exploration and development, reach self-sufficiency, and win approving authority over *all* fundamental decisions. Financial provisions in the Accord provide even stronger incentive for rapid development. Because Newfoundland has exclusive control over the mode of development, it will be able to determine what type of development takes place, thereby maximizing employment and economic benefits for Newfoundland. All of this may be to the detriment of the oil and gas industry, other provinces and the environment.

Conclusion

Offshore exploration activity is partly the result of massive federal subsidies. While costly, these expenditures have made good political and even economic sense. They have enabled us to learn more about the size and accessibility of frontier oil and gas. They have benefitted have-not provinces such as Newfoundland. They have also benefitted other Canadians, as owners of the frontier lands. How else can Canada justify paying such large subsidies for offshore exploration? One would have expected, therefore, that the federal government would be reluctant to give up almost all of the financial benefits that development of the Newfoundland offshore might bring.

The Atlantic Accord expresses the federal interest in the Newfoundland offshore in terms of national self-sufficiency, security of supply and, to a lesser extent, Canadianization of the industry. This seriously understates the federal interest. In the past, Canadian energy policy has reflected a multiplicity of interests, including conservation, environmental protection, economic development, regional disparity, and consumer price protection.

This apparent narrowing of federal policy interest would be less disturbing if the Accord provided for periodic review and mechanisms by which it could be adjusted. But, without Newfoundland's consent, that option is not available (clause 2(g)). Indeed, if Newfoundland achieves the requisite support from other provinces, clause 64 commits the federal government to introduce a mutually agreeable resolution into Parliament to constitutionally entrench the Accord. If that should happen, the Accord and the Board would be effectively insulated from any government review.

The Atlantic Accord offers an interesting approach to federal-provincial energy relations; however, it is an approach that should not be extended to other coastal provinces.

Canada Lands Project

The Institute recently commenced a three-year study of legal issues pertaining to petroleum activities on federal lands. The Project will be supervised by an Advisory Committee made up of representatives of the Project's sponsors. Currently the sponsors include: Canadian Superior Oil Ltd., Chevron Canada Resources Limited, Esso Resources Canada Limited, Gulf Canada Limited,

Home Oil Company Limited, Husky Oil Operations Ltd., Mobil Oil Canada, Ltd., Petro-Canada, and Suncor Inc.

The first meeting of the Advisory Committee was held in June.

The Project will involve the preparation of several working papers dealing with financing of offshore projects, environmental regulation on the Canada lands, the legal nature of Exploration Agreements, and liability of petroleum explorers. An additional study, which will examine the impact of the Inuvialuit settlement agreement on petroleum activities in the western Arctic, is being funded by the federal Department of Energy, Mines and Resources. Researchers for the Project include: Constance Hunt, Janet Keeping, and Christian Yoder of the Institute staff; Professor Rowland Harrison of the University of Ottawa law faculty; and Robert Nowack, a Calgary lawyer.

In addition to the preparation of the above papers, it is anticipated that the Institute will organize occasional seminars and workshops over the course of the Project.

CIRL Staff Changes

Ms. Enid Marion left the Institute in August, 1985, to pursue full-time legal studies at The University of Calgary. Ms. Theresa Goulet will be replacing her as Administrator/ Public Relations Officer. Theresa holds a B.A. from The University of Calgary, and is completing a Master's degree in Communications Studies. She recently presented results of her thesis research before the House of Commons Sub-Committee on the Revision of Copyright. She was President of The University of Calgary Students' Union in 1980-81, and has served on the University's Board of Governors. Theresa will be responsible for the overall promotion of the Institute, including the publication of *Resources,* as well as financial management and control.

Publications

The Assignment and Registration of Crown Mineral Interests, by N.D. Bankes. Working Paper 5. 1985. ISBN 0-919269-11-7. 126 p. $15.00

The subject of this paper is the registration of Crown mineral interests. This topic has drawn considerable attention as a result of the passage of the *Canada Oil and Gas Act* in 1981, and the recognition of the resulting need for a registry system pertaining to federal petroleum lands.

The first section examines the various types of registration systems that could be employed. Those discussed are registration of deeds, registration of charges, and registration of title. The second part of the paper analyzes the registry systems for Crown minerals utilized in Alberta and Australia. In relation to the former jurisdiction, the paper reviews the historical evolution of the system and pertinent jurisprudence, and underscores a number of still unresolved legal issues. In relation to Australia, the focus is upon the registry system of the *Petroleum (Submerged Lands) Act* of 1967. The paper reviews the effect of assignment of interests in the absence of approval and registration, the types of interests that may be registered, existing jurisprudence, and the effect of unregistered instruments on third parties with notice.

The third section is concerned with the *Canada Oil and Gas Act.* It reviews the two major interests available under the Act (exploration agreements and production licences), analyzing the legal nature of each. It also examines the transfer provisions found in 1983 regulations promulgated under the Act, and procedures for notification and approval of assignments. Interpretational difficulties posed by the current statutory provisions are described, and the effect of 1984 amendments to the Act are analyzed.

Finally, conclusions are offered.

Oil and Gas Conservation on Canada Lands, by Owen L. Anderson. Working Paper 7. 1985. ISBN 0-919269-16-8. 122 p. $15.00

This paper examines *Canada's Oil and Gas Production and Conservation Act,* which provides for the regulation of exploration, drilling, production, conservation, processing and transportation of oil and gas on Canada lands. Petroleum production from the Canada lands is still very limited, and thus there has been relatively little experience against which to assess the adequacy of this statute. Notwithstanding the sometimes necessarily speculative approach that the paper takes, it is intended to help illustrate both the strengths and weaknesses of the current regime.

The paper provides a brief review of the history and rationale for petroleum conservation laws. It examines the legislative history of the Act, raises some organizational issues, and reviews the statutory provisions pertaining to the currently dormant Oil and Gas Committee.

A major portion of the paper focuses upon the actual procedures for pursuing oil and gas conservation. These include the mechanisms for obtaining licences and orders, the prevention of waste, enhanced recovery, and pooling and unitization. The problematic new sections of the Act dealing with spills are examined in some detail. Brief reference is made to inquiries and appeal procedures, and to the role of conservation engineers. A list of the offences and penalties under the Act is provided.

The paper outlines a series of important conservation matters which are not addressed in the current Act. It concludes with a statement of five types of problems that ought to be resolved before oil and gas production on Canada lands escalates.

Public Disposition of Natural Resources, Essays from the First Banff Conference on Natural Resources Law, Banff, Alberta, April 12-15, 1983; Nigel Bankes and J. Owen Saunders, eds. ISBN 0-919269-14-1. 366 p. (hardcover) $45.00

Canadian Maritime Law and the Offshore: A Primer, by W. Wylie Spicer. Canadian

Continental Shelf Law 3; Working Paper 6. 1984. ISBN 0-919269-12-5. 65 p. $11.00

Fairness in Environmental and Social Impact Assessment Processes, Proceedings of a Seminar, The Banff Centre, February 1-3, 1983; Evangeline S. Case, Peter Z.R. Finkle and Alastair R. Lucas, eds. Proceedings 2. ISBN 0-919269-08-7. 125 p. $15.00

Canadian Electricity Exports: Legal and Regulatory Issues, by Alastair R. Lucas and J. Owen Saunders. Working Paper 3. 1983. ISBN 0-919269-09-5. 40 p. $7.50

The International Legal Context of Petroleum Operations in Canadian Arctic Waters, by Ian Townsend Gault. Canadian Continental Shelf Law 2; Working Paper 4. 1983. ISBN 0-919269-10-9. 76 p. $7.00

Acid Precipitation in North America: The Case for Transboundary Cooperation, by Douglas M. Johnston and Peter Finkle. 1983. ISBN 0-919269-02-8. 75 p. $8.00

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