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Jurisdictional Overlaps in Alberta Energy Regulation

by Janet Keeping

Across Canada consumer rates for many utility services are fixed by administrative tribunals. In Alberta gas, electricity and, at least for the present,[1] telephone rates are set by the Public Utilities Board (PUB). Generally, it is the job of the PUB to see that the utilities in the province do not charge "unjust" or "unreasonable" rates for their monopolistic provision of essential services.

One of the main elements of that task is to allow utilities to earn a return on only appropriate investments, and public utility theory provides an answer to the question - what is meant by "appropriate" here? The most common formulation of the standard is that the property on which a utility may earn a return, or profit, is that which is "used and useful" to the provision of utility services. In Alberta the requirement is statutorily imposed on decisions regarding electric utilities by s.82(1) of the *Public Utilities Board Act*[2] and, regarding gas utilities, by s.29(1) of the *Gas Utilities Act*.[3] Its precise wording in those statutes is that the PUB shall determine a return on the utility's property that is "used or required to be used to provide service to the public within Alberta".

The "used or required to be used" criterion is frequently invoked by the PUB in order to justify reducing the amount (called the "rate base") on which the utility seeks to have a return calculated. For example, this is the basis on which additions to utility property which are under construction are excluded from rate base. Where projects that are not yet completed cannot be employed in the provision of utility service, they do not fulfill the "used or required to be used" requirement.

But certain proposed applications of the criterion have proven controversial. The most spectacular of these have involved the expenditure of large sums on the construction of facilities approved not by the PUB but by another provincial tribunal, the Energy Resources Conservation Board (ERCB). For example, in a 1987 application for a rate increase Alberta Power Limited (APL) sought to have the costs of constructing the Sheerness I electricity generating plant included in rate base. The

Résumé

En Alberta, les nouvelles centrales électriques doivent être approuvées par la Energy Resources Conservation Board (Commission chargée de l'économie des ressources énergétiques). Toutefois, lorsqu'un service public cherche à couvrir les coûts d'une centrale additionnelle en imposant certains tarifs aux abonnés, il doit faire une demande à la Public Utilities Board (Commission des services publics). Cette juridiction partagée a créé certains problèmes.

Cet article soutient en conséquence que la Alberta Public Utilities Board (Commission des services publics de l'Alberta) devrait jouer un plus grand rôle en matière d'approbation des centrales électriques. Il est suggéré qu'un tribunal mixte, dans le style de la Gas Utilities Board (Commission des services publics de gaz), pourrait être le moyen d'atteindre cet objectif.

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ERCB had approved construction of the plant but intervenors argued that Sheerness I was not "used or required to be used". Evidence showed that there was significant excess capacity on the Alberta integrated system and as to the fact that Sheerness was already in use intervenors observed, for example, that "It is absurd ... to suggest that a 383 megawatt generating unit is demonstrated as being used or required to be used when use is transitory and as a 'voltage regulator' to ameliorate difficulties associated with lengthy transmission lines ...".[4] Although the PUB appears not to have been convinced that Sheerness met the criterion set out in s.82(1) of the *Public Utilities Board Act*, it allowed amounts expended on the project into rate base, and thus permitted Alberta Power to earn a return on them, with the justification that not to do so could lead to "additional future costs to customers".[5]

It is not unreasonable to view the inclusion of Sheerness costs in APL's rate base as a regulatory charade. The picture that emerges from the PUB's decision on the matter is disturbing for those who retain any measure of confidence in regulatory processes: although the PUB seems to have recognized that the additions to plant did not meet a statutory requirement applicable to additions to rate base, it nevertheless allowed the utility to earn a return on the amounts in question. In other words, consumer rates were impacted by the desire of utility shareholders to earn a return on an investment that was unnecessary to the provision of services to those consumers.

The Sheerness incident might have been left to history were it not for the fact that a virtually identical issue was recently before the Public Utilities Board. The latter case involved a proposal by Edmonton Power (EP) that the costs of constructing a new generating plant, Genesee II, be included in rate base and strong interventions suggesting that the plant's capacity is superfluous to Albertan needs for electricity and thus cannot be said to be "required to be used to provide service".[6]

The attempt to include Genesee II costs in rate base once again put the PUB in an untenable position. Section 82(1) of the *Public Utilities Board Act* confers a jurisdiction upon the Board which it is under a legal obligation to exercise. At the same time, the prior ERCB approval of the project made it almost impossible for the PUB to do its job. But is it important that circumstances make the exercise of this jurisdiction by the PUB difficult? In a word -- very. The central tenet of public utility rate regulation is that rates not be approved unless they are "just and reasonable". This standard almost assuredly will not be met unless regulators exercise control over the amounts on which utility shareholders will be permitted to earn a profit. Rates simply cannot be "just" or "reasonable", let alone both, where a component of them is attributable to expenditures that were unnecessary to the provision of service.

So how might this jurisdictional stand-off between the ERCB and PUB be remedied? One strategy might be adoption of a more relaxed interpretation of "used and required to be used". Two observations on this possibility are in order. First, the Public Utilities Board has shown a willingness in the past to apply the criterion with some flexibility. In 1982 APL sought ERCB approval for construction of an interconnection with the transmission system of Saskatchewan Power Corporation. The ERCB denied approval for the project but APL later sought inclusion in rate base of amounts spent in respect of the transmission tie. Although intervenors objected that investment in the project had not yielded assets useful to providing utility service, the PUB included them because it was not established that the utility had been imprudent in developing the proposal to the point where it was considered by the ERCB.[7]

Second, there are numerous examples from other jurisdictions where regulators have applied something less stringent than a full-blown "used and useful" or, as in Alberta, "used or required to be used" standard. In the absence of statutory direction on the point the former Quebec Electricity and Gas Board first adopted the "used and useful" requirement and then abandoned it in favour of a prudency test.[8] The 1988 statute establishing the Quebec Natural Gas Board does not impose the "used and useful" rule but instead requires the new tribunal to ensure that amounts are included in rate base only in respect of assets that are "useful" (utile) to the provision of service.[9] And there are examples from the United States where regulatory commissions have adopted a more flexible test, even though the relevant statutes require that to be included in rate base amounts must have been expended on "used and useful" assets.[10]

So there is considerable precedent for a liberalized approach to assessing the eligibility of assets for rate base. And no doubt there are many circumstances where something other than a rigid application of the "used and required to be used" criterion would be appropriate. The inclusion of APL's investment in the Saskatchewan Power transmission tie, which has already been discussed, might be one. But arguably neither the expenses associated with Sheerness I or Genesee II come within this category. The problem with amounts expended on those new facilities is not that they belong in rate base and s.82(1) of *Public Utilities Board Act* constitutes an overly restrictive barrier to their inclusion, but more basically that they do not belong in rate base at all.[11]

If facilities which were constructed ostensibly to provide utility service do not belong in rate base, then they should not have been approved in the first place. How, then, to narrow the gap between ERCB and PUB decision-making on these issues? A radical solution would be to narrow the gap by eliminating it, that is by combining the two boards into one. After all, most Canadian jurisdictions do not split the energy regulation that is to be carried out by tribunal between two bodies.[12] Thus, the Ontario Energy Board both issues

certificates of convenience and necessity to, and regulates the rates of, gas utilities in the province. The Nova Scotia Board of Commissioners of Public Utilities exercises both jurisdictions over electric utilities. The B.C. Utilities Commission fixes utility rates and plays a role in the approval of new facilities, although the latter is advisory only.

Nevertheless, objections can be made to a proposal to collapse the ERCB and PUB into one tribunal. First, the examples of combined boards in other provinces are perhaps inapposite. Of those mentioned in the above paragraph, only the Nova Scotia tribunal has a combined jurisdiction in respect of electricity. As already noted, the B.C. Utilities Commission does not have a full-blown approval power in respect of facilities, and in other jurisdictions (Manitoba, Ontario, Quebec, New Brunswick[13]) the electric utilities are either largely or totally exempt from regulation by tribunal.

Second, since energy regulation is a bigger job in Alberta than in other provinces, combining the PUB and the ERCB might concentrate too much power in one tribunal. Besides, the two boards have very different functions: the PUB is involved in the economic regulation of energy and the ERCB in the regulation of energy resource development. There are several points at which their jurisdictions are interwoven. For example, where the ERCB reduces the area over which an electric utility is to provide service it may also order that compensation be paid, say, by the utility which takes over that part of the service area. But where agreement on the amount of such compensation cannot be reached, it is the PUB, not the ERCB, which fixes the amount to be paid.[14] As long as the points at which the two boards' jurisdictions "collide" are recognized and there are appropriate[15] strategies in place for preventing, or keeping to a minimum, incompatible decisions of the two, there is probably nothing wrong with their remaining distinct.

Indeed, there may be a positive benefit from having two tribunals, as opposed to one, regulating energy in the province. Alberta's current approach arguably offers the consumer "two kicks at the cat": before the ERCB it can be argued that new generating facilities should not be built and before the PUB that, even if built, their costs should not be included in rate base. The decision-making process in other jurisdictions is also, and necessarily, two step. Where it is the same decision-maker at both stages it would seem more likely that amounts would eventually wind up in rate base and thus impact rates.[16] But the converse presupposes an Alberta PUB that is prepared to take the "heat" that a decision to exclude

such amounts would produce. While we may not have had such a tribunal in 1987, the PUB appears to have undergone a transformation: on February 15 it released a decision in which Genesee II costs are excluded from EP's rate base because they fail the "used and required to be used" test.[17]

What seems needed, then, is not the amalgamation of the ERCB and the PUB but a technique whereby the two can better work together on matters of common concern. In the context being discussed here, this would involve ensuring that the rate-regulator's perspective be better represented at the facilities approval stage, that is, before the ERCB. How might this be done?

It is beyond the scope of this brief article to examine this question in any comprehensive fashion but some observations can be made. For example, it is appropriate to note that the ERCB's authority to approve the construction and operation of power plants is subject to, amongst other limitations, the statutory requirement that the Minister of the Environment be involved in the process. Sections 9(3) and (5) of the *Hydro and Electric Energy Act* provide that

> Prior to the Board approving the construction and operation of the power plant, it shall refer the application to the Minister of the Environment for his approval of the application as it affects matters of the environment ... [and]
>
> The Minister of the Environment may give his approval with or without conditions, but when conditions are imposed, the Board shall, if it approves the construction and operation of the power plant, make its order subject to the same conditions imposed by the Minister of the Environment when he gave his approval.

It has been suggested in this article that rate regulatory implications of a proposed power plant are also very important, but could they be handled in the same fashion? Arguably not. For one thing, there is no Minister to whom the application could be referred, for the PUB reports directly to Cabinet. In any event, what one wants to give the PUB is not the power to impose conditions on an approval, but a say in the initial "go/no-go" decision.

Perhaps a better model is found in Part 4(f) of the *Gas Utilities Act* which establishes the little known Gas Utilities Board. Either the ERCB or the PUB may refer to the Gas Utilities Board any natural gas issue which it considers "may involve or affect a matter that is wholly or partly within the jurisdiction of the other board under the [the Gas Utilities] Act or the *Oil and Gas Conservation Act*". An analogous Electric Utilities Board could be created or perhaps the Gas Utilities Board could be transformed into a tribunal with jurisdiction over energy utilities issues of joint concern. Such a board would approve new energy projects and, although a utility would still have to come before the PUB for a rate increase, there would in normal circumstances be no real question as to whether the addition to plant was "used or required to be used", but only whether, in the execution of the project, expenditures had been prudent.

For reasons that emerge from the above discussion the idea of a joint board has much to recommend it. Of course the idea requires much more careful scrutiny but, even if adopted, there are grounds for pessimism: for although the Gas Utilities Board has existed on paper since 1962 nothing has ever been referred to it.

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Notes

1. Provincial jurisdiction over Alberta Government Telephones is the subject of an appeal to the Supreme Court of Canada. See *CNCP Telecommunications* v. *Alberta Government Telephones et al.* (1985), 17 Admin. L.R. 190 (Fed. C.A.). The case was argued before the Supreme Court in November 1987.
2. *Public Utilities Board Act*, R.S.A. 1980, c.P-37.
3. *Gas Utilities Act*, R.S.A. 1980, c.G-4.
4. Public Utilities Board, Decision E87025, April 2, 1987, quoted at 28.
5. *Id.*, at 36.
6. Public Utilities Board, Decision E89004, February 15, 1989.
7. Public Utilities Board, Decision E82194, August 18, 1982, at 34-39.
8. See the discussion of the Electricity and Gas Board's practices in this regard, and others, in Volume 5 of the *Canada Energy Law Service* (Toronto: Richard DeBoo Publishers, 1988).
9. See *Loi sur la Regie du gaz naturel*, L.Q. 1988, c.23, a.32. The issue is somewhat complicated by the fact that the English version of the Act provides quite differently. However, it is probable that through application of s.40.1 of the *Interpretation Act*, R.S.Q. 1977, c.I-16, the French version would prevail.
10. See Shippen Howe "The Used and Useful Standard: What Should the Criteria [sic] Be?", *Public Utilities Fortnightly*, February 7, 1985, 54-56.
11. Perhaps, looked at more practically, there may be situations where, once the decision to build has been made, the consumer is ultimately done more harm than good by exclusion of such assets from rate base. For example, where amounts are disallowed, a utility's securities rating could suffer thus causing capital costs to rise. But a tribunal that takes this route is making the best, as it sees it, of a bad situation. The underlying problem -- that is, the erroneous initial decision -- remains.
12. Indeed, the only example of which the writer is aware is found in Nova Scotia's statutes. These provisions concern that province's still non-existent gas utilities and were explicitly modelled on Alberta's approach. See, in particular, the *Gas Utilities Act*, S.N.S. 1980, c.7.
13. With the 1987 demise of the Saskatchewan Public Utilities Review Commission, there is no tribunal exercising an energy jurisdiction in Saskatchewan. The precise situation that obtains in Prince Edward Island and Newfoundland has not been researched.
14. See the *Hydro and Electric Energy Act*, R.S.A. 1980, c.H-13, s.26(4).
15. For a discussion of what the writer at least views as an inappropriate strategy see "Case Comment: *TransAlta Utilities Corporation* v. *Alberta Public Utilities Board*" (1986), 45 Alta. L.R. (2d) 377.
16. The possibility explored in the first few sentences of this paragraph was drawn to the writer's attention by Terry Davis, Third year law student, University of Calgary.
17. *Supra*, note 6.

Bank of Nova Scotia v. *Société Général (Canada) et al.*[1]

by Shawn H.T. Denstedt

It is clear from the decision of the Alberta Court of Appeal in *Bank of Nova Scotia* v. *Société Général (Canada) et al. ("Société")* that the law relating to fiduciaries is anything but static. *Société* is peculiar in that it did not, unlike most other cases in this developing area, deal with an injured beneficiary claiming against a faithless fiduciary. Instead, *Société* showed how a fiduciary relationship may be used to fend off an attack by a third party against the fiduciary, to the benefit of the beneficiaries.

The facts in *Société* were not overly complicated. Sorrel Resources Ltd. ("Sorrel") was the main player, as the operator of certain oil and gas properties and debtor of Société Général ("Société"). Sorrel and the nine other respondents (Non-operators) had participating interests in the oil and gas properties. The agreement among Sorrel and the Non-operators was governed by the 1981 Canadian Association of Petroleum Landmen Operating Procedure (the "Agreement").

Sorrel owed more than $4 million to Société and had given it a general assignment of book debts as security for the indebtedness. When Sorrel ran into financial trouble, Société attempted to realize on its security by purporting to attach Sorrel's account at the Bank of Nova Scotia. The Non-operators challenged Société's attempt and the Bank interpleaded.

The outcome of the case depended on the relationship between Sorrel and the Non-operators. The Non-operators claimed that Sorrel stood in a fiduciary relationship and held certain funds in the Bank of Nova Scotia account in trust for them. Société contended the relationship between Sorrel and the Non-operators was debtor-creditor and claimed the funds in the account as a secured creditor.

In determining the issue before it, the Court of Appeal cited Waters' *Law of Trusts in Canada*[2] and stated that the existence of a trust depends on the presence of three certainties: (i) certainty of intention, (ii) certainty of subject matter and (iii) certainty of object. The Court found that the money in the Bank of Nova Scotia account satisfied the certainty of subject requirement and that the non-operators were clearly the object of the trust. The Court focused on whether there was an intention to create a fiduciary relationship in the Agreement among Sorrel and the Non-operators.

In analyzing the Agreement the Court applied a factual test and found that the intention of the Agreement was that Sorrel would act for the benefit of the Non-operators. The Court looked at specific sections of the Operating Agreement which set out Sorrel's duties and obligations to the Non-operators. Sections 301 and 503 made numerous references to the fact that Sorrel was to act for the "joint account" of the parties regarding certain matters. The Court said:

> Sorrel was given wide powers to act for them (the non-operators) in the control and management of the exploration, development and operation of the joint lands for the joint account. The term "joint account" is often referred to in the Agreement and is expressly defined as embodying the concept of being for the benefit of the Non-Operators. In brief, the Agreement reflects confidence of the Non-Operators in Sorrel as operator and expressly provides that Sorrel keep them informed, account to them and in Général act for their benefit.[3]

The Court held that the duties imposed on Sorrel in the Agreement showed that the parties intended Sorrel to be in a fiduciary relationship to the Non-operators, therefore there was certainty of intention. The Court also held that such an intention can be found despite the absence of express words.

Résumé

Dans la cause Société Général v. Bank of Nova Scotia, la Société Général avait prêté de l'argent à Sorrel Resources, un exploitant aux termes d'un accord d'exploitation de 1981 de la Canadian Association of Petroleum Landmen (CAPL). Lorsque Sorrel s'est trouvé en difficultés financières, la Société Général a revendiqué des fonds que Sorrel avait en compte à la Banque de la Nouvelle-Écosse. Ces fonds étaient également revendiqués par les non exploitants aux termes de l'accord, en se basant sur le fait qu'ils se trouvaient dans un rapport fiduciaire avec Sorrel et que les fonds étaient détenus en fiducie à leur intention.

La Cour d'appel de l'Alberta a jugé que Sorrel était dans l'obligation, en vertu de l'accord de la CAPL, d'agir pour le compte de toutes les parties en question, et que les fonds se trouvant dans le compte bancaire étaient détenus en fiducie pour les non exploitants. La cour en a ainsi décidé en dépit du fait que Sorrel avait le droit de confondre les fonds des non exploitants avec ses propres fonds. En rendant sa décision, la cour s'est écartée de la croyance traditionnelle que le droit de confondre les fonds réfute l'existence d'une fiducie.

Cette décision aura des conséquences intéressantes aussi bien dans le domaine du droit du pétrole et du gaz que dans celui du droit régissant les débiteurs et les créanciers. Il semblerait que les non exploitants disposent à présent de tout l'éventail des recours en droit fiduciaire, tandis que les prêteurs devront se méfier davantage des fiduciaires qui pourraient surgir des pages d'un contrat.

Waters in *Law of Trusts in Canada*, (2nd ed.) at p.31, points out that "the whole purpose of a trustee's existence is to administer property on behalf of another, to hold it exclusively for the other's enjoyment." The intention that Sorrel acts for the benefit of others (in this case the Non-Operators) pervades the entire Agreement. Specific examples may be seen in Secs. 503, 601, 602 and 605. We agree with the learned trial judge that the creation of a trust does not require express words to that effect and one may be inferred from the examination of the entire Agreement.[4]

Société contended that Sorrel's right to commingle the funds of the Non-operators with its own, and Sorrel's duty to pay interest on monies owing to the Non-operators, traditionally would evidence a debtor-creditor relationship. The Court, however, held that such facts are merely indicators of the type of relationship and not determinative. The Court held that in the context of the whole Agreement the right to commingle was only an "administrative aid to the smooth implementation of the agreement",[5] and that the duty to pay interest in this case was more like the payment of a penalty, for lack of promptness, than interest.[6]

In analyzing the commingling issue the Court focussed on the fact that Sorrel was not entitled to use the funds for its own purposes but was restricted to the uses permitted by the Agreement:

It is important to note that the Agreement does not permit Sorrel to use the funds in question for its own use. In *M.A. Hanna Co. v. Prov. Bank of Canada*, [1935] 1 D.L.R. 545 (S.C.C.) this point was critical to the court's conclusion that a debtor-creditor relationship existed ... In that case the factor was allowed to use the disputed funds as his own.[7]

The Court then cast considerable doubt on the *Re Petroleum Royalties Ltd.*[8] *("PeteRoy")* case, relied on by Société, in which Forsyth J. found that no trust relationship arose under a similar Agreement. Forsyth J., holding that the right to commingle funds negatived a trust, found a debtor-creditor relationship. The Court distinguished *PeteRoy* from Société on the facts, but also cut away the underpinnings of the *PeteRoy* case. In *PeteRoy*, Forsyth J. relied on *Henry* v. *Hammond*[9] and *H.E.P. Commission* v. *Brown*[10] as authority for the proposition that the commingling of funds, with a subsequent duty to hand over a certain amount, established a debtor-creditor relationship. In *Société* the Court, however, found that *Henry* v. *Hammond* and *H.E.P. Commission* stood for a much broader proposition than that for which they had been cited.

The Court held that *Henry* v. *Hammond* and *H.E.P. Commission* did not apply because in those cases the agent had the right to commingle the funds *and* the right to use the funds for its own purposes. In *Société* the Court found that Sorrel had a duty to deal with the money only as the Agreement permitted, and was thus in a fiduciary relationship *vis-a-vis* the Non-operators.

Relying on *H.E.P. Commission*, Société's final contention was that, even if a fiduciary relationship existed, the right to commingle precluded the Non-operators from tracing the funds into the joint account. The Court stated that in *H.E.P. Commission* the Ontario Court of Appeal's refusal to permit tracing was based on the fact that no fiduciary relationship was found. The Court then cited *In Re Halletts Estate*[11] for the proposition that the beneficial owner has the right to trace, whatever the nature of the fiduciary obligation. The Court was not concerned with the fact that *Halletts* did not deal with a situation in which the beneficiaries had given the trustee an express right to commingle.

The Court of Appeal's decision in *Société* clearly follows the trend in recent Canadian decisions (such as *International Corona Resources Ltd.* v. *Lac Minerals Ltd.*[12] and *Standard Investments Ltd. et al* v. *Canadian Imperial Bank of Commerce*[13]) which have imposed fiduciary obligations on parties that were not traditionally thought to be fiduciaries. In doing so, the Alberta Court of Appeal has stayed the course set by Laskin C.J.C. in *Canadian Aero Service Ltd.* v. *O'Malley*[14] of applying a flexible, factual test to determine if a fiduciary relationship exists between parties.

Société, however, was unique in that the beneficiaries were not trying to establish the relationship to get funds back from a faithless fiduciary; instead, they were trying to fend off a secured creditor. The decision has potential consequences in both debtor-creditor and oil and gas law.

The Alberta Court of Appeal has clearly stated that an agreement must be considered in its entirety to determine the relationship of the parties. Furthermore, the Court held that factors such as commingling that were thought traditionally to indicate a debtor-creditor relationship, are to be considered in the context of the whole agreement. In holding that commingling is only one factor to be considered in determining the relationship between the parties, the Court strayed from the long-held view that a right to commingle negatives the existence of a trust. By introducing such a flexible approach to whether a trust exists, the Court has introduced a new measure of uncertainty into trust law. Such uncertainty is fraught with danger for third parties, such as Société, who may find themselves without a remedy against a trustee who springs forth from the pages of a contract such as the 1981 Canadian Association of Petroleum Landmen Operating Procedure.

For Non-operators governed by the 1981 Procedure, the decision opens up an entirely new field of remedies based on trust law. For example, should the operator become insolvent, the Non-operator's funds held in trust will not form part of the bankrupt's estate. Should an operator breach his fiduciary obligations, the Non-operators will be able to trace the funds in question. Such a remedy would be particularly useful where an operator has siphoned off funds to a sister-company.

On the other side of the coin are lenders and other secured parties who, as a result of the *Société* decision, may find that loans to operators are not adequately secured. Consequently, lenders will have to be more vigilant in the types of security they take from operators. In addition, lenders should take *Société* as a warning that they should apprise themselves of any agreements a borrower might have with other interested parties.

In conclusion, the *Société* decision can best be understood as another step in the developing law of fiduciaries. It reminds us that traditional legal relationships, such as debtor-creditor, can be transformed into a trustee-beneficiary relationship when the surrounding facts indicate that one party should act for the benefit of (or at least not harm) the other party. When such situations will arise remains difficult to predict.

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Notes

1. (1988), 58 Alta. L.R. (2d) 193; 87 A.R. 133 (C.A.)
2. Donovan Waters, *Law of Trusts in Canada* (2d Edition), Carswell Company Limited, (Toronto, 1984), at107 and *ff.*
3. *Bank of Nova Scotia* v. *Société Général (Canada) et al.* (1988), 58 Alta. L.R. (2d) 193 (C.A.)
4. *Supra*, at 199.
5. *Supra*, at 199.
6. *Supra*, at 200.
7. *Supra*, at 199.
8. (1986), 45 Alta. L.R. (2d) 273, 60 C.B.R. (N.S.) 224, 73 A.R. 76.
9. [1913] 2 K.B. 515.
10. [1960] O.R. 91, 21 D.L.R. (2d) 551 (C.A.)
11. (1880), 13 Ch.D. 696 (C.A.).
12. (1988), 46 R.P.R. 109 (Ont. C.A.) (leave to appeal to the Supreme Court of Canada granted).
13. (1986), 52 O.R. (2d) 473.
14. [1974] S.C.R. 592; 40 D.L.R. (3d) 371.

Institute News

Oil and Gas Project Sponsors

Esso Resources Canada Limited has joined the list of sponsors of the final phase of the Institute's Oil and Gas Law on Canada Lands Project, which will result in the publication of two additional books - *Management of Offshore Petroleum in Canada and Australia* and *The Impact of the Inuvialuit Final Agreement on Oil and Gas Activities North of 60°*.

The following is a complete list of the companies which are sponsoring the project: Chevron Canada Resources, Esso Resources Canada Limited, Gulf Canada Resources Limited, Home Oil Co. Ltd., Husky Oil Ltd., Petro-Canada, and Shell Canada Limited.

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Mining Law Project

Hydro-Québec recently became a sponsor of the Institute's Canadian Mining Law Project. The two-year research project will result in a one-volume manuscript on mining law, focusing on mineral title. The project will cover mining legislation in all provinces and territories, as well as federally.

The following is a complete list of project sponsors to date: American Barrick Resources Corporation, Angus McClellan and Rubenstein, BP Canada, Cominco Ltd., Davis and Company, Falconbridge Limited, Fasken Martineau Walker, Hudson Bay Mining and Smelting, Hydro-Québec, International Corona Resources Ltd., LAC Minerals Ltd., Lawson Lundell Lawson & MacIntosh, Noranda Minerals Inc., Northgate Exploration Limited, Osler Hoskin & Harcourt, Uranerz Exploration & Mining Ltd., James Wade Engineering Ltd., the Foundation for Legal Research, the Rocky Mountain Mineral Law Foundation, and the law foundations of Alberta, British Columbia, New Brunswick, the Northwest Territories, Ontario and Saskatchewan. Additional sponsors will be announced in future issues of *Resources*.

The Canadian Mining Law Project is progressing under the guidance of an Advisory Committee consisting of Stuart Angus (Angus, McClellan & Rubenstein, Vancouver), Jean Brisset de Nos (Gagnon de Billy Cantin Martin Beaudoin Lesage et associes, Quebec), Karl J.C. Harries, Q.C. (Fasken & Calvin, Toronto), and John Kearney (Northgate Exploration Ltd., Toronto). The Committee held its first meeting in Toronto in early March.

Recent Visitors

Jean Brisset de Nos, Canadian Mining Law Advisory Committee Member, with the law firm Gagnon de Billy Cantin Martin Beaudoin Lesage et associes, Quebec City

Stien Lal, Deputy Solicitor General, Government of Ontario

Kenneth A. Palmer, Faculty of Law, University of Auckland, New Zealand. Professor Palmer presented a seminar on "Resource Management Law Reform in New Zealand".

Essay Prize Honourable Mention

In issue 24 of *Resources* it was reported that the Institute's 1988 Essay Prize was won by David E. Hardy.

Unfortunately, the article that appeared in *Resources* neglected to mention that, for the first time in the history of the competition, another paper was awarded an Honourable Mention. The paper to be so honoured is "Deregulation and Canadian Natural Gas Utilities Law", by Alexander J. Black.

Mr. Black received his LL.M. from the University of British Columbia in November 1988. He articled with the Calgary firm Owens & Sattin in 1986 and is currently a law lecturer at the University of Glasgow in Scotland.

The Institute's Essay Prize competition offers an award of $1,000 for the best paper written by a Canadian law student on any aspect of natural resources law. Students wishing to submit an entry for the 1989 Essay Prize competition may obtain application forms from the Dean of Law at their universities. The deadline for submission of essays is June 30, 1989.

Globe 90 Conference

The Institute is one of the sponsors of the Globe 90 International Environment Industry Trade Fair and Conference to be held in Vancouver in March, 1990. In addition, Institute Executive Director Constance D. Hunt is a member of the co-ordinating group for the Government Policy and Legislation Session of the Conference.

The purpose of Globe 90 is to create a practical approach to meeting the challenges of sustainable economic development and to provide business-oriented solutions to environmental issues.

Recent Publications

Toxic Water Pollution in Canada: Regulatory Principles for Reduction and Elimination with Emphasis on Canadian Federal and Ontario Law, by Paul Muldoon and Marcia Valiante. 1989. 120 pages. $22.00

Surrounding Circumstances and Custom: Extrinsic Evidence in the Interpretation of Oil and Gas Industry Agreements in Alberta, by David E. Hardy (discussion paper), 1989. $10.00

Interjurisdictional Issues in Canadian Water Management, by J. Owen Saunders. 1988. 127 pages. $22.00

The Framework of Water Rights Legislation in Canada, by David R. Percy. 1988. 103 pages. $20.00

Maritime Boundaries and Resource Development: Options for the Beaufort Sea, by Donald R. Rothwell. 1988. 61 pages. $15.00

Classifying Non-operating Interests in Oil and Gas, by Eugene Kuntz (discussion paper). 1988. 28 pages. $10.00

Aboriginal Water Rights in Canada: A Study of Aboriginal Title to Water and Indian Water Rights, by Richard H. Bartlett. 1988. 231 pages. $30.00

A Reference Guide to Mining Legislation in Canada (Second Edition), by Barry Barton, Barbara Roulston, and Nancy Strantz. 1988. 120 pages. $30.00

View on Surface Rights in Alberta, Papers and materials from the Workshop on Surface Rights, presented by the Canadian Institute of Resources Law in Drumheller, April 20-21, 1988 (discussion paper), edited by Barry Barton. 1988. $10.00

Books on a variety of resources law topics (forestry, electricity, acid rain, mining, oil and gas, etc.) are available from the Institute. For a complete publications list write to the address below.

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