esources

No. 27 Summer 1989

The Newsletter of the Canadian Institute of Resources Law

# The Legal Challenge of Sustainable Development

## Introduction: Fourth Institute Conference on Natural Resources Law

The Fourth Institute Conference on Natural Resources Law was convened in Ottawa from May 10 to 12, 1989. Co-sponsored by the Institute and the University of Ottawa Faculty of Law (Common Law Section) the conference drew approximately 250 participants to discuss legal issues involved in implementing environmentally compatible economic development.

Economic development and environmental health are not competing ends, to be in some sense reconciled or traded off. While in the short term environmental factors may be viewed by some as a constraint on economic growth, it is clear that, over the longer run, sound environmental decision-making is a requirement for, rather than a hindrance to, sustained economic development. This equation between economic and environmental health has been recognized by such groups as the World Commission on Environment and Development (the Brundtland Commission) and Canada's National Task Force on Environment and Economy. But while the desirability of moving towards sustainable development is beyond doubt, the means to be employed in meeting this goal are far more problematic.

How, for example, in a market-driven society, do we make sustainable development an integral part of economic decision-making, and, more broadly, what should be the respective roles of the public and private sectors in achieving this goal? To what extent has Canada taken on international obligations with respect to sustainable development? How should these commitments be reflected in our domestic law, particularly in the context of our existing federal structure? What implications does sustainable development hold for Canada's international economic ties - both in trade and in foreign assistance?

All these issues pose important questions with respect to the adequacy of existing legal and policy instruments - both nationally and internationally. Surprisingly, though, relatively little attention has been paid to date to the role of law in moving towards sustainable development. Yet it is clear from our experience with natural resources management generally, and environmental regulation specifically, that law and legal structures are crucial in determining whether our resources are used wisely and efficiently.

The purpose of this Conference was to provide that legal perspective - to explore the legal issues and challenges associated with a movement towards sustainable development. In doing this, the Conference drew upon not only legal scholars, but also experts from the physical and social sciences. Similarly, the objective of the Conference was not only to educate lawyers about sustainable development; it was just as much to inform non-lawyers of the legal obstacles that must be met, and the legal options that might be considered, in moving towards this goal.

INSIDE

This issue of *Resources* contains excerpts from two of the papers presented at the Conference, both of which address the question of foreign aid and sustainable development, an issue that has taken on increasing importance in recent years. The complete papers, together with the other Conference presentations, will appear in a book of Conference essays to be published by the Institute later this year.

## Conference Sponsors

The Institute gratefully acknowledges the financial support provided to the Conference by the following sponsors: Alberta Law Foundation, Department of Justice Canada, Department of the Secretary of State of Canada, Ontario Ministry of the Environment, Dofasco Inc., Dow Chemical, Environment Canada, Walter and Duncan Gordon Charitable Foundation, Inco Limited, MacMillan Bloedel Limited, Noranda Forest Inc., Helen McCrea Peacock Foundation, Social Sciences and Humanities Research Council of Canada, and one anonymous donor.

The Institute also acknowledges the 44 speakers and commentators, including keynote banquet speaker Manitoba Premier Gary Filmon.

## Sponsorship Information

Companies, firms, and foundations interested in obtaining information about sponsorship of an Institute project may contact the Institute's Executive Director at (430) 220-3200 or write to:
Canadian Institute of Resources Law,
430 Bio Sciences Building,
The University of Calgary,
Calgary, Alberta
T2N 1N4.

All donations are tax-deductible, and sponsors are acknowledged in a variety of Institute publications.

# Legal Issues in Development Assistance: The Challenge of Sustainable Development

*by Phillip M. Saunders*

For many less-developed countries the pursuit of sustainable development, whether through improved management of resource exploitation or through the enhancement of environmental protection, is inextricably linked to the impact of external development assistance. This relationship has been recognized for many years, and that recognition has extended to the disproportionate effects of environmental degradation on those who are intended as the primary beneficiaries of many development assistance programmes:

> [If] environmental dimensions [of development funding] are disregarded there will not only be unexpected ecological costs, but additional social economic costs - which tend to fall most heavily on the poor.[1]

The linkage between development assistance and sustainable development operates in at least two important ways. First, external assistance is often a major source of the capital funding required to permit resource development projects to proceed.[2] As a result, the criteria applied in project selection can influence whether or not such activities will be conducive to sustainable development. Second, technical assistance and training are often required to help define and implement policies which promote the sustainable development of a country's resources or the protection of its environment.

Legal structures and systems play a critical role in both resource management and environmental protection. At the supra-national level, the development of international law can be employed in the creation of new obligations to manage and protect the environment. Domestically, policies for the promotion of sustainable development of natural resources often rely upon the introduction or improvement of legislative and regulatory schemes. This excerpt, however, will examine the role of

***Résumé***

*Pour de nombreaux pays en voie de développement, la poursuite d'une forme viable de développement est étroitement liée à l'aide extérieure. Cet article examine l'impact qu'ont les systémes et structures juridiques sur la protection de l'environnement et la gestion des ressources, plus particuliérement au niveau international. Depuis le début des années 1970, et notamment avec la Déclaration de Stockholm en 1972, le droit international a contribué à établir de nouveaux principes et de nouvelles normes visant à protéger l'environnement. Ce nouveau droit international de l'environnement différe du droit international traditionnel par sa nature positive (il impose des obligations de faire plutôtque de ne pas faire), sa complexité et sa flexibilité. De nouveaux mécanismes institutionnels ont été également créés, le plus important étant le Programme des Nations Unies pour l'environnement (PNUE), établi en 1972 pour promouvoir l'objectif de la Déclaration de Stockholm. Le nouveau droit international de lécodéveloppement oblige maintenant les états et autres acteurs du développement à intégrer les considérations environnementales à leurs activités de dévelopement. Cependant ces nouvelles "normes" internationales n'imposnet pas une stricte obligation de faire: leur effet est plutôt moral et pratique.*

international law in the interaction between development assistance and the environment. Particular shortcomings in the application of law to economic development are reviewed, and some steps suggested to increase the effectiveness of the legal sector's contribution.

The primary contribution of international law to the promotion of sustainable development in less-developed countries has been through the establishment of new principles and standards for environmental protection and resource management. Obligations to manage and protect the environment are defined and agreed to at the international level, and are thus made binding on states (or at least on those which agree to be bound). From the early 1970s through to the 1980s this was clearly one of the most important areas of growth in international law. The watershed of this emerging international law of the environment, the Stockholm Declaration,[3] provided both the political impetus and substantive guidance for legal advances in a number of sectors. New multilateral treaty obligations filled the obvious gaps left by the existing customary international law of the environment.

The new environmental principles were also changing the face of international law. New *types* of obligations could be discerned, going beyond traditional rules which regulated state behaviour in a *negative* sense (in that states were primarily obliged *not* to take certain actions and were subject to sanctions for breaches). New, more positive obligations were established, such as requirements to cooperate in the furtherance of scientific research and environmental monitoring. These obligations were clearly more difficult to "enforce" than more familiar international law rules, but they also provided more sophisticated means for international action on the environment .

The complexity of the new obligations is illustrated by the environmental management provisions of the 1982 Law of the Sea Convention.[4] The Convention contains a myriad of provisions[5] with direct environmental and resource management implications, and they go far beyond straightforward rules. It is possible to discern in the Convention at least four main types of obligations - some previously familiar to international law and some not.[6] First, there are articles which *prescribe behaviour*, in that they dictate specific or general responsibilities of states.[7] Second, some articles *establish* or *affirm jurisdiction*, either creating or confirming the right of a state to take jurisdiction over a resource,[8] or over a geographic area for management purposes.[9] A third category consists of articles which *establish criteria* or *standards* - either setting standards to be implemented, or establishing general criteria which further international action can transform into specific standards.[10] Finally, some provisions have the objective of *establishing mechanisms*, promoting or requiring the creation of international institutions or avenues for cooperation and management.[11]

This range of obligations is more flexible and complicated than was the pattern for traditional approaches to international law, and additionally provided for post-Convention development and refinement of areas which were not adequately dealt with, whether because of insufficient technical information or inability to reach agreement. Critical to this further definition, in the LOS and elsewhere, were the associated new institutional mechanisms. That most directly relevant was the United Nations Environment Programme (UNEP), established with a broad mandate to promote the aims of the Stockholm Declaration and Action Plan, including the advancement of international environmental law. Thus, concomitant with the new types of obligations which were emerging, the world community created institutions intended to ensure both practical implementation and further agreement on specific rules beyond the broad principles which had been stated.

Throughout this period of change and expansion in international law the special programmes of developing countries were given special attention. The Stockholm Conference itself reflected the awareness that environment and underdevelopment were linked issues, and that environmental law principles must reflect this fact:

> The Stockholm Declaration and Declaration of Principles emphasized two primary themes stressed at the conference: 1) most environmental problems in developing countries are caused by, or related to, poverty and underdevelopment, and 2) development will better achieve its goals if it adequately takes into account environmental and natural resource concerns.[12]

It has been suggested that international law may now be evolving an obligation more directly relevant to development assistance - an obligation on donor nations to observe certain principles of environmental responsibility in the projects which they fund:

> The international law of ecodevelopment merges environmental and development concerns to create a framework for the rational use, allocation, and management of natural resources ... It obliges all states, international development agencies, and other development actors to integrate environmental considerations into their development activities...[13]

Even a proponent of such an approach would acknowledge that most of these "norms" are not "hard" law, but rather "...emerging law or 'soft' law that carries a strong moral or practical effect".[14] At this stage it is even difficult to carry through the case for "emerging" law: most of the relevant international resolutions and other documents are mainly recommendatory in nature.[15] It is in any event difficult to see rules of this kind being accepted and applied in any rigorous sense. To do so would imply an obligation on one state (the donor) to abide by rules within a second state (the recipient) which the second state, albeit a "beneficiary" of enlightened policies, might not wish to apply. The logic is more compelling where a third state is involved (where, for example, identifiable transboundary pollution or other damage might result from a project),

but beyond this particular problem it is doubtful that any rule of general application will emerge. Perhaps more important is the "moral and practical effect" already referred to, which has resulted in the stated desire of most development assistance agencies to pursue environmentally sound policies, regardless of any "hard" international law obligation to do so. Whether they have succeeded or even intend to succeed is still a matter for some argument,[16] but it would appear that substantial improvement has been made by many agencies over recent years.

*Phillip M. Saunders is Field Representative (South Pacific), International Centre for Ocean Development (ICOD).*

*The views expressed are those of the author and do not necessarily reflect ICOD policies.*

### Notes

1. K.A. Dahlberg; "Ecological Effects of Current Development Processes In Less Developed Countries" in A. Vann and P. Rogers, eds., *Human Ecology and World Development* (London: Plenum Press, 1974), at 76-77.
2. P. Muldoon, "The International Law of Ecodevelopment: Emerging Norms for Development Assistance Agencies" (1986) 22 *Texas International Law Journal* 52, at 2. One third of net external capital receipts for developing countries is derived from development assistance.
3. Declaration of the United Nations Conference on the Human Environment, June 16, 1972; in *Report of the United Nations Conference on the Human Environment*, UN Doc. A/Conf.48/14. Hereinafter referred to as the Stockholm Declaration.
4. 1982 United Nations Convention on the Law of the Sea. Done at Montego Bay, 10 December, 1982. Not in force. UN Doc. A/Conf.62/122. (Hereinafter 1982 LOS).
5. At least 59 distinct provisions of the 1982 LOS can be seen to have environmental significance. D.M. Johnston, P.M. Saunders, N.G. Letalik *et al*; *Conservation and Management of the Marine Environment: Responsibilities and Required Initiatives in Accordance with the 1982 UN Convention on the Law of the Sea* (IUCN: 1984). Chart prepared by Dalhousie Ocean Studies Programme under the auspices of the Commission for Environmental Policy Law and Administration of the International Union for the Conservation of Nature and Natural Resources.
6. *Ibid*; "Introductory Note".
7. See, eg., Article 62(2), 1982 LOS.
8. Article 67(1), 1982 LOS, for example, *establishes* jurisdiction over catadromous stocks by the State in whose waters the majority of the life-cycle is spent. Article 65, on the other hand, *affirms* continuing coastal state (and international organization) authority to regulate marine mammal exploitation in the EEZ.
9. As is provided in Article 234, 1982 LOS, which creates special environmental jurisdiction for the coastal State over ice-covered areas of the EEZ and Territorial Sea.
10. Article 119(1), 1982 LOS, for example, establishes criteria respecting allowable catches and other conservation measures on the high seas; criteria which States are meant to incorporate in national legislation.
11. See, eg., Article 118, 1982 LOS, which mandates States to cooperate in the creation of subregional and regional organizations for the conservation and management of high seas living resources. Not all of these "mechanisms" are institutional in nature; some (such as Article 61(5) on sharing of fish stocks data) simply establish channels of communication.
12. B.M. Rich; "The Multilateral Development Banks, Environmental Policy, and the United States" in 12 *Ecology Law Quarterly* 681 (1984), at p.704.
13. *Supra*, note 2, at 8.
14. *Ibid.*
15. Examples include: the *Stockholm Declaration*, 1972; the *Cocoyoc Declaration*, 1974 (UNEP/UNCTAD Symposium on Patterns of Resource Use, Environment and Development Strategies, UN Doc. A/X.2/292); UN General Assembly Resolution adopting *The International Development Strategy* (GA Res. 35/56, 35 UN GAOR Supp.- no. 48); the *Nairobi Declaration*, 1982 (UN Doc. A/37/25); and the *World Conservation Strategy*, 1980 (World Conservation Strategy: Living Resource Conservation for Sustainable Development; IUCN 1980).
16. Rich, *supra*, note 12, at p.688, notes that there is evidence the multilateral development banks have continued to pursue environmentally unsound projects long after the "acceptance" of environmental guidelines.

## Recent Presentations and Appointments

- Research Associate Owen Saunders was an instructor at the International Law and Economic Development workshop, held in Fiji in April. The workshop was attended by lawyers, government officials, and professors from throughout Asia. It was sponsored by the Canadian International Development Agency and organized by the University of Victoria law faculty and the South Pacific Forum Secretariat. Professor Saunders presented sessions on international trade law, corporate finance and international financial markets, and market failure and alternative legal or policy responses.

- Constance D. Hunt was recently appointed Chair of the International Bar Association's Mining Law Committee and Member of the Inuvialuit Arbitration Panel.

- Owen Saunders was a participant in Environment Forum '89, a public forum on the environment presented by CBC and the Canadian Petroleum Association. The forum took place on June 6.

- In April, Constance Hunt presented a talk to senior U.S. resource executives through Lewis and Clark College's Management Program. The program examines resource decision-making in Canada.

- Constance Hunt and Alastair R. Lucas co-authored a paper for the International Bar Association Academic Advisory Group meeting in May. Professor Hunt was the local organizer for this meeting. She is also a member of the organizing committee for the IBA conference Energy Law 1990 to be held in Strasbourg this October.

# Aid and the Environment: The Canadian Approach

*by François Bregha*

## Introduction

In 1987-88, Canada spent $2.624 billion in official development assistance (ODA), an amount equivalent to almost half a per cent of the gross national product (GNP).[1] Although foreign aid's share of GNP was cut in the April 1989 budget, Canada remains one of the principal donors among the industrialized countries.[2] Canada disburses its development assistance through several channels: bilaterally in government-to-government projects; multilaterally, by funding 65 international organizations, such as UN agencies, development banks and humanitarian organizations; and through non-governmental organizations and development-oriented Crown corporations, such as the International Development Research Centre and Petro-Canada International Assistance Corporation. The Canadian International Development Agency, or CIDA, is the principal instrument of Canada's foreign aid policy, accounting for about three quarters of Canada's ODA budget.

Although CIDA claims that it "has long been at the forefront of incorporating environmental concerns into the development process",[3] only in 1983 did it start taking the institutional steps required to integrate formally environmental considerations into its planning cycle. CIDA's recent awakening to the importance of environmental issues should, of course, be judged in the context of the federal government's overall environmental record. When seen in this light, CIDA's performance is better than most: the Agency boasts that it is one of the only three departments whose procedures the Federal Environmental Assessment and Review Office (FEARO) has approved, and the only one whose procedures are comprehensive.

CIDA's own critics also concede that the Agency's environmental strategy "puts CIDA in a class above most aid donors, and second only to USAID in terms of environmental requirements".[4] They nevertheless see much room for improvement in the Agency's environmental performance.

## The New ODA Charter

CIDA is now rightly placing environmental policy within the broader context of sustainable development. The term "sustainable development" was popularized by the World Commission on Environment and Development (the Brundtland Commission). The Commission defined sustainable development as development which "meets the needs of the present without compromising the ability of future generations to meet their own needs".[5] CIDA was instrumental in creating the Commission, and contributed $1 million to its $7 million budget.

In March 1988, after the first comprehensive review of Canada's foreign aid policies since the mid-70s, the Minister responsible for CIDA, the Honourable Monique Landry, tabled Canada's new Official Development Assistance (ODA) Charter entitled *Sharing our Future*. The title was deliberately chosen to echo the title of the Brundtland Commission report, *Our Common Future*, and represents a conscious commitment by CIDA to sustainable development.

The ODA Charter is designed to guide Canada's aid effort to the year 2000. Mme. Landry had described it as "our 'coming of age' by showing that we know where we want to go, and how we intend to go about it".[6] The Charter is based on four principles:

1. Put poverty first: the primary purpose of Canada's development effort is to help the world's poorest countries and people;

2. Help people to help themselves: Canada's aid policies must strengthen the human and institutional capacity of developing countries to solve their own problems in harmony with their natural development;

3. Developmental priorities must prevail in setting objectives for development assistance; as long as these priorities are met, aid objectives may take into account other foreign policy goals;

4. Partnership is the key in strengthening the links between Canadian citizens and institutions, and those in the Third World.

With these principles as the foundation of its policy, CIDA has identified the environment as one of six priorities for its bilateral programmes and a factor to be considered in every project. It is


***Résumé***

*L'Agence canadienne de développement international (ACDI) est le principal instrument de la politique d'aide au développement du Canada. Depuis 1983, l'ACDI s'est efforcée d'intégrer de façon formelle les considérations environnementales dans ses politiques et procédures. Elle y est parvenu mieux que la plupart des autres agences internationales de développement. En 1988, l'ACDI a adopté une nouvelle Charte officielle de l'aide publique au développement qui établit le fondement de la politique d'aide canadienne jusqu'en l'an 2000. Le théme sous-jacent de cette Charte est le développement viable. Le défi que doit à présent relever l'ACDI est de traduire en termes opérationnels la politique définie: ceci implique un changement institutionnel et une réallocation des ressources considérables. Le succès des efforts de l'agence en faveur du développement viable dépendra de cette réorientation politique et structurelle majeure.*

important to note that several of CIDA's other priorities complement the Agency's emphasis on environmental issues. For example, inasmuch as poverty has been decried as the worst form of pollution, the Agency's decision to make the alleviation of poverty a priority will yield environmental benefits. Similarly, the priority CIDA is placing on enhancing the role of women in development is justified not only in its own right; it will also pay environmental dividends because of the direct link between the role of women in developing societies and the use that is made of forests, fields and water.

As a result of a gradual reorientation over the years, CIDA is taking a more proactive approach to environmental issues, and now devotes a substantial proportion of its bilateral assistance funds to projects and programmes designed to improve the management of renewable and non-renewable resources, conservation and damage control, and rehabilitation. The exact proportion of CIDA money allocated to these ends, however, is unclear: a 1986 CIDA estimate places it at between 20 and 25 per cent, double an Agency estimate made only four years before. As the 1982 estimate may already have been exaggerated by its reliance on a very broad definition of "environmental projects", the more recent figure should be treated with caution.[7]

In order to help it implement fully the new principles of its Charter, CIDA recently commissioned the Institute for Research on Public Policy (IRPP) - whose director of sustainable development, Jim McNeill, served as secretary to the Brundtland Commission - to advise it on how Canada's aid programmes can more effectively support sustainable policies in developing countries. Through five public forums held earlier this year across the country, the Institute received a wide sampling of views from academics, non-governmental organizations, industry and others. At the time of writing, the Institute had submitted an interim report. It will be up to CIDA to translate the IRPP's many specific recommendations into operational terms over the next few years.

In developing new approaches to implement the environmental policies and strategies in *Sharing our Future*, CIDA is also likely to benefit from two recent initiatives to create Canadian centres for policy analysis. In September, 1988, the Prime Minister announced before the United Nations General Assembly that Canada would establish in Winnipeg a centre to promote internationally the concept of sustainable development. CIDA will contribute $5 million over the next four or five years to this centre. The centre's programmes are not expected to be defined much before the end of 1989. Depending on its overall budget and the mandate it receives - the Manitoba government has strongly supported the establishment of such a centre - the Winnipeg centre could make an important contribution to CIDA's implementation of sustainable development strategies.

In addition, CIDA has announced its willingness to support financially Canadian universities which wish to establish a Centre of Excellence in their area of specialisation in international development. CIDA plans to make available up to $10 million a year for five years to assist in the creation of eight to ten such centres. The roles such centres may fill include teaching, training, research, services to governments, a clearing-house function, conference organisation and publications. CIDA has already received several environmentally-related proposals under this programme.

**The Challenge Ahead**

In the environmental field, CIDA must now move from the policy-development to the implementation stage. This is clearly the more challenging of the two, as CIDA will have to translate into operational terms the policy statements in the environmental strategy at every level of the organisation: the corporate, the regional and the country programme levels. CIDA's new orientation represents a substantial shift in policy, a fact which CIDA's claim to earlier environmental enlightenment should not be allowed to obscure. The difficulties inherent in effecting institutional change on such a scale should not be underestimated: issues must be redefined, new objectives set and attitudes changed. Even with strong leadership it will take time before environmental values become imbued in CIDA's corporate culture.

Indeed, it is not clear whether CIDA fully understands the magnitude of the policy shift to which it has committed itself. CIDA today is essentially a project agency; almost all of its bilateral budget is allocated to funding individual projects. Yet, as is becoming increasingly evident in Canada, government policies often lead to greater environmental impact than do projects. A sustainable development strategy must therefore ensure not only that projects are environmentally sound, but that environmental considerations are integrated into broad government economic policies as well. In the words of the Brundtland Commission,

> the ability to choose policy paths that are sustainable requires that the ecological dimensions of policy be considered at the same time as the economic, trade, energy, agricultural, industrial, and other dimensions - on the same agendas and in the same national and international institutions.[8]

CIDA's commitment to sustainable development will require it to improve its internal macroeconomic analytical capability and broaden its focus from project management to influencing the policies of the countries receiving Canadian aid. A policy shift of such magnitude is not easily made. Nevertheless, until CIDA reallocates a significant share of its resources away from project implementation and towards improving policy formulation in developing countries, its efforts at promoting sustainable development are likely to fall short of their intended effect.

*François Bregha is Director of Policy Studies, Rawson Academy of Aquatic Science.*

**Notes**

1. Canadian International Development Agency: *Annual Report 1987-1988* (Minister of Supply and Services Canada, 1987, Ottawa).
2. *Budget Papers* tabled in the House of Commons by the Honourable Michael Wilson, April 27, 1989.
3. Canadian International Development Agency, Environmental Sector, *From Policy to Practice* (Internal document, June 1988).
4. Ferretti, Muldoon and Valiante, "CIDA's New Environmental Strategy", in PROBE POST, Winter 1987.
5. World Commission on Environment and Development, *Our Common Future* (Oxford University Press, 1987, London), at 8.
6. CIDA, *supra*, note 1, at 5.
7. Mark Gawn: *Donor Agencies and the Environment* (unpublished MA Thesis, December 1985), p.73 cited in Muldoon: *The International Law of Ecodevelopment: Emerging Norms for Development Assistance Agencies* (Texas International Law Journal, Vol 22:1, 1986).
8. *Supra*, note 5, at 313.

## Oil and Gas Project Sponsors

Amoco Canada Petroleum Company Ltd. 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°*.

## Mining Law Project

The Canadian Imperial Bank of Commerce, DuMoulin Black, the Law Foundation of Newfoundland, Smith Lyons Torrance Stevenson & Mayer, and Westminer Canada Limited recently became sponsors 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.

Additional sponsors will be announced in future issues of *Resources*.

# Institute News

## Constance D. Hunt Appointed Dean of Law

Professor Constance D. Hunt Executive Director of the Institute since 1983, assumed the position of Dean of Law at The University of Calgary on July 1, 1989.

Constance Hunt received a B.A. and LL.B. from the University of Saskatchewan. After being called to the Saskatchewan Bar, she worked in Ottawa for two years as the first staff legal advisor to the Inuit Tapirisat of Canada (National Eskimo Brotherhood). She received a Master's degree in Law from Harvard University in 1976 and became a founding faculty member of The University of Calgary's new Law School. Appointed as an Associate Professor at the University, she was promoted to Full Professor in 1980 and served as the Law School's first Associate Dean from 1979 to 1981. Following a two year leave of absence to work in the petroleum industry in Calgary and London, England, she returned to the University in 1983 to take up the position of Executive Director of the Canadian Institute of Resources Law, a research organization she had helped to establish in 1979.

Professor Hunt has specialized in the field of resources and environmental law, authoring numerous books and articles on subjects including aboriginal rights, constitutional law and energy regulation. A member of many national and international organizations, she was a member of the Arthurs Committee appointed by the Social Sciences and Humanities Research Council in 1980 to prepare a report on legal research and education. In 1985, she was one of five individuals appointed to advise the federal government on its aboriginal land claims policy. More recently, she has been named as a member of the Arbitration Panel established in relation to the Inuvialuit land claims settlement in Canada's western Arctic. She has been active in community affairs in Calgary, including the YWCA and the Art Gallery Foundation and has been a member of the Alberta Bar since 1979.

## J. Owen Saunders Appointed Acting Executive Director

J. Owen Saunders has been appointed Acting Executive Director of the Canadian Institute of Resources Law, effective July 1 to December 31, 1989.

Mr. Saunders has been a Research Associate with the Institute since 1980, and an Adjunct Professor of Law at The University of Calgary since 1984. He holds a B.A. from St. Francis Xavier University, an LL.B. from Dalhousie University, and an LL.M. from the London School of Economics and Political Science. His main areas of interest include natural resources policy, international economic law, and the law of international institutions, and environmental and administrative law.

He has acted as an advisor to federal and provincial governments and to the Macdonald Royal Commission on the Economic Union and Development Prospects for Canada. His most recent writing has focused on international trade law, water management in Canada, and sustainable development.

## Chair of Natural Resources Law Appointed

Beginning in January, 1990 for a six-month period, Richard Bartlett of the College of Law at the University of Saskatchewan will hold the Chair of Natural Resources. The Chair is co-sponsored by the Institute and The University of Calgary Faculty of Law.

Highly respected by natural resources and energy law specialists, Mr. Bartlett is noted for his expertise in natural resources law, native law, and tax law. He has published extensively in these areas.

Mr. Bartlett will teach a course entitled Indian and Aboriginal Law, and will guest lecture in the Natural Resources and Tribunal Practicum for third year students. In addition, he will guest lecture on native law in a first year constitutional law course.

Within the Canadian Institute of Resources Law, he will carry out a research project - Natural Resources and Aboriginal People on the Prairies.

## Nancy Money Appointed Institute Administrator

Nancy Money has been promoted to the position of Administrator / Public Relations Officer of the Canadian Institute of Resources Law. Mrs. Money had served as the Institute's Conference Co-ordinator since August 1, 1988.

In her new position she is responsible for administering the Institute's publicity programs, including editing *Resources*. She is also responsible for the financial management of the Institute and will continue to coordinate Institute conferences and seminars.

## New Publication

**The Offshore Petroleum Regimes of Canada and Australia,** by Constance D. Hunt. 1989. ISBN 0-919269-29-X. 158 pages. $24.00.

As federal states, both Canada and Australia have struggled to cope with the fact that two levels of government wish to play a role in the management of offshore petroleum resources. While litigation has had an influence, in each country solutions have been achieved through intergovernmental agreements implemented by federal-provincial/state legislation. This study reviews the approaches taken in the two countries with a view to their similarities and differences, their impact on industry, and what lessons may be learned from each.

Several themes common to both countries are addressed in this study. These include the legal and constitutional status of the political accords and what effect such status has had on the ongoing relationships between the levels of governments; the procedures by which the enabling laws and their regulations are amended; the extent to which it has been possible to achieve consistency in the laws, regulations and policies that pertain to the various offshore areas in each country; the workability of the respective decision-making mechanisms; the clarity of legislative authority under each regime; fiscal relationships; and the legal and practical significance of boundaries in the offshore areas. The conclusions focus upon the ways in which future Canadian offshore regimes might be improved as a result of the experiences in both countries.

### How to Order

To order publications please send a cheque payable to "The University of Calgary". Orders from outside Canada please add $2.00 per book. Please send orders to:
Canadian Institute of Resources Law
430 Bio Sciences Building
The University of Calgary
Calgary, Alberta T2N 1N4
Telephone (403) 220-3200
Facsimile (403) 282-8325


## Resources
## No. 27 Summer 1989

Resources is the newsletter of the Canadian Institute of Resources Law. Published quarterly, the newsletter's purpose is to provide timely comments on current resources law issues and to give information about Institute publications and programs. The opinions presented are those of the authors and do not necessarily reflect the views of the Institute. Resources is mailed free of charge to more than 6,000 subscribers throughout the world. (International Standard Serial Number 0714-5918) *Editor*: Nancy Money

**Canadian Institute of Resources Law**
*Acting Executive Director*:
J. Owen Saunders
The Canadian Institute of Resources Law was established in 1979 to undertake research, education, and publication on the law relating to Canada's renewable and non-renewable resources. Funding for the Institute is provided by the Government of Alberta, the Government of Canada, the Alberta Law Foundation, other foundations, and the private sector. Donations to projects and the Resources Law Endowment Fund are tax deductible.

**Canadian Institute of Resources Law**
430 Bio Sciences Building
The University of Calgary
2500 University Drive N.W.
Calgary, Alberta T2N 1N4
Telephone (403) 220-3200
Facsimile (403) 282-8325



**Board of Directors**
Francis M. Saville, Q.C. *(Chairman)*
E. Hugh Gaudet *(Vice-Chairman)*
Nigel Bankes
W. Gordon Brown, Q.C.
Don D. Detomasi
J. Gerald Godsoe, Q.C.
Karl J.C. Harries, Q.C.
W. James Hope-Ross
John L. Howard, Q.C.
Margaret E. Hughes
Constance D. Hunt
Louis D. Hyndman, Q.C.
John W. Ivany
Alastair R. Lucas
Peter A. Manson
William M. Mustard, Q.C.
David R. Percy
The Hon John Roberts, P.C.
Pierrette Sinclair
Maurice E. Taschereau