

The Supreme Court Decision in Oldman River Dam: More Pieces in The Puzzle of Jurisdiction over the Environment

by Judith Hanebury*

INTRODUCTION

Almost a year after the Oldman River Dam case was heard¹ by the Supreme Court of Canada, judgment was rendered.² Long awaited by environmental groups, natives, provincial governments and federal departments, the decision did much to clarify the question of federal jurisdiction over environmental impact assessment. Significant questions still remain, however, with the result that the issue of jurisdiction over environmental impact assessment will likely be back before the Court in the future.

At both the Federal Court Trial Division³ and the Federal Court of Appeal⁴, the Province of Alberta failed to raise the question of federal jurisdiction to undertake an environmental impact assessment of a provincial project based in a province. Realizing its error, the Province sought and obtained the consent of the Supreme Court of Canada to address the constitutional issue, and the following question was posed: "Is the Environmental Assessment and Review Process Guidelines Order, S.O.R. 84/467 so broad as to offend s. 92 and 92A of the Constitution Act, 1867 and thereby constitutionally inapplicable to the Oldman River Dam owned by the appellant, Her Majesty the Queen in Right of Alberta?" Six provinces, the Government of the Northwest Territories and a variety of native and environmental groups intervened to address that question.⁵ Although the Court answered the question in the negative, it left a number of

Résumé

Ce commentaire porte sur la récente décision de la Cour suprême du Canada dans la cause Oldman River Dam. Dans cette cause, la Cour a analysé la compétence fédérale en matière d'évaluation des répercussions environnementales de projets provinciaux. L'auteur examine la question constitutionnelle qui a été posée à la Cour et passe en revue les trois dimensions d'une évaluation environnementale: son envergure, sa portée et sa profondeur. Elle analyse la façon dont la Cour a traité de ces trois dimensions dans le contexte de l'actuel *Décret sur les lignes directrices visant le processus d'évaluation et d'examen en matière d'environnement* et les implications de cette décision pour la compétence fédérale en matière d'évaluation environnementale à l'avenir.

Inside

The European Energy Charter
(page 7)

Recent Case Developments in
Oil and Gas & Mining Law
(page 13)

jurisdictional issues open for further consideration. The jurisdictional issues the Court decided and the issues left undecided will be outlined in this comment.

CASE HISTORY

Friends of the Oldman River Society is an Alberta environmental group formed for the sole purpose of opposing the construction of the Oldman River Dam in southern Alberta. Members of the Society wrote to the Minister of Fisheries and Oceans in the summer of 1987 pointing out the effect the dam would have on fisheries and asking that an initial assessment be conducted under the *Environmental Assessment Review Process Guidelines Order*.⁶ On the basis that potential problems were being addressed, and because of the "long-standing administrative arrangements that are in place for the management of fisheries in Alberta,"⁷ the Minister refused. The same request was made to the Minister of the Environment with the same reply. In the fall of 1987 the Province obtained a licence from the federal Minister of Transport under the *Navigable Waters Protection Act*.⁸ No initial assessment was conducted by that department either.

The Friends commenced this action in April 1989, seeking an order in the nature of certiorari to quash the approval granted by the Minister of Transport and an order in the nature of mandamus requiring the Minister of Transport and the Minister of Fisheries and Oceans to comply with the *Guidelines Order*. The Trial Division dismissed the application, but an appeal to the Federal

Court of Appeal was successful. That Court found that both s. 5 of the *Navigable Waters Protection Act*⁹ and s. 37 of the *Fisheries Act*¹⁰ were sufficient to trigger the requirements under the *Guidelines Order*.

The latter Act gave the Minister the discretionary power to require copies of plans for a proposal that could disrupt fish habitat. Unlike the mandatory licence required from the Minister of Transport prior to the commencement of construction, the Minister of Fisheries could choose whether or not to act. The Court found that a decision not to act was a decision sufficient to trigger the federal environmental impact assessment process.¹¹

Leave to appeal to the Supreme Court of Canada was granted in September of 1990. During the period prior to judgment coming down from the Supreme Court, a number of cases considered the *Guidelines Order*¹² and its applicability was further broadened.¹³

THE THREE DIMENSIONS OF AN EIA PROCESS

The overall purpose of environmental impact assessment legislation is wise decision making by government. Before proceeding with a proposal, or permitting a proposal to proceed, the decision maker needs to know as much as possible about the impacts of that proposal on the environment, with "environment" understood in the widest sense. As was pointed out by one group of interveners in the Oldman case, if the Minister of Transport considered only the biophysical environmental effects of a dam on

navigable waters, no dam would ever be approved.¹⁴

When considering the scope of federal constitutional jurisdiction over an environmental impact assessment review process, three different but overlapping dimensions must be considered. The first is the circumstances or kinds of proposals that will trigger the process — what will be referred to here as the *ambit* of the process. Can the federal process be initiated only when the proposal involves federal lands, federal funds or a federal project, or can it extend to all proposals that have an environmental effect on an area of federal jurisdiction?

Once the process has been triggered, the *scope* of the assessment must be established. Can the assessment consider all environmental effects, whether on federal or provincial areas of jurisdiction, or can it just consider the effects on federal areas of jurisdiction?

The final dimension to be considered is the *depth* of the assessment. Can it look ahead or behind to the cause or effect of the proposal? For example, if the construction of a causeway to an isolated island will permit a fish processing plant to be built, can the assessment consider the environmental effects of that plant or only the environmental effects of the proposal before it — ie. the causeway?¹⁵

The decision provides a partial answer to the first question: What is the ambit of federal jurisdiction over environmental impact assessment? It gives a jurisdictional guideline in reply to the second question: What is the scope of a federal assessment?

It supplies no answer to the third question, the depth of the assessment, for that question was not specifically before the Court.

THE SUPREME COURT DECISION

Justice La Forest, writing for the majority,¹⁶ acknowledges in the first sentence of his judgment that "[t]he protection of the environment has become one of the major challenges of our time".¹⁷ He quotes from the *Report of the National Task Force on Environment and Economy*,¹⁸ where it states that economic growth and a healthy environment are inter-related.¹⁹ Agreeing with Stone J. A. in the Federal Court of Appeal,²⁰ he holds that the duty of a Minister to consider the environmental impacts of a proposal is "superadded" to any other statutory power he has unless there is a specific conflict in the legislation.

The Ambit of EIA

The Court held that the ambit of the federal environmental impact assessment review process includes federal decision making. The process is not limited to proposals involving federal lands, federal funds or a federal project. What Justice La Forest questions is the meaning of "decision making responsibility" as set out in the *Guidelines Order*. He begins by reviewing the terms of the *Guidelines Order*.

Section 6 of the *Guidelines Order* sets out its governing principle of application and provides that it is to apply, *inter alia*, to any proposal "that may have an environmental effect on an area of federal responsibility".²¹ He notes that there is no doubt the

Oldman River Dam will affect areas of federal responsibility, including navigation, Indians, lands reserved for Indians and inland fisheries.

The question he then addresses is whether the project is a "proposal" within the meaning of s. 2 of the *Guidelines Order*, which defines that term as including "any initiative, undertaking or activity for which the Government of Canada has a decision making responsibility".²² If there is a proposal, the process must then be instituted by the "initiating department", which is defined as "any department that is, on behalf of the Government of Canada, the decision making authority for a proposal".²³

Justice La Forest holds that the *Guidelines Order* is not triggered every time there is a project which may have an environmental effect on an area of federal jurisdiction. That was obviously not the intention.

He then examines the meaning of "responsibility" as contained in the definition of "proposal". "Responsibility" describes a legal obligation or duty, which he holds to be "an affirmative regulatory duty pursuant to an Act of Parliament which relates to the proposed initiative, undertaking or activity".²⁴ Looking at other sections of the *Guidelines Order* in order to support this interpretation, he finds that there was an intention that the initiating department have some degree of regulatory power over the project.²⁵

In the result, he finds that the Minister of Fisheries and Oceans, as he has a mere discretionary power under s. 37 of the

Fisheries Act, is not bound by the *Guidelines Order*. He notes the provisions of ss. 35 and 40 of the *Fisheries Act*, which set out a prohibition on the construction of works that result in harm to fish habitat. Penalties are provided unless the harm has been authorized by the Minister or under regulations. These provisions are not the equivalent of the regulatory scheme set out under the *Navigable Waters Protection Act*, and the Minister of Fisheries and Oceans, as he has no affirmative regulatory duty, is not bound by the *Guidelines Order*. As the *Fisheries Act* has similar provisions in relation to the dumping of deleterious substances in waters frequented by fish, this categorization of the provisions under that Act has profound implications for the many proposals presently being screened under it.²⁶

As a result of Justice La Forest's references to ss. 35, 37 and 40 of the *Fisheries Act*, "affirmative regulatory duty" would appear not to encompass a discretionary legislative power or a regulatory scheme whereby standards are set and penalties established. It is limited to situations where applications for permits and licences are necessary, thereby requiring the regulatory authority to take some action. For purposes of enforcing the recommendations resulting from an environmental impact assessment, this makes sense.

Is Justice La Forest saying that environmental impact assessment can be constitutionally supported only in such circumstances? Such a position has serious implications for the proposed Canadian Environmental Assessment Act which provides

for an environmental impact assessment in certain situations where there is no licence or approval required.²⁷ Under the proposed legislation and regulations, s. 37 of the *Fisheries Act*, for example, can trigger an assessment.²⁸

As he is examining only the constitutionality of the *Guidelines Order*, Justice La Forest does not go further to establish the constitutional limits on the ambit of a federal environmental assessment review process.²⁹ His comments on the basis of federal jurisdiction to undertake assessments under the *Guidelines Order* do, however, provide clues to his views on the underpinnings for a federal process with a wider ambit.

He finds that when validly exercising its legislative power, Parliament can examine and consider concerns relating to the environment. As the various heads of power differ in nature, the degree to which environmental concerns may be considered in the course of the exercise of each power can vary from one to another.³⁰ Although local projects usually come within provincial responsibility, if the project impinges on an area of federal jurisdiction, federal participation can occur.³¹ As long as there is not a colourable purpose or a lack of bona fides, consideration of environmental implications in the exercise of federal powers and duties under valid legislation will not detract from the fundamental nature of the legislation. As Justice La Forest puts it:

Quite simply, the environment is comprised of all that is around us and as such must be a part of what actuates many decisions of any moment.³²

He points out that environmental impact assessment, because of its "auxiliary" nature, can only affect matters that are "truly in relation to an institution or activity that is otherwise within [federal] legislative jurisdiction".³³ As a result, the constitutional support comes from the particular head of power invoked in each case and the assessment is an adjunct of the federal legislative powers affected.³⁴

These comments indicate that the ambit of the federal process could be wider than that set out in the *Guidelines Order*, and still be constitutionally supportable. It is not necessary that there be an "affirmative regulatory duty" for an assessment to be within federal jurisdiction.³⁵ However, the question of enforceability of such a process remains. Without a permit or licence requirement, an obvious mechanism to enforce the results of the assessment is not available. It must be remembered that it was for this very reason that "responsibility" was given such a narrow definition by Justice La Forest.

The Scope of an EIA

The subject of environmental quality, La Forest J. held, is not confined to the biophysical environment alone.³⁶ The potential consequences for a community's livelihood, health and other social matters resulting from environmental change are integral to decision-making on matters affecting environmental quality.³⁷ Such considerations are subject to the appropriate constitutional limitations, and he finds such limitations are contained within the *Guidelines Order*.

An assessment cannot be used as a "colourable device" to invade areas of provincial jurisdiction which are unconnected to the relevant heads of federal power.³⁸ As long as the matters examined are directly related to the areas of federal responsibility affected by the proposal, the assessment is *intra vires*. He points out that the *Guidelines Order* itself provides for this, for there must be a close nexus between the social effects examined, ordinarily a matter within provincial jurisdiction, and the potential environmental effects.³⁹

Further, when the assessment results from the exercise of a federal decision-making power,⁴⁰ the environmental effects to be examined are only those that may have an impact on the affected areas of federal responsibility. On that basis Justice La Forest holds that any intrusion into provincial areas of jurisdiction is incidental to the pith and substance of the legislation.⁴¹ By implication, he appears to be stating that when a proposal is a federal proposal, is located on federal lands or involves federal funds, all related environmental effects can be considered, with "environment" used in its broadest sense.

Although his reasoning provides guidance for future situations, it is obvious that each situation will have to be individually examined. The result is that there will likely be further litigation on the issue of which environmental effects can be considered in a federal assessment. La Forest J. himself makes this point when he notes that the extent to which environmental concerns may be taken into account can vary from one power to another.⁴²

The Depth of an EIA

The question of how far an assessment may go in examining cause and effect, is only touched on by La Forest J. He refers to the Australian case of *Murphyores Incorporated Pty. Ltd. v. Commonwealth of Australia*,⁴³ where the Court upheld the ability of the Minister of Minerals and Energy to refuse a minerals export licence because of the environmental effects of the mine from which the minerals originated. His reliance on that case is to illustrate the point that the environment is not a matter extraneous to decision making.⁴⁴ He "hasten[s] to add"⁴⁵ that there are important differences between the Canadian and Australian trade and commerce powers, thereby escaping the issue.

That issue, the depth of an assessment, has plagued *NEPA*,⁴⁶ the American equivalent of our *Guidelines Order*.⁴⁷ If the recent Federal Court of Appeal decision in *Attorney-General of Quebec v. National Energy Board*⁴⁸ is heard by the Supreme Court of Canada, it is likely Justice La Forest will be considering the very issue he avoided so carefully in this case. If the limits he has imposed on the scope of an assessment can be used as a guideline to the Court's thinking on this issue, it is likely the approach taken by the Australian Court in *Murphyores* will not be followed here.

CONCLUSION

With this decision the Supreme Court of Canada upholds the *Guidelines Order* and acknowledges the importance of environmental protection. The Court accepts that biophysical

environmental considerations are intertwined with socio-economic concerns and that the environment is everything around us. The right of federal decision-makers to consider environmental factors other than those strictly within the mandate of their enabling legislation is upheld, and the Court goes so far as to state that it "defies reason to assert that Parliament is constitutionally barred from weighing the broad environmental repercussions, including socio-economic concerns, when legislating with respect to [federal] decisions..."⁴⁹ For these reasons this decision is a landmark case in the development of Canadian environmental law.

The decision leaves a number of jurisdictional questions unanswered, with the result that federal legislators, provincial governments, industry and citizens can anticipate further litigation. These cases will address the broad questions of the ambit and depth of a valid federal assessment and the narrower question of the allowable scope of an assessment in specific factual situations.

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Notes

1. Argument was heard February 19th and 20th, 1991.
2. Judgment was handed down January 23rd, 1992.
3. *Friends of the Old Man (sic) River Society v. Minister of Transport et al*, [1990] 1 F.C. 248, [1990] 2 W.W.R. 150.

4. *Friends of the Old Man (sic) River Society v. Minister of Transport et al*, [1990] 2 F. C. 18, [1991] 1 W.W.R. 352.

5. Intervening were the provinces of Quebec, New Brunswick, Manitoba, British Columbia, Saskatchewan and Newfoundland, the National Indian Brotherhood, the Assembly of First Nations, the Dene Nation, the Metis Association of the Northwest Territories, the Native Council of Canada (Alberta), the Sierra Legal Defence Fund, the Canadian Environmental Law Association, the Sierra Club of Western Canada, the Cultural Survival (Canada) and the Friends of the Earth.

6. S.O.R. 84/467.

7. *Her Majesty the Queen in Right of Alberta et al v. Friends of the Oldman River Society and Interveners S.C.C.* Jan. 23rd, 1992 (unreported) at 9.

8. R.S.C. 1985, c. N-22, s. 5.

9. *Id.*

10. R.S.C. 1985, c. F-14, ss. 35, 37, 40.

11. *Supra*, n. 4 (F.C.A.), F.C. at 46.

12. See for example, *Angus v. Canada*, [1990] 3 F.C. 410, *British Columbia Wildlife Federation and others v. Her Majesty the Queen and others, Carrier-Sekani Tribal Council and others v. Minister of the Environment, Minister of Indian and Northern Development, et al*, [1991] F.C.T.D. May 14, 1991, (unreported) T-713-88, T-2686-90 and T-2687-90, *Western Canada Wilderness Committee v. Minister of the Environment* [1990] F.C.T.D., Dec. 21, 1990, (unreported, dismissed from the bench with written reasons to follow) T-2913-90.

13. The case that appeared to broaden the Guidelines applicability was *Eastmain Band v. Robinson* [1991] F.C.J. No. 975, Oct. 2, 1991 T-1512-91, where the Court found at p. 6 that the "main question to be determined is whether any of the respondent

Ministers, on behalf of the federal Government, has a decision making responsibility for any initiative, undertaking or activity which may have an environmental effect on an area of federal responsibility." In the result the Minister of the Environment was found to have such responsibility under a wide variety of acts that had not, in the past, been seen to initiate the EARP process.

14. Factum of the Sierra Legal Defence Fund, Canadian Environmental Law Association, Sierra Club of Western Canada, Cultural Survival (Canada) and Friends of the Earth. This argument was echoed by Justice La Forest at p. 30 of the judgment.

15. A similar question has recently been addressed by the Federal Court of Appeal in *Attorney-General of Quebec v. National Energy Board*, Federal Court of Appeal, A-1057-90, July 9, 1991. See as well, Janet Keeping, "The Environmental Assessment of Electricity Exports: The Whale That Ate the NEB" (1991) 35 *Resources - The Newsletter of the Canadian Institute of Resources Law* 1.

16. The full bench heard the case, with only Justice Stevenson, formerly of the Alberta Court of Appeal, in dissent.

17. *Supra*, n. 7 at 1.

18. Canadian Council of Resource and Environment Ministers, *Report of the National Task Force on Environment and Economy*, September 24, 1987 at p. 2.

19. *Supra*, n. 7 at 28.

20. *Supra*, n. 4, and n. 7 at 31.

21. *Supra*, n. 6 s.6(b), and n. 7 at 37.

22. *Supra*, n. 6 s.2, and n. 7 at 38.

23. *Supra*, n. 6 s.2, and n. 7 at 38.

24. *Supra*, n. 7 at 40, 41.

25. He examines s. 12(f) and 14; *supra*, n. 7 at 41, 42.

26. For example, in Alberta, there are 18 proposals presently subject to screening by the department of Fisheries and Oceans, including the Weldwood Pulp mill expansion in Hinton, the new Alberta Newsprint and Slave Lake Pulp Corporation pulp mills, the Cardinal River Coals Ltd. mines and the Three Sisters Golf and Resort proposal for the Bow Corridor. For a further discussion of the implications of this decision on specific proposals see "Oldman Decision: Narrows and Widens", one page insert, *Environline*, February 10, 1992.

27. Bill C-13, Canadian Environmental Assessment Act, 3rd Session, 34th Parl., 1991 Session. For example, assessments are triggered by the exercise by federal authorities of certain "powers, duties or functions". Which powers, duties and functions will be triggered is to be set out in regulations, now released in draft form. See s. 55(f) of the Bill. Further, the Minister of the Environment can send to public review or mediation any project with even a remote federal component if there are likely to be significant adverse environmental effects or there is public concern about the potential environmental effects. See s. 24 of the Bill.

28. See Annotated List of Statutory and Regulatory Provisions under Bill C-13 (FEARO: Sept. 19, 1991) at 13.

29. For a discussion of those limits see Judith Hanbury, *The Federal Role in Environmental Impact Assessment*, 1991, University of Calgary Thesis for the Degree of Master of Laws, at 184.

30. *Supra*, n. 7 at 67.

31. *Id.*, at 68, 69.

32. *Id.*, at 71.

33. *Id.*, at 72, 73, where he is quoting from *Devine v. Quebec (Attorney General)*, [1988] 2 S.C.R. 790, at 808.

34. *Id.*, at 73, 76.

35. From the majority decision in *R. v. Crown Zellerbach*, [1988] 1 S.C.R. 401, it can be argued that peace, order and good government could support an assessment in certain instances. La Forest, who wrote the decision for the minority, indicates in this case that "pogg" can support environmental impact assessment, but he appears to be relying on the residual power to support the delegation of the assessment duties to the initiating department. See *supra*, n. 7 at 75, 76. For a consideration of the use of that power in environmental impact assessment see *supra*, n. 29.

36. *Supra*, n. 7 at 27.

37. *Id.*, at 28.

38. *Id.*, at 72.

39. *Id.*, at 72, 73.

40. Rather than the project being on federal lands, involving federal funds or being a federal proposal.

41. *Supra*, n. 7 at 76.

42. *Id.*, at 67.

43. 1976 136 C.L.R. 1 (H.C.).

44. *Supra*, n. 7 at 70, 71.

45. *Id.*, at 70.

46. *The National Environmental Policy Act of 1969*, Pub. L. No. 91-190, 1 January 1970, 83 Stat. 852, 42 U.S.C. s. 4321 - 4347 (1970).

47. See, for example, W.B. Ellis and T.T. Smith Jr., "The Limits of Federal Environmental Responsibility and Control Under the National Environmental Policy Act" (1988) 18 E.L.R. 10055 at 10058; *Sierra Club v. Marsh*, 769 F. (2d) 868; *Natural Resources Defense Council, Inc. v. United States Environmental Protection Agency*, 822 F. (2d) 1305 (8th Cir. 1987).

48. *Supra*, n. 15.

49. *Supra*, n. 7 at 65, 66.

The European Energy Charter

by Michel Chatelin and
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Background

The idea for a European Energy Community was launched at the summit meeting of the European Community (EC) in Dublin, Ireland on June 25, 1990 by the Dutch Prime Minister Mr. Lubbers. It aims to make available Western technology, know-how and capital to explore and develop the oil and gas resources in the Central and Eastern European (CEE) countries and especially in the Commonwealth of Independent States (CIS), the former Soviet Union. In return, the West is to obtain secure supplies of oil and gas from non-OPEC sources.

One might ask why the energy sector was chosen as a first major field of cooperation between the West and the CEE countries, including the former Soviet Union. The answer is that this sector offered the best prospects for speedy and tangible economic returns for both sides.

For the CIS, selling its energy resources provides a relatively quick way to generate much-needed hard currency and domestic growth. Furthermore, the cooperation may contribute towards making the transition from a centrally planned to a market economy a smoother one. In the long run, both the CIS and the CEE countries can profit from the transfer of know-how and technology by using it to make their industries more efficient and environmentally friendly. Last but not least, the Lubbers initiative

provides the kind of framework, within which Western companies may operate, which reassures the CIS that the largest oil and gas producer in the world will not be plundered of its natural resources by the West and that it will benefit from the joint exploitation of those natural resources.

For the West, the diversification of its supply, and the discouragement of the CIS — which possesses 38% of the world gas and 6% of the world oil reserves¹ — from joining a producer cartel such as OPEC, are two sides of the same coin, and two major advantages to be gained. The Lubbers initiative also provides a practical way to provide assistance to the CEE countries, including the CIS, and thereby enhance their stability. Concrete energy-related projects are an attractive alternative to pouring large sums of money into slumbering economies.

Casting a glance backwards, the original plan was barely more than a rough draft, and the initial reactions to it were lukewarm at best. The then Soviet Union was afraid of being exploited. Mr Cardoso e Cunha, the European energy commissioner, was pre-occupied with the EC's plans for an internal energy market, and the energy industry never failed to point out that enormous amounts of money would have to be invested in a politically unstable area for the initiative to bear fruit.

Then, only 38 days after the European summit meeting in Dublin, Iraq invaded Kuwait on

Résumé

La Charte européenne de l'énergie a été signée à la Haye le 17 décembre 1991. Cette Charte devrait être considérée comme un cadre juridique dans le domaine énergétique, visant à mettre la technologie, le know-how et les capitaux occidentaux à la disposition de l'exploration, du développement et de l'exploitation des ressources en pétrole et en gaz des pays de l'Europe centrale et de l'Europe de l'est et surtout de l'Union des états indépendants, l'ancienne Union soviétique. Ce cadre d'objectifs et de principes est destiné à encourager le développement d'un marché énergétique pan-européen efficace et le meilleur fonctionnement d'un marché global.

Les objectifs de la Charte reflètent les principales préoccupations des états participants et sont très larges. Ces objectifs sont les suivants: améliorer la sécurité de l'approvisionnement, maximiser l'efficacité de la production, de la conversion, du transport, de la distribution et de l'utilisation de l'énergie, accroître la sécurité et minimiser les problèmes environnementaux. Il reste à voir si les états qui ont solennellement signé la Charte signeront aussi l'Accord de base, sans lequel la Charte ne serait rien de plus qu'une autre déclaration d'intention politique.

August 2, 1990. The ensuing Gulf crisis emphasized the need for the West to diversify its sources of energy supply. "I can hardly imagine that Prime Minister Lubbers knew in advance that this crisis would break out, but I must say that his memorandum (initiative) was launched at a very suitable moment", said Mr. Cardoso e Cunha².

The Gulf crisis served as a catalyst for the Lubbers plan, but the real turning point was the break-up of the Soviet Union and the recognition that Western technology would be essential if its economy were to be set in motion once again. The CSCE (Conference on Safety and Cooperation in Europe), which took place on November 19-21, 1990 in Paris, was also an important milestone, since this was the first time that several European leaders voiced their support for the Lubbers plan. In Paris, Mr. Lubbers and Mr. Delors, Chairman of the European Commission, both suggested the establishment of a conference at which a European Energy Charter could be drawn up. Once that idea was accepted, two new problems arose as to where the conference would be held and who would be invited to participate in it.

The first problem was resolved by February 1991, at which time it was decided that the conference would be held in The Hague during the second half of 1991. The fact that The Hague was chosen as the conference location seems logical, not only because it was Lubbers who originally launched the idea for European energy cooperation, but also because during this time the Netherlands was to take the chair

of the European Communities, which had been given overall responsibility for the development of the Charter³.

The second problem, as to participation, took somewhat longer to resolve because there were quite a few possible participants to be considered. Should the member states of the European Free Trade Association (EFTA) and the Maghreb nations of North Africa be allowed to participate? Should OPEC be granted observer status? Should the non-European OECD members be allowed to enter into the negotiations? Of these questions, the last is the most important one, since US and Japanese private capital and technology are considered to be essential for the implementation of the Charter. As the United States Secretary of State for Energy, John Easton, said on March 21, 1991⁴, "We want to join in the process of cooperation in Europe. In our contacts with the Dutch government we have indicated that we would like to see a role in the Lubbers plan for non-European countries such as the US, Canada, Japan, Australia and New Zealand". Another civil servant⁵ declared with an unusual breadth of vision: "The US wants to be involved in everything that happens in the energy market. Whether it concerns the Lubbers plan or the Donald Duck plan makes no difference". Finally, on June 17, 1991, the 12 Foreign Ministers of the EC countries decided that all European nations (thus including the members of EFTA) and all the OECD countries would be invited to participate in negotiations. The Maghreb countries (Algeria, Mauritania and Morocco), the six members of the Gulf Corporation

Council (Saudi Arabia, Kuwait, Bahrain, the United Arab Emirates, Qatar and Oman) and several international organisations (European Bank of Reconstruction and Development (EBRD), International Energy Agency (IEA), World Bank, European Investment Bank (EIB), International Atomic Energy Agency (IAEA) and United Nations Economic Commission for Europe (UNECE)) were to be invited as observers.

In June 1991 Mr. M.H.J.C. Rutten, a former Netherlands ambassador to the European Communities, was appointed chairman of the preparatory conference for the European Energy Charter. During the first plenary session of the Conference, a Conference Bureau and a number of Working Groups were established. The Bureau, of which Mr. Rutten is the president, "[has] the overall responsibility for matters regarding the organisation of the Conference and the conduct of negotiations.⁶ Within the Working Group (WG), which "has [a] general responsibility for the preparation of the text of the European Energy Charter"⁷, WG I, is chaired by Mr. C. Maniatopoulos, Director General of Energy of the EC Commission; WG II "has the responsibility to prepare a text of a binding Basic Protocol⁸ which covers general issues"⁹; WG III is concerned with Energy Efficiency and Environmental Aspects; WG IV handles Hydrocarbons; and WG V is responsible for Nuclear Energy, including safety.

It took three plenary sessions of the Conference and four WG I meetings¹⁰ before the European Energy Charter was finally signed on December 17, 1991 in The Hague. The Charter should be

considered as a "legal umbrella", aimed on the one hand at establishing the necessary conditions for the transfer of capital, technology and know-how from West to East, and on the other hand at protecting the interests of the CEE countries and in particular the CIS.

The Framework of the Charter

Under the Concluding Document of the Hague Conference on the European Energy Charter, representatives from 48 States and from the European Communities and the Interstate Economic Committee¹¹ adopted the objectives and principles set out in the Charter.

The final Charter text consists of a preamble, which is followed by the four titles, covering respectively Objectives, Implementation, Specific Agreements and a Final Provision which states that the Charter is not eligible for registration under Article 102 of the Charter of the United Nations. The text is the result of the preparatory work of Working Group I. The Working Groups focused on major substantive topics of the Charter and on the principal innovations contained in the Soviet draft. There were, for example, some basic differences between the USSR draft and the EC draft¹² due to the fact that the USSR focused on a common European energy space rather than on the concept of a somewhat looser cooperation agreement.¹³ The differences were such that, "It is a small miracle that the Preparatory Conference was able to agree on the text of the Charter within a period of three months", as the

Conference Chairman Ambassador Rutten has remarked.¹⁴

In the preamble, specific reference is made to political statements highlighting the beginning of a new era of East-West co-operation. The Charter, whilst restricted to energy, can be seen as another step down that road. However, the final goal is more than just another political statement. The Charter itself states in Title III that, "The signatories undertake to pursue the objectives and principles of the Charter and implement and broaden their cooperation as much as possible by negotiating in good faith¹⁵ a Basic Agreement and Protocols." This statement implies the establishment of a legally binding framework which will create firm and clear guarantees defining the conditions under which both governments and private companies can cooperate and develop activities in the field of energy.

The objectives of the Charter reflect the main concerns of the participating states and are very broad in character. They are: to improve security of supply, to maximize the efficiency of production, conversion, transport, distribution and use of energy, to enhance safety and to minimize environmental problems. These objectives will have to fall within the framework of four principles:

- the principle of State sovereignty and sovereign rights over natural resources;
- the principle of non-discrimination;
- the principle of market-oriented pricing;
- the principle of minimizing environmental problems.

This framework of objectives and principles is designed to safeguard the development of an efficient pan-European energy market and a better-functioning global market.

Two items on the list of objectives merit particular attention — non-discrimination and State sovereignty. At the second plenary session it was generally accepted that

"the principle of non-discrimination should be defined in the least restrictive manner which could be achieved. In this respect, the "most favoured nation" treatment (MFN), which might be envisaged as a first stage, should be considered as only a minimum requirement. It would be preferable to seek a more ambitious and open definition of this concept in the Charter, closer to "national" treatment. In both cases, it would be necessary to take account of any specific, legal or other difficulties for certain countries, while recognising that the Charter should not necessarily codify the existing situation but should be considered in an evolutive context".¹⁶

The Charter text speaks of MFN Treatment as a "minimum standard". In addition, "National Treatment may be agreed to in provisions of the Basic Agreement and/or Protocols." At the ministerial conference¹⁷ the United States Under-Secretary of Energy, John Tuck, expressed his dissatisfaction with the Charter's definition of non-discrimination. From the US point of view non-discrimination treatment goes one step further than national treatment, ensuring that an investment will not only be accorded national treatment, but "the better of national or Most Favoured Nation treatment". Tuck noted that the European Community's Treaty of Rome, the OECD conferences, the various treaties of friendship, commerce and navigation, and the various

bilateral investment treaties that many of the OECD countries have signed with the Soviet Union and the nations of Central Europe, are all based on the principle of national treatment.

The second key item, State sovereignty, is of particular interest to the resource-rich countries. The principle of "State sovereignty and sovereign rights over resources" was generally accepted at the second plenary session as the right of States to control the exploitation of resources on their territory. It was agreed that the principle would need to be given a clear legal definition in the Basic Agreement. A number of delegations reserved their position on the inclusion of references to "national sovereignty over the management of resources" in the text, which could in their view conflict with the principle of non-discrimination and certain existing international obligations.¹⁸ The phrase was not included in the final document. The Norwegian delegation stated that international cooperation is a matter of harmonizing the exercise of State sovereignty and sovereign rights for the benefit of shared interests and common goals.

Implementation

The second title of the Charter describes in greater detail how the objectives set out above are to be implemented in eight fields of action:

1. access to and development of energy resources;
2. access to markets;
3. liberalization of trade in energy;
4. promotion and protection of investments;

5. safety principles and guidelines;
6. research, technological development, innovation and dissemination;
7. energy efficiency and environmental protection;
8. education and training.

It is obvious that the above-mentioned fields of action are highly interrelated and that they must therefore be implemented in a coherent and coordinated fashion. However, they cover such a wide variety of subject matters that it would be impossible to deal adequately with all of them within the space of this article. This is why we have decided to concentrate only on the fourth field of action, which we consider essential to implementation of the others. To put it bluntly, without adequate promotion and protection of investments, Western industry will not be inclined to look East, and without Western industry which has the necessary experience, technology and know-how, the Charter will be worthless.

The Promotion and Protection of Investments

The energy sector in the CIS represents 40% of its economy;¹⁹ about 40% of its total industrial investment goes towards energy production.²⁰ One fifth of its working population is employed in the energy sector.²¹ When one considers these statistics in the light of the fact that both the production and export of all energy resources have declined, it is easy to see that the energy sector in the CIS is not healthy. The situation in Eastern Europe which is highly dependent on the CIS for oil and gas, is even worse. Indeed, the point is being

reached where there is not even enough capital to keep energy production at its current levels.²² In short, it is absolutely essential to create a favourable investment climate as soon as possible.

A common view is that little Western capital will flow eastward without strict protection for private investment. A recent study by Gaffney, Kline and Associates²³ suggests that this statement is correct. The study estimates that the CEE and CIS will require investment in energy of more than two trillion dollars over the next 15 years if the stated desires for economic growth are to be met.

Clearly investments of this magnitude are impossible without the cooperation of banking and industry. As Mr. Cardoso e Cunha put it, "The whole debate [...] should highlight the importance of synergy between the players involved. Clearly this applies first and foremost to the energy industry".²⁴ Prime Minister Lubbers agreed, stating that "Actual substance to the Charter has to be given by the industry and banking sector".²⁵ To begin with, "what is necessary is the vitamin of concrete projects"²⁶ requiring a relatively moderate flow of capital but "aimed at creating a large spin-off effect".²⁷

Initially, both banks²⁸ and the energy industry regarded the Charter with scepticism, but now that the Charter has been signed and the negotiations concerning the Basic Agreement are in full swing, they are actively participating in the negotiations. However, a number of problems regarding investments have yet to be solved. These problems can be roughly divided into two groups: practical and legal.

The practical problems are mainly the concern of the Western energy industry. A major obstacle, for instance, is the fact that the energy transport infrastructure in the CEE and CIS is largely inadequate and highly inefficient. This calls for huge investments, whilst the payout times are likely to be very long. As a leading Dutch official observes, "a gas pipeline from Moscow to Western Europe costs around 8 billion dollars, but most gasfields are situated a lot further away than Moscow." The geographical situation of the energy resources poses another major problem. Many of the areas which may be explored, developed and eventually exploited are subject to harsh weather conditions and permafrost, conditions similar to those found in Alaska. Ultimately, the most difficult problem that will be encountered, considering the ever changing political scenarios in the CEE and the CIS, will be to determine who to deal with. While the overall political situation in the CIS may seem to have stabilised recently, observers expect further changes as a result of volatile economic circumstances. For Western banks and energy companies wishing to sign contracts this is of course a highly uncomfortable situation.

Even if these difficulties were to be overlooked, a number of important issues remain to be solved before one can expect major investments. For these a legal framework is being created. In order to promote and protect foreign investments, the Charter aims at "a high level of legal security" on a national level to be provided by "a stable, transparent legal framework for foreign investments, in conformity with the relevant international laws and

rules." More concretely, the right to repatriate profits or other payments relating to an investment and the right to obtain or use the needed convertible currency are guaranteed. The need to avoid double taxation in order to foster private investment is also recognised. Of course it remains to be seen, as Marc Moody Stuart of Shell put it, "what commercial, cost transparency and non-discrimination mean for people that have never thought in economic terms, have experienced discrimination as part of life and who do not know the meaning of cost accounting."

In the course of 1992 the Negotiations Conference is expected to conclude the Basic Agreement (BA), which is being prepared by Working Group II under the chairmanship of Mr. Slater from the United Kingdom. The BA is about to become the world's first legally binding energy treaty, creating a common framework of shared principles and practices relating to the exploitation of, and trade in, energy materials and products among its signatories. The most recent draft Basic Agreement (21 January 1992) contains a number of articles concerned with investments. Included are articles on the promotion, protection and treatment of investments; compensation for losses; expropriation; repatriation of investments and returns; taxation; the relationship to other agreements; and dispute settlement.

The BA will contain provisions relating to access to resources, non-discrimination as between Charter parties, transparency of regulation, freedom of transit, the avoidance of unfair trading

conditions (e.g. through subsidization), the control of monopoly and dominant positions, the promotion and protection of investments and the settlement of disputes. Provisions of this sort already exist in a variety of international agreements such as the General Agreement on Tariffs and Trade (GATT). In this respect, the negotiations involve two groups of participants: Charter parties which are also Contracting Parties to GATT and Charter parties which are not in GATT. Therefore, the BA should not conflict with GATT, nor set up a separate and parallel set of obligations; this is to avoid the risks of confusion of objectives and obligations and the possibility of conflicting jurisdiction in the event of disputes. The BA must also take care not to create any presupposition about the eventual GATT accession of non-GATT parties. In the draft BA three areas are within the ambit of GATT: tariffs and other international trade policy regulations relating to products; taxation; and other internal regulations relating to products and dispute settlement. Whatever the form of the final BA, it should provide comprehensive guarantees for operators in such important areas as investment and trade, so that they will be able to work in a more stable and predictable economic and legal environment, especially within the CEE and the CIS.

Conclusion

The Lubbers initiative is either brilliantly simple, or dangerously simplistic, depending on one's point of view. The possibilities for East-West cooperation seem endless, but the political and economic difficulties which must

be overcome are enormous. It remains to be seen whether the States which solemnly signed the Charter will also sign the Basic Agreement, without which the Charter will remain nothing more than another political declaration of intent, of which so many already exist. Clearly, the Charter's credibility is at stake.

We believe that the Charter's success can only be guaranteed by the creation and signature of the above-mentioned legal framework, which must protect the interests of both sides, leaving room for Western banks and companies to make their own decisions on where and how to invest. We believe that, even though the circumstances are far from ideal, the time is ripe for this bold initiative: as Mr. Lubbers has put it, "Let us join efforts. There is a lot to do."²⁹

* *Michel Chatelin and Marc van Beuge are Research Assistants at the International Institute of Energy Law, Leiden, The Netherlands. This article is based on recent research by the authors in preparation for a book-length study of the European Energy Charter.*

Notes

1. NCR Handelsblad, (21.09.90), Source: BP Statistical review of world energy.
2. Source: NRC Handelsblad, (21.09.90.).
3. The chair rotates on a six-monthly basis, generally in alphabetical order according to the letter of the Member State's name in its own language. Currently, the chair is held by Portugal (until July 1, 1992).

4. Source: NRC Handelsblad, (23.03.91).
5. A diplomat in Washington, quoted in the *Wall Street Journal*, Source: NRC Handelsblad, (21.09.90).
6. 3/91 CONF 3 (Annex).
7. 3/91 CONF 3 (Annex).
8. The "Basic Protocol" was renamed the "Basic Agreement" in October 1991. This was done because it was felt that a protocol must be attached to a legally binding document. The Charter is not legally binding; therefore "Protocol" was changed to "Agreement".
9. 3/91 CONF 3 (Annex).
10. Note from the Secretariat; 15/91, CONF 8, Brussels (23.10.91).
11. The Interstate Economic Committee represented the central government at the time.
12. EC draft 2/91, (10.07.91).
13. USSR provisional comments 9/91 annex II CH. 2.
14. Ambassador Rutten at the conference "The European Energy Charter", The Hague (13.12.91.).
15. The expression "negotiate in good faith" does not oblige every signatory to sign the Basic Agreement, but there is definitely a political commitment.
16. Summary note of the second plenary session of the Conference: 20/91 CONF 12.
17. The Hague, 16 to 17 December 1991.
18. See n. 16.
19. Source: NRC Handelsblad, (6.9.91).
20. Source: Petroleum Economist, July 1990.
21. Source: F.E.M. (6.4.91).
22. To maintain current production levels of oil and gas the CIS will need 875 billion dollars over the next 15 years.
23. Source: Gaffney, Kline and Associates (1990).
24. Source: Mr. Cardoso e Cunha, (16.12.91), The Hague Conference.
25. Source: Mr. R. Lubbers, (16.01.92), Eastern European Natural Gas Seminar in London.
26. Source: Mr. R. Lubbers (05.09.91), The Fourth Wittenburg Business & Discussion Luncheon.
27. Source: Mr. R. Lubbers, (16.01.92), Eastern European Natural Gas Seminar in London.
28. Mr L. Knegt, the deputy director general for energy at the Dutch Ministry of Economic Affairs, and one of the coordinators of the Lubbers initiative, mentions The European Bank for Reconstruction and Development (EBRD), the European Investment Bank (EIB) and private banks as possible sources of financing.
29. Source: NRC Handelsblad, (15.02.91).

Correction

Note #21 of Nigel Bankes' article on the federal constitutional proposals in *Resources*, No. 36, contained an erroneous citation. Correct citations to the Supreme Court of Canada decision mentioned there include the following; *Re Exported Natural Gas Tax*, [1982] 1 S.C.R. 1004, and *Reference Re Proposed Federal Tax on Exported Natural Gas* (1982), 136 D.L.R. (3d) 385.

Recent Case Developments in Oil and Gas and Mining Law

by Susan Blackman*

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Oil and Gas

Working Interests — Participation Agreements — Letter Agreements

In *Husky Oil Operations Ltd. v. Forest Oil Corp.* [1991] 4 W.W.R. 336, 79 Alta. L.R. (2d) 134 (Alta. C.A.), Forest contracted to exchange well information for a limit on a right of first refusal purportedly owned by Husky. In fact, the nature of Husky's interest had never been settled *vis-à-vis* other parties. The disputed contract was made in a situation where Husky had threatened to cancel Forest's existing rights under an earlier agreement. Forest repudiated the disputed contract, alleging that Husky never had a right of first refusal. At trial ([1989] 6 W.W.R. 226 (Alta. Q.B.)), the judge held in favour of Forest, finding that there had been a mistake and Husky never had a right of first refusal.

On appeal, Côté J, for the Alberta Court of Appeal, held that there was no mistake. Valid contracts may be made about uncertain rights or claims. Forest knew of the uncertainties when it made the contract, and it was irrelevant whether Husky really had a right of first refusal. Also, the court pointed out that Forest never

made an adequate attempt to confirm whether Husky had a right of first refusal. The court held that Forest had made a valid compromise contract in settlement of a claim put forward by Husky against Forest, regardless of the legal validity of Husky's claim. *See, Husky Oil Operations Ltd. v. Forest Oil Corp.*, [1991] 4 W.W.R. 336, 79 Alta. L.R. (2d) 134 (Alta. C.A.). Leave to appeal to the Supreme Court of Canada was dismissed, 3 October 1991 (81 Alta. L.R. (2d) 1xvii).

Oil and Gas Leases — Lessor's Title — Interpretation

In *Amoco Canada Resources Ltd. v. Potash Corp. of Saskatchewan Inc.*, Amoco claimed an interest in various mines and minerals under a lease, and filed a caveat against the title of the lands in question. The title itself excepted out "All coal, petroleum, natural gas and all other hydrocarbons, ..., occurring in association with any of the foregoing in a fluid state." Potash Corp. bought a four-fifths interest in the land, and moved for discharge of the caveat claiming Amoco had no interest in the lands because its interest fell within the exception. The original action was decided by a Chambers Judge on an agreed statement of facts, lacking any evidence but the disputed title document and lease themselves ([1990] 5 W.W.R. 641 (Sask. Q.B.)). The Judge decided that the leased substances did fall within the exception to the title.

The Saskatchewan Court of Appeal held that summary proceedings are generally inappropriate for final determination of "complex issues of fact or law touching upon the rights of caveators and land owners." The Court also pointed to several places where the Chambers judge's interpretation of the facts could be questioned. The Court ordered that the caveat be continued for 3 months, after which time it would lapse, unless Amoco has commenced an action to establish an interest in the disputed mines and minerals. *See, Amoco Canada Resources Ltd. v. Potash Corp. of Saskatchewan Inc.*, [1991] S.J. No. 613 (QL Systems).

Operating Agreements — Clauses — "Area of Mutual Interest"

In *Luscar Ltd. v. Pembina Resources Ltd.* ([1991] A.J. No. 1051 (QL Systems)), Egbert J of the Alberta Court of Queen's Bench dealt with a case involving alleged breach of an "Area of Mutual Interest" clause (A.M.I. clause) in an operating agreement. The judge found there had been a breach. Moreover, the breach was not solely a breach of contract, but also a breach of a fiduciary obligation contained in the clause itself. The judge followed many similar American cases. Therefore, the plaintiffs obtained a declaration that the interests obtained by the defendant in breach of the A.M.I. clause, as well as the revenues

generated by those interests, were held in trust by the defendant for the plaintiffs. In calculating the award, the judge decided that 20% is an appropriate discount rate for mature producing oil properties in today's market.

National Energy Board — New Office and New Duties

The National Energy Board has moved its head office from Ottawa, Ontario to Calgary, Alberta. Also, the Canada Oil and Gas Lands Administration has finally been officially dissolved. Its engineering branch responsibilities have been transferred to the National Energy Board's Yellowknife Office (See, *Oilweek* Vol. 42, 16 September 1991, "Pulse").

Mining

Claim Staking on recorded Claims and Leases — Dispute Provisions — Ontario

In *Therault v. Ontario*, [1991] O.J. No. 1778 (Div. Ct.) (QL Systems), a decision of the Mining Commissioner of Ontario was appealed. The appellant submitted a number of claims to the Mining Recorder for filing that were in areas of subsisting mining leases. The Mining Recorder refused to file them. The appellant appealed to the Mining Commissioner, and the appeal proceeded by way of *trial de novo*. The Mining Commissioner upheld the decision of the Recorder.

The case was decided under Ontario's 1980 *Mining Act*, R.S.O. 1980, c.268 which provided that

an application to record a claim that is for lands or mining rights already included in a subsisting recorded claim shall not be recorded but shall, if the applicant desires, be received and filed. After filing, the applicant had 60 days to submit a dispute for adjudication. The appellant claimed that the Recorder had no jurisdiction to refuse to file the application.

The court cited a number of established propositions. If the certificate of record has been obtained by fraud or mistake, the Commissioner may revoke it on the application of an interested person. Further, no third party has a right to interfere with a lessee's possession under a Crown lease unless, at the time the lease was granted, that third party had an interest in the lands to be leased. Therefore, the "interested person" who may apply to have a lease revoked is narrowly construed. The court held that the Mining Commissioner had determined these issues, therefore, the dispute contemplated by filing and then raising a dispute within 60 days had already taken place and been decided. Thus the issue of whether the Recorder should have filed the application was moot.

Option Agreement — Termination — Whether Oil and Gas Lease Cases are Relevant to Construction of Option Agreement

In *W. Bruce Dunlop Ltd. v. Snow Lake Mines Ltd.*, [1991] M.J. No. 477 (C.A.) (QL Systems), B.D. and S.L. had an agreement regarding production from a mining property. The original agreement provided that B.D. would give S.L. 30 days notice in

the event S.L. defaulted in its obligations under the agreement. B.D. and S.L. subsequently executed an amending agreement whereby production from the property was to begin by December 31, 1990, or a payment could be made that would extend the date for commencement of production to June 30, 1991. Production did not commence nor was payment made by December 31, 1990. B.D. claimed that the agreement ended and it was entitled to reconveyance of the mining property.

S.L. claimed that it was entitled to notice of default. The court held that S.L. was not actually in default, but that the agreement had expired according to its terms. To hold otherwise would render the amending agreement nugatory. S.L. also claimed that it was entitled to relief from forfeiture because of the harsh consequences of its default. However, again the court noted there was no default. Failure to exercise the option to extend the agreement gave rise to neither forfeiture nor penalty. The court followed *East Crest Oil v. Strohschein*, [1952] 2 D.L.R. 432, a decision of the Alberta Court of Appeal that dealt with an oil and gas lease containing much the same terms. S.L. attempted to distinguish the case on the basis that it was an "owner" of the mining properties and not a "lessee". The court decided that made no difference in this case.

* *Susan Blackman is a Research Associate with the Canadian Institute of Resources Law and is the Canadian oil and gas and mining law reporter for the Rocky Mountain Mineral Law Foundation Newsletter.*

Institute News

Chair of Natural Resources Law Appointed

Beginning in January, 1992 for a six-month period, Lorne Giroux of the Law Faculty of Laval University will hold the Chair of Natural Resources Law at The University of Calgary. The Chair is co-sponsored by the Institute and The University of Calgary Faculty of Law.

Mr. Giroux has taught at the Law Faculty at Laval University since 1970 and has been a member of the law firm of Grondin, Poudrier & associés since 1972. He has written extensively in the areas of planning and zoning law, municipal law, environmental law and administrative law.

Mr. Giroux will teach Advanced Environmental Law during the winter semester and will be presenting a free public seminar sponsored by the Faculty of Law and Canadian Institute of Resources Law on May 14, 1992 starting at 1:30 p.m. For further information about this seminar, please contact Pat Albrecht at 220-3974.

Recent Seminar

On February 13, 1992, the Institute hosted a seminar by Professor Phil Elder of the Faculty of Environmental Design, entitled "Environmental Ethics: Don't Go Off the Deep End."

New Board Members

The Institute has two new Board members.

Sheilah Martin was appointed to the Institute's Board as one of the representatives of the Faculty of Law Council of the University of Calgary. Dr. Martin was appointed Acting Dean of Law in January, 1992. She came to the University of Calgary in 1982 working part-time for the Faculty of Law and part-time for the Canadian Institute of Resources Law. She has taught in many different areas and has written widely in the areas of constitutional law, feminist jurisprudence, legal controls on human reproduction, health care, and law and medicine.

Donald E. Wakefield is a partner with the Toronto law firm of Osler, Hoskin & Harcourt. He practices in the area of Corporate and Commercial Law with special emphasis on mining, energy, environmental and natural resources law. He is a Director of several Canadian business corporations and is a Trustee of the Rocky Mountain Mineral Law Foundation and co-editor of the Canadian Mining Law Section of the American Law of Mining.

Recent Visitors

Patricia Guthrie, Ebersold & Associates, St. Paul, Minnesota

John Bradsen, Department of Law, University of Adelaide, Australia

Globe '92

The Canadian Institute of Resources Law is pleased to be a Promotional Partner for Globe '92. Globe '92 is an international, integrated Conference and multi-sectoral Trade Fair on business and the environment which will be held in Vancouver, B.C. from March 16 to 20, 1992. It's mandate is to increase the advancement of sustainable development by encouraging practical solutions to environmental challenges and promoting related business opportunities and responsibilities.

The Conference will bring together key players from business, finance, industry, government, labour and environmental non-government organizations from developed and developing countries, to shape solutions which combine sound environmental practice with proven business strategy.

The trade fair will promote both the sale of leading-edge products, services, and technology of the environment industry, and the formation of strategic alliances crucial for success in the global marketplace.

For further information about Globe '92 please write to:
601 - 535 Thurlow Street
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Environmental Law for Practitioners

The Canadian Institute of Resources Law and the Faculty of Law, The University of Calgary will be co-sponsoring an Intensive 5-day Course on Environmental Law for Practitioners.

This course was first offered in 1990 and attracted a wide range of participants from across Canada. It is intended both for those practitioners who want to learn in a comprehensive way how environmental considerations will affect their practice now and in the coming years, and for those who are interested in developing a practice with a greater emphasis on environmental law.

The course will be taught by a faculty comprising leading Canadian academics and practitioners in environmental law and will include an extensive collection of material prepared by the faculty which will serve as an invaluable reference tool. The course will be held in Calgary from June 8 to 12, 1992.

The fee for the course is \$1,390. This includes classes, course materials, refreshment breaks and all social activities.

Please see the enclosed brochure for further details or contact Patricia Albrecht, Canadian Institute of Resources Law, 2500 University Drive NW, Calgary, Alberta, T2N 1N4
Phone: 403 220 3200 Fax: 403 282 6182

Course Outline

Topics to be covered include the following:

- An Introduction to Environmentalism
- Constitutional and Legislative Context of Environmental Law
- Environmental Impact Assessment
- Judicial Review
- Corporate Law and the Environment
- Business and Real Estate Transactions
- Hazardous Materials
- International and US Environmental Law
- Environmental Litigation Strategies
- Enforcement

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