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Sustainable Forest Management on Alberta's Private Woodlots: Defining a Role for Government

*by Monique Ross**

Introduction

During the recent past, the logging of substantial quantities of timber on Alberta private woodlots, propelled by an increasing scarcity of timber on public lands in neighbouring British Columbia and Montana, has received wide coverage in the provincial press.[1] The negative economic and environmental consequences of the "rush" on privately owned timber reserves have included, notably, a) the export of wood and related jobs, resulting from the inability of local wood processors to compete with the prices offered by out-of-province purchasers, b) the adverse impacts on soil, water and wildlife habitat linked to poor harvesting practices, c) illegal harvesting on adjoining Crown lands, d) the impact on roads due to heavy truck traffic, as well as e) the aesthetic impact on neighbouring properties. This host of unforeseen problems has raised important issues as to private property rights, the public good nature of forests, and the role of government in regulating forest practices on private lands. Even though these issues no longer make the newspaper headlines, the rate of logging on private lands has not abated and the problems which surfaced in the mid-1990s have not as yet been satisfactorily resolved. With timber supplies from public lands either declining, particularly in certain regions of British Columbia, or becoming fully allocated, the potential offered by private woodlots as a source of additional timber for a growing forest sector continues to attract the attention of the forest industry, both within and outside of Alberta.

The challenge is to devise means by which the age-old respect for property rights may be reconciled with the new demands for sustainability. Increased public sensitivity to environmental degradation on the one hand, and the globalization of forestry issues on the other, have made it imperative to address the unresolved issues surrounding the exploitation of private woodlots. On the newly found path towards sustainable forest management, how are unsustainable forest practices on some of those lands which are held in private ownership to be dealt with? Should the flow of timber outside of the province be contained? Should the provincial government participate more directly in the enhancement of forest conservation and management on private lands, and which policy tools are best suited to the task?

Which role, if any, should other levels of government as well as other interested parties play? Should woodlot owners be

Résumé

Les questions soulevées par les coupes abusives et l'exportation de bois en provenance des boisés privés de l'Alberta, qui avaient provoqué beaucoup d'intérêt dans la presse locale il y a quelques années, restent d'actualité et sont reprises dans cet article. L'auteur examine brièvement la situation des boisés privés en Alberta ainsi que les politiques et législations qui s'y appliquent. Elle suggère que le gouvernement provincial est bien placé pour jouer un rôle de premier plan eu égard à la préservation et à la saine gestion des boisés privés et identifie certaines actions concrètes qui pourraient être prises dans ce sens.

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left to devise their own solutions to the problems at hand?

This article takes a cursory view of these issues and adopts the position that the provincial government should take the lead in developing policy objectives and instruments supportive of long-term conservation and sustainable management of private woodlots. After a brief overview of the situation in regard to private woodlots in Alberta and current government policies applicable to these lands, certain key areas are identified towards which provincial initiatives should be directed.

The woodlot sector in Alberta

In Alberta, as in the other Prairie provinces, forest lands in private ownership represent only a small percentage (approximately 6%) of all provincial productive forests. Private woodlots are located in the White Area of the province, which is primarily dedicated to agriculture and settlement, while the vast majority of Crown forests are found in the Green Area, designated for timber production and multiple values. The White Area also contains, along with private woodlots, significant public woodlands which in many cases are presently under grazing lease dispositions.[2] Most forested lands are situated in a parkland/forest transition zone along the Green Area and in the Peace region.

Historically, interest in exploiting woodlots for timber in the White Area has been minimal. Woodlands were traditionally considered an obstacle to the expansion of agriculture; they were cleared and burned to free land for agricultural crops or pasture. This bias toward agricultural land uses persists to this day and has long been actively encouraged by government policies, with the clearing of woodlands to promote agricultural expansion and intensification being subsidized under a Range Improvement Assistance Program, until its discontinuance in 1995.[3] Other factors which explain the minimal attention paid to woodlot management were the low commercial value of deciduous trees (aspen) and the lack of markets for commercially valued species (coniferous).

Further, surveys indicate that woodlot owners in the Prairie provinces, as is generally the case across Canada, value their woodlots considerably more for their non-timber values than they do for timber production.[4] The most significant reason cited by woodlot owners for the ownership and retention of forest lands or woodlots is, firstly, the provision of shelter for residences, followed by wildlife habitat, soil and water conservation as well as heritage value. The three most important reasons cited for the use of forest lands are wildlife habitat, grazing livestock and recreation, with the use of timber for sale ranking as a low priority for woodlot owners.

Nevertheless, in Alberta sales of timber from private lands have rapidly increased over the past few years.[5] Shortages of timber supplies on public forests, combined with recent industrial uses for aspen and soaring market prices commanded by coniferous wood, have caused woodlot owners to become fully aware of the economic value of their woodlots. Some opt to manage their woodlot for long-term returns while others realize short-term profits from a one-time harvest. Despite high levels of private timber harvesting, a majority of landowners continue to indicate a preference for selective harvesting in order to retain a certain degree of forest cover.[6]

Government regulations and policies applicable to private woodlots

Provincial and federal legislation

The provincial *Forests Act* and its regulations govern the use and management of public forests and regulate all aspects of Crown timber allocation, harvesting and export.[7] These provisions prescribe specific forest practices to be followed by those authorized to harvest Crown timber and set reforestation standards designed to maintain a forest cover on Crown lands. The act and regulations do not apply to privately owned forests. In response to public concerns surrounding the cutting and export of substantial quantities of privately owned timber, the provincial government has recently implemented a permit system applicable to the transportation, on public highways, of coniferous timber from private lands.[8] These measures are intended to enable the provincial government to trace with more accuracy the origin, destination and quantities of harvested timber; however, they do not affect the volumes of cut nor the harvesting practices carried out on private lands.

A number of provincial statutes designed to protect specific resources (eg. soil and water) or to prevent the creation of a fire hazard have application on both private and public lands. These include, in particular, the *Soil Conservation Act*, the *Forest and Prairie Protection Act* and the *Water Resources Act*.[9] Under these statutes, activities which may result in soil loss or deterioration, create a slash fire hazard, or affect the bed, shore or banks of any body of water, are prohibited. Such prohibitions directly apply to timber harvesting operations since, when improperly carried out, they can result in these detrimental consequences. Landowners who contravene the legislative provisions may be compelled to undertake mitigative measures, incur penalties or, if remedial measures are taken by provincial or municipal officers, be required to reimburse all expenses incurred in carrying out remedial work. In addition to these provincial statutes, the pollution provisions of the federal *Fisheries Act*[10], which apply to "water frequented by fish", whether on public or private lands, prohibit activities which may cause harm to fish habitat.

The provincial and federal statutes are enforced by provincial or municipal government employees with their effec-

tiveness being directly proportional to the number of inspectors or officers available to monitor activities on private lands. When provincial cut-backs reduce the workforce, government's ability to monitor and prevent local infractions inevitably decreases.

Municipal regulation

In the absence of direct provincial regulation of harvesting operations on private lands, a few municipalities have endeavoured to use their land-use planning powers to control potentially negative environmental impacts of timber harvesting on private lands, by imposing restrictions on the operations. The powers invoked are those provided to municipalities, under the *Municipal Government Act*, to enact land use bylaws which divide municipalities into districts, prescribe permitted and discretionary uses within each district and control developments, which are defined to include building activities or changes in land use.[11] Any development requires the issuance of a development permit which may be granted with or without conditions. Municipalities which have enacted logging controls have required landowners desirous of undertaking commercial logging in designated districts to obtain a development permit. The permit is issued subject to certain conditions with respect to, notably, cutblock size, logging on slopes, buffer zones, slash burning and reclamation.[12] In the face of local opposition, the first municipality in Alberta to have applied such logging restrictions on private land, the Municipal District of Pincher Creek, withdrew the logging guidelines under which strict conditions for the issuance of development permits for commercial logging were imposed. Currently, only a handful of municipalities in Alberta have implemented controls over private logging in designated areas of their municipality.[13]

Such municipal initiatives, taken to limit or prevent environmental damage and to protect the amenities of neighbouring properties, are a strong deterrent of the occurrence of unsustainable harvesting practices. However, they do not address the more fundamental policy issue of the long-term maintenance and enhancement of private forests.

Financial assistance

In Alberta, as in other Canadian provinces, governments' preferred means to foster the conservation and management of woodlots by woodlot owners has been the provision of financial incentives. For many years, federal-provincial cost-sharing programs have sought to enhance forest management on private lands with a view to primarily protect provincial wood supplies and strengthen rural economies. Under a series of now defunct agreements, financial and technical assistance was provided to woodlot owners for silvicultural treatments designed to improve the productivity of their woodlot, the development of woodlot infrastructure and the preparation of woodlot management plans.[14] In Alberta, where the woodlot sector was undeveloped but nevertheless perceived as presenting potential for timber utilization, the program focused on developing an understanding and awareness of the forest resource among woodlot owners and sponsored sectoral development projects. One of the outcomes of the final round of agreements was the preparation of A Woodlot Management Guide for the Prairie Provinces, offering woodlot owners sound advice on woodlot assessment, multiple land use, products/markets and woodlot management.[15] However, in the current climate of fiscal restraint, prospects for continued funding of private forestry programs by the provincial government are facing a less-than-secure future.

Information and advice

In order to foster woodlot owners' awareness and management skills, government and industry have developed management and planning directives. In addition to the above-mentioned woodlot management guide and other extension material, the provincial government offers professional advice to any woodlot owner who may so require.[16] Forest companies have also developed planning guidelines and provide management assistance to woodlot owners interested in entering into Wood Purchase Agreements with these companies.[17] Further, the recently created Woodlot Association of Alberta has the express goals of providing technical information and assistance to its members and facilitating responsible woodlot management.[18]

Defining a role for government

The complexity of the issues surrounding logging on private lands requires carefully researched solutions which involve a broad spectrum of parties. The provincial government, in its capacity as owner and manager of the vast majority of forest lands in the province, and as legislator of property and civil rights, and matters of a local and private nature in the province, is positioned to play a decisive role in the debate.[19]

Since Canada prides itself upon being a leader in international efforts to define sustainable forest management and to progress towards it nationally, it is no longer possible nor desirable to consider forestry activities on private lands in isolation from the international and national context of sustainable forest management.[20] To its credit, the Canadian forest industry has actively supported national efforts to develop standards for a voluntary certification program which would "enable clients to identify forest companies that manage forests according to the principles of sustainable forest management".[21] As well, the Canadian Federation of Woodlot Owners, representing various provincial woodlot associations, has been involved in several of the national policy initiatives and has closely followed the development of certification standards.[22]

The following paragraphs identify concrete steps the provincial government can implement to positively influence forest management on private woodlots. It is not suggested that other parties should not be equally involved; however, the provincial government is empowered to significantly orientate the outcome of the debate.

Development of a provincial woodlot policy

One of the major obstacles to overcome in developing a woodlot sector in Alberta is the lack of a clear commitment to woodlot conservation and management on the part of the provincial government. Since 1993, a wide range of individuals and organizations have been involved in the preparation of an *Alberta Forest Conservation Strategy*, and this lengthy consultation process resulted, in the Fall of 1996, in the submission of a proposed strategy to the provincial government. Presenting Albertans with "a new way of viewing and caring for forests in the province", the strategy is intended to "guide the policies and actions of all those who live, work and play in the forests of Alberta", both public and private.[23] The strategy advocates an ecological management approach to forests centered on the maintenance and enhancement of the forest landbase in Alberta, including private and public woodlands in the White Area, which have been acknowledged as having tremendous potential for management as sustainable woodlots. Provincial government and municipalities have been invited to adopt this specific policy objective and to further their commitment to the sustainable long-term management of those forested lands.[24]

The adoption of a policy objective of maintaining and enhancing the forest landbase requires firm support from the agricultural constituency in the province and a commitment by all government departments including those responsible for forestry, agriculture, municipal affairs and economic development. In regard to the White Area, concerted action between the Department of Agriculture, Food and Rural Development, which assumes major management responsibilities, and the Department of Environmental Protection, which controls timber harvesting on public woodlands, is a prerequisite. A key element of a policy commitment to maintaining the forest landbase would be the completion of forest resource inventories on both private and public woodlands in the White Area. Land use decisions are best taken on the basis of a solid understanding of the characteristics of the land and all existing resources. An equally important factor in a woodlot policy is the creation of integrated land use decision-making processes fostering local resolution of potential conflicts. The provincial Woodlot Association should play a central role in identifying specific strategic policy directions.

Tax policies

The tax regime currently applicable to woodlot owners, both under national income tax provisions and provincial property tax provisions, is not conducive to woodlot preservation or management. This situation is due to the fact that woodlot owners, unlike farmers, are not recognized as a specific category and do not benefit from the same tax benefits. Proposals to amend Canada's *Income Tax Act* in order to create a category of woodlot managers to which special tax provisions would apply have been developed and submitted to the federal government.[25] Provincial property tax regimes tend to favour farmers and provide disincentives to woodlot owners to maintain and manage their woodlots. For example, under Alberta's *Municipal Government Act*, woodlot operations are not considered farming operations and whereas land classified as farmland is assessed at the agricultural use value, woodlots are classified as non-residential land and assessed at market value. This assessment policy encourages the clearing of woodlots for pasture to obtain the benefit of a lower tax assessment. By changing the unfavourable tax treatment applied to woodlot owners, the provincial government could, at a minimum, create a more equitable situation for both farmers and woodlot owners.

Certain provinces have instituted preferential tax treatment for woodlot owners who manage their woodlots by providing either lower tax rates (eg. British Columbia) or rebates on their property taxes (eg. Ontario, Quebec).[26] Such tax incentives have been used to encourage more efficient woodlot management since, in order to qualify as managed forest for taxation purposes, proof of active management must be furnished and a forest management plan must, in most cases, be submitted to a government representative. Such preferential tax treatment could also be offered to landowners for the long-term protection and stewardship of conservation lands, as is currently the case in Ontario.

Creation of woodlot licences

In the White Area, private woodlots are often intermingled with and adjacent to stands of public forests. Although the moderate size of private woodlots may not always justify investments in long-term woodlot management, a combination of private and public woodlots could create economically viable management units. By granting woodlot owners access to public woodlands, the provincial government could provide those desirous of engaging in timber management the incentive to do so. Both the provinces of British Columbia and Quebec offer such an option to their woodlot owners. Specifically in British Columbia, a woodlot licence enables landowners or lessees of private lands to have access to Crown land under a long-term tenure, with the lands being then jointly managed under a comprehensive management plan approved by a district manager,

according to strict provincial regulations.[27] Quebec's forest legislation also provides for the entering into of forest management contracts between private landowners and the provincial government, under which the management of public lands located in the vicinity of municipalities is entrusted to parties who may be either individual landowners or groups of woodlot owners having formed joint-management organizations.[28]

Provision of financial assistance

With the cancellation of economic incentives previously provided under federal-provincial cost-sharing programs, continued provincial support is imperative in order for the woodlot sector to develop and expand. In addition to existing extension services, technical and financial assistance is required for the preparation of forest management plans, the application of silvicultural treatments, the identification of markets for both timber and non-timber products, and woodlot management for a variety of non-timber resources. The undertaking of afforestation or reforestation programs on private lands, as provided for under a rarely used section of the *Forests Act*, is one example of such incentives.[29] Another possibility is the forging of alliances among various parties such as government, the provincial Woodlot Association and the forest industry for the funding and delivery of these programs.

Conclusion

The above discussion highlights the fact that the resolution of issues relating to over-cutting and poor harvesting practices on private lands necessitates moving beyond a mere debate between advocates and opponents of state control and regulation. Without directly regulating the activities of private landowners, the provincial government disposes of several means to significantly influence woodlot owners' actions and choices, with only a few of the available options having been reviewed in this article. Compelling economic and ecological reasons exist for the maintenance and enhancement of woodlots, either for the production of timber and non-timber resources, or for conservation. By endorsing and implementing a woodlot policy such as has been proposed in the draft Alberta Forest Conservation Strategy, the provincial government would contribute to fulfilling its national commitments towards the sustainable management of all forests.

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Notes

1. Anne Crawford, "B.C. mills snap up private timber" *Calgary Herald* (02 February 1994); Donald Campbell, "U.S. sawmill buying up Alberta logs" *Calgary Herald* (08 March 1994) D1; Andrew Nikiforuk, "The Great Alberta Timber Rush" *Environment Views*, Vol. 17, No.2, Winter 1994; Patricia Lush, "Alberta log exports spark tensions" *Globe and Mail* (06 June 1995).

2. A 1988 Agriculture Land Base Study estimated the amount of unimproved woodland in the White Area of the province at approximately 2.9 million hectares, of which an estimated 1.2 million hectares are on private land. A comprehensive inventory of forest resources in the White Area has not yet been completed by the province.

3. Ezra Consulting Limited, *A Profile of the Private Woodlot Industry in Alberta* (March 31, 1996), submitted to the Prairie Farm Rehabilitation Administration (PFRA), Red Deer, Alberta. Wooded areas on public lands held under grazing leases in the White Area continue to be cleared for range improvement: Vicky Barnett, "Timber plan irks residents" *Calgary Herald* (12 November 1996).

4. Rounds, R.C., Milne, B, and J. Rollheiser, *Towards Defining A Woodlot Management Program For The Prairie Provinces*, The Rural Development Institute, 1995, RDI Report Series 1995-3, Brandon University, Brandon, Manitoba.

5. In 1994/95, the harvest from private land was approximately 2.3 million m^3 (948 000 coniferous and 1 364 000 deciduous) while the provincial harvest on public lands was 15.1 million m^3: Alberta Environmental Protection, *The Status of Alberta's Timber Supply*, May 1996. A significant proportion of the coniferous timber continues to be exported, primarily to British Columbia, while most of the deciduous timber is utilized by Alberta mills.

6. Ezra Consulting Limited, *supra*, note 3.

7. R.S.A. 1980. c. F-16. The export of Crown timber is restricted under s. 31, which prohibits the transport of logs, trees or wood chips, except dry pulpwood and Christmas trees, to any destination outside of Alberta, except with Ministerial exemption. The *Timber Management Regulation*, Alta Reg. 60/73, deals with timber allocation, Crown charges, timber harvesting operations, reforestation, etc.

8. Under the *Timber Management Regulation*, Alberta Regulation 60/73 as amended by Alberta Regulation 296-95, ss. 111.1-120, a permit is now required to haul coniferous trees or logs exceeding 2.2. meters in length, harvested from private lands, Indian reserves and Metis settlements. The timber transported must be measured and the volume recorded.

9. S.A. 1988, c. S-19.1, R.S.A. 1980, c. F-14, R.S.A. 1980, c. W-5.

10. R.S.C. 1985, c.F-14.

11. S.A. 1994, c. M-26.1. Division 5 (ss. 639 to 646) deals with land use bylaws.

12. Eg. Municipal District of Bighorn No. 8, *Bylaw 64/94* amending the General Municipal Plan, 1992 and *Bylaw 65-Z/94* amending Land Use bylaw No. 11 (passed September 12, 1995). A development permit is required for logging on private lands located within "regulated areas" identified in the General Municipal Plan, except when the total area to be logged is less than 10% of the size of the parcel on which logging will occur, or less than 2.0 hectares (4.9 acres). A development permit application must be accompanied by a harvesting plan prepared by a registered professional forester and be consistent with the provincial *Timber Harvest Planning and Operating Ground Rules*, under which forest practices on Crown lands are regulated.

13. In addition to the M.D. of Bighorn No. 8, in 1994, the Municipality of Crowsnest Pass amended its Land Use Bylaw No. 304-92 and established Commercial logging guidelines setting standards and restrictions for the issuance of logging permits (*Bylaw No. 333, 1994*). In August of 1996, the Town of Canmore adopted *Bylaw 35(Z)96*, amending Land Use bylaw No. 18, to require the obtention of a development permit for any logging operation performed on a contiguous area of at least 500 m^2 or involving volumes of merchantable timber greater than 25m^3.

14. Often known as Forest Resource Development Agreements (FRDAs), these agreements were initially subsidiary to a set of umbrella agreements for regional economic development entered into by the federal and provincial governments, beginning in 1974. The private forestry component of these agreements varied according to the provinces. The last Canada-Alberta agreement (1991-1995) allotted a meagre 2.3% of the budget to private woodlots. See Monique M. Ross, *Forest Management in Canada* (August 1995), Canadian Institute of Resources Law, Calgary, at 210-217.

15. *Woodlot Management Guide for the Prairie Provinces*, produced by The Farm Woodlot Association of Saskatchewan, 1993.

16. Alberta Environmental Protection, *Alberta's Private Woodlot Program*, Forestry in Alberta Fact Sheet, No. 002, updated May 1996.

17. Eg. Alberta-Pacific Forest Industries Inc., Alberta-Pacific Private Forest Program, *Woodlot Planning Guide*.

18. "A Positive Start - Woodlot Association of Alberta" in Woodlot Bulletin - A newsletter for owners of forested land, Winter 1995/96.

19. The powers conferred upon the provinces under the *Constitution Act, 1867* notably under ss. 92(5), 92(13), 92(16), enable provincial governments to legislate in a broad range of areas, including environmental protection.

20. National initiatives include the 1992 National Forest Strategy (*Sustainable Forests: A Canadian Commitment*, Canadian Council of Forests Ministers, Ottawa: March 1992), as well as the development of national criteria of sustainability: *Defining Sustainable Forest Management - A Canadian Approach to Criteria and Indicators* (Canadian Council of Forest Ministers: Ottawa, March 1995).

21. Canadian Standards Association, *Z808-96 A Sustainable Forest Management System: Guidance Document*, Environmental Management Systems, Draft - February 6, 1996, Executive Summary.

22. The Federation participated in the development of the 1992 *National Forest Strategy*, and was a member of the Forest Round Table on Sustainable Development, established by the National Round Table on the Environment and the Economy.

23. *Draft Alberta Forest Conservation Strategy*, July 8, 1996, at i.

24. *Id.*, at 11, 12. Specific recommendations to a) minimize withdrawals from the forested landbase, b) promote return to forest of marginal agricultural public lands in the White Area, and c) support return of forested White Area lands to Green Area classification, were included in an earlier draft Strategy (October 21, 1995) and have been removed from the latest draft.

25. See David S. Curtis, *Tax Reform for Private Woodlot Owners In Canada: Executive Summary* (Ottawa: Canadian Forestry Association, May 1992).

26. David S. Curtis, *Provincial Taxation of Private Woodlots in Canada* (Ottawa: Canadian Forestry Association, June 1992). Ontario offers tax rebates of up to 75% of property taxes, with a maximum of $25,000 per landowner, and Quebec refunds 85% of taxes paid on productive assets.

27. Under ss. 41-43 of the *Forest Act*, R.S.B.C. 1979, c. 140, woodlot licences are allocated for a period of up to 15 years and may be periodically replaced. Interior woodlot licences may include a maximum of 600 ha of Crown land, whereas the maximum for coastal licences is 400 ha of Crown land.

28. *Forest Act*, R.S.Q. c. F-4.1, ss. 102-106.

29. R.S.A. 1980, c. F-16, s. 41.

Recent Developments in Canadian Mining and Oil and Gas Law

*by Susan Blackman**

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MINING

Newfoundland — Tax exemption — Interpretation of "pre-production development of any mineral"

In Newfoundland, a regulation exempts gasoline from tax when it is used "in motorized equipment used on the site for the exploration or pre-production development of any mineral, including the removal of overburden in open pit mining." Two companies conducted open pit iron ore mining and were assessed tax on the gasoline used in their operations. They appealed the assessment to the Trial Division of the Supreme Court claiming that some of the gasoline should be exempt from tax as in the quoted regulation. At trial, they were successful in having the tax reduced and the Crown appealed.

The first issue was whether "pre-production of any mineral" should mean "pre-production of a mine". It was accepted that during production a company might do further exploration in the vicinity of the producing mine to determine the extent of mineralization for example. The Court of Appeal stressed the use of the words "of any mineral" in the regulation and concluded that pre-production of a mineral could be an ongoing process that exists at the same time as production of a mine.

The second issue concerned the meaning of "overburden" and, specifically, whether it was confined to loose materials overlying bedrock or whether it could include waste rock. The Court accepted that either definition was possible in this case but determined that the intent of the exemption was to provide incentives for ongoing exploration and pre-production development of minerals and to extend the life of the mine. Therefore, it was reasonable to assume that mine operators were intended to derive the maximum benefit from the exemption. "Overburden" was interpreted to include waste rock. The Crown was unsuccessful in its appeal. *See Re Wabush Mines*, [1996] N.J. No. 246 (C.A.) (QL Systems).

British Columbia — Substantial Compliance — S.34, Mineral Tenure Act

The defendant (D) owned six claims that a complainant asserted had been staked in a manner not in compliance with the regulations. After inspections, the Chief Gold Commissioner cancelled all six claims. The defendant appealed that decision to the Supreme Court of British Columbia and had two of the six claims reinstated (*see Bond* v. *Dupras* (1995), 32 Admin. L.R. (2d) 161 (B.C.S.C.)). The complainant appealed to the Court of Appeal. That Court restored the decision of the Chief Gold Commissioner (CGC) and, in doing so, affirmed that the decision should not be overturned unless it can be shown that the CGC has erred as to his jurisdiction. Merely showing a possibility of error is not adequate. In addition, with regard to the curative provision in s.34 of the *Mineral Tenure Act* (S.B.C. 1988 c.5), the Court restored the discretion of the CGC as to how he can consider the claim from both aspects of the curative provision ("attempted in good faith to comply" and "not calculated to mislead other free miners") before he rules on its validity. That is, he is permitted to examine the whole claim from both aspects or to rule that a small portion such as a single boundary does not meet one of the tests, whatever is required in the circumstances. *See Bond* v. *McKenzie*, [1996] B.C.J. No. 3014 (C.A.) (QL Systems).

OIL AND GAS

Offshore petroleum development — Offshore Waste Treatment Guidelines

The National Energy Board has published Offshore Waste Treatment Guidelines that outline recommended practices and standards for the treatment and disposal of wastes from petroleum drilling and production operations in Canada's offshore areas on the East Coast and in the Arctic. The Guidelines will be applied by the National Energy Board, the Canada-Newfoundland Offshore Petroleum Board and the Canada-Nova Scotia Offshore Petroleum Board as part of their supervision of offshore petroleum development.

Oil and gas contracts — Exclusive jurisdiction clauses

Two agreements dealt with marketing of gas from a jointly-owned field and included a clause stating that the agreement was to be construed according to the laws of Alberta and that the courts of Alberta would have exclusive jurisdiction over any matters arising related to the agreement. The gas fields were located in British Columbia and the cause of action arose in British Columbia.

The dispute centred on the exclusive jurisdiction portion of the clause. Such a clause is not determinative of jurisdiction but is a factor to be considered. If the dispute was over an interest in land, the better forum would be British Columbia. Also, if the dispute involved a tort claim, again the better forum might be British Columbia. Here the dispute was over the production from the gas fields and whether it should be disposed of pursuant to existing contracts or whether new contracts could be sought. The judge determined that the production was not an interest in land but was personalty. Therefore, the dispute did not focus on the determination of rights to land. A tort claim was possible in the circumstances but it would be founded in contract. The judge determined the dispute should be heard in Alberta since the documents were in Alberta, most of the witnesses were in Alberta, and Alberta law was to be used to interpret the contracts. Alberta had the most real and substantial connection to the action. *See Encal Energy Ltd.* v. *Numac Energy*, [1996] B.C.J. No. 1918 (S.C.) (QL Systems).

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