Resources
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Judicial Attitudes to Aboriginal Resource Rights and Title

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Several interesting aboriginal title cases have recently come before the courts of Alberta, British Columbia and Ontario. In the Alberta and B.C. cases the impetus for litigation originated in a direct conflict between Crown granted rights of resource companies and pre-existing rights of aboriginal inhabitants. In the *Meares Island* ([1985] 2 WWR 722 (BC SC), [1985] 3 WWR 577 (BCCA) leave to appeal to SCC denied) and *Lubicon Lake* cases ((1984), 29 Alta L.R. (2d) 151 (QB), 36 Alta LR (2d) 137 (CA), leave to appeal to SCC denied) the aboriginal title holders sought an interim injunction, while in the *Bear Island* case ((1985), 15 DLR (4th) 321 (Ont. HC)), the matter was brought to trial by the Attorney-General following the filing of a caution in the land titles office by the Teme-agama Anishnabay band of Indians. Collectively, the cases reveal a wide range of judicial responses to the problem of aboriginal title: some humanitarian and sensitive but others hard-nosed and assimilationist.

In spite of the importance of the *Bear Island* case as it bears upon defining the content of aboriginal title, this comment is confined to the issues raised by the *Meares Island* and *Lubicon Lake* cases because they are directly comparable in view of the manner in which the matters came before the courts.

The comment is organized around the tests applied by the courts for dealing with interim injunction applications. I shall begin with a statement of facts of each case, followed by a review of the different tests applied. Then, I shall deal with the manner in which the tests were applied, and conclude with some comments about what the cases reveal about judicial attitudes to aboriginal title claims and claimants. (In all, there were five separate judgments in the British Columbia case and two in the Alberta case.)

In the *Lubicon Lake* case the action for an interim injunction was brought on behalf of an identifiable band of Indians. The action was brought on several grounds. First, it was alleged that members of the band were not signatories of Treaty 8. As a result, it was argued, they had never extinguished their aboriginal title, and provincial legislation was therefore of no application (presumably on the basis of s. 91(24) of the *Constitution Act,* 1867). Second, on the assumption that the band was bound by Treaty 8, it was alleged that a reserve had actually been set aside (although the formalities were not complete) within the meaning of the Natural Resources Transfer Agreement. Third, and finally, it was alleged that the Band was entitled to a reserve to be set aside in a particular area.

The defendants to the action were certain named oil and gas companies which held exploration rights from the Crown in right of the province in the area. The provincial Crown was also made a party to the action. The interim relief was sought pending trial of the action. It was supported by the band on several grounds, including: the effect of oil exploration activities on wildlife patterns and harvesting and the importance of wildlife to the diet and way of life of the Lubicon Band, and the consequent and cumulative effect on lifestyles. The band was unsuccessful both at trial and in the Court of Appeal.

The issues were similar in *Meares Island* but by no means identical. There, parallel actions for interim relief were commenced by the Crown licensee, MacMillan Bloedel (MB) and the aboriginal plaintiffs, members of the Clayoquot and Ahousaht bands. MB sought interim relief to restrain Indians and environmental protesters from unlawful interference with their logging operations. The Indian bands sought a declaration of unextinguished aboriginal title and a declaration that no provincial law in contravention of that title was of any force or effect. An interim injunction was also sought against MB restraining them from logging pending the trial of the main action.

Factors relied upon by the Indians to support their application for interim relief included: cultural significance of the forest, loss of heritage sites, overall dependence on the forest, and threat to family and social structure. MB on the other hand pointed to the need to cut the timber on the island to preserve its investments and

also pointed to the symbolic significance of the case were the Indians to succeed. At trial the Indians lost but the decision of Gibbs J. was reversed 3:2 on appeal.

The Tests Applied

The importance of the availability of interim relief in cases such as this should not be underestimated. It was, after all, the grant of an interim injunction in the *Kanatewat* case (unreported in English) by Mr. Justice Malouf, that finally persuaded the Province of Quebec to negotiate a settlement with the James Bay Cree and Northern Quebec Inuit.

In each of the two cases considered here the test applied for the availability of an interim injunction was some variation of the House of Lords' decision in *American Cyanamid Co.* v. *Ethicon* ([1975] AC 396). That case suggested a number of tests which should be applied by a court.

First, there must be a "serious question to be tried" or "a fair question to be raised". This is a much less onerous burden on the applicant than a requirement that the applicant establish "a strong *prima facie* case that the right which he seeks to protect in fact exists." Second, the court must establish where the balance of convenience lies between the parties. Important to this question is whether or not the plaintiff or defendant will suffer irreparable damge if the injunction were to be granted or denied. "Irreparable damage" simply means such damage as could not be compensated by a monetary award.

Doubt as to the adequacy of damages can lead to difficult problems of balance. But it was Lord Diplock's opinion in *Cyanamid* that only as a last resort should reference be made to the relative strengths of each party's case, and then only where one party's case is disproportionately stronger than that of the other. It was also Diplock's view that, since an interim application would come before the court on the basis of affidavit evidence, it was no part of the court's function to resolve conflicts of evidence or to decide difficult questions of law at this preliminary stage.

While all the judges involved in the two cases purported to pay obeisance to Diplock's opinion, their applications of the tests differ markedly. I will begin with the opinions of the Alberta courts in *Lubicon* and the trial and dissenting judgments in *Meares Island.* Mr. Justice Gibbs gave the trial judgment in *Meares Island* and his judgment represents, with respect, a serious misapplication of *Cyanamid.* First, Gibbs came to the conclusion that in a case of this type, where interim relief would have the effect of granting all the relief claimed in the action[1], a decision ought to be reached "on the relative strength of each party's case, even though the questions of law may be difficult". Hence Gibbs was raising the threshold that the applicants had to meet before being entitled to relief and reverting to pre-*Cyanamid* days. Second, Gibbs went on to consider the difficult and complex questions of law Lord Diplock had urged not be considered at this stage. And to cap it all, his Lordship's view of the status of aboriginal title in Canadian law was unsympathetic and idiosyncratic. It was his view that the 3:3 decision in *Calder* ([1973] SCR 313) disposed of the issue before the court. But even if it did not, and the applicant bands could establish title, generally applicable provincial legislation such as the *Forest Act* would continue to apply to the island.

This is not the place to criticize in detail these two conclusions, but what may be said is that they indicate a cavalier and sceptical approach to aboriginal title which ill accords with the fundamental constitutional status of aboriginal rights. As to findings of fact and evidence, Gibbs was equally sceptical, rejecting much of the opinion evidence filed by the applicant bands as being unsupported by factual evidence as to the sophistication of band organization at the critical time of settlement. By the same token, the generality of the evidence adduced by the applicants did not, in Gibbs' view, support their argument of irreparable harm and hence the balance of convenience also favoured MB.

The two dissenting judges in the Court of Appeal agreed with the result of Gibbs' review but disagreed with some of his reasons. In particular, both Craig and Macdonald JJA agreed that the band had shown a "fair question as to the existence of the right alleged" and that was all that they were required to do at this interlocutory stage. However, Craig was of the view that the plaintiff band could not establish irreparable damage and, therefore, that the balance of convenience favoured MB. Now the reason given for this is quite interesting because it seems to me to represent a fundamental misunderstanidng as to the consequence of ultimate success by the Indians in this case. For Craig's argument is that even were the Indians to obtain a final injunction "the inevitable solution must be what should be fair and reasonable compensation for land and interest *(sic)* which the Provincial Crown considers should be alienated or utilized for the welfare of all the citizens of the province".

I agree that final injunctive relief could not end the dispute between the bands and government and that there would still have to be a negotiated solution. But implicit in Craig's remarks is the belief that the provincial Crown would be competent to make a determination of, and carry through, if necessary unilaterally, what it perceives to be the public interest. I do not believe that to be the case; were the Indians successful in their argument, legislative responsibility would be vested in the Crown in right of Canada, and the province would lack jurisdiction.

Macdonald's opinion differed from Craig's in approach. Macdonald seemed prepared to assume (without deciding) that the plaintiff bands could establish irreparable damage. He therefore dealt with the matter on the basis of the balance of convenience, which he found to favour MB. Mainly, it appears for the same reason as Gibbs: *viz,* if this interim injunction were granted, it would be a sign of potential success to other bands who might then be able to make similar claims. Since a large proportion of B.C. is subject to an unextinguished aboriginal title claim, if the relief sought were granted the potential consequences to the economy could be drastic. This is the floodgates argument at its most objectionable, for its result is not simply a failure to establish or recognize a new cause of action, its result is a failure to protect an existing or claimed right or interest pending final judicial resolution.

But if the result is objectionable, so too is the means of

reaching it; for the willingness of both Gibbs and Macdonald to take into account additional actions brought by different bands in order to weigh the balance of convenience in the action before them is inappropriate. It is true that a court is entitled to take into account a broad range of issues when considering the availability of interim relief and it is certainly entitled to consider the rights and interests of third parties. But the line must be drawn at the point where interests may be affected as the result of the grant or denial of that particular injunction. The availability of relief cannot depend upon the possible success of potential litigants in future causes of action. For that, once again, is simply a floodgate argument and the court is well equipped to prevent abuses of its process.

Far preferable, in my view, was the approach of Seaton and Macfarlane. Macfarlane in particular noted that each application had to depend upon its own circumstances. But, he noted, if future applications were to come before the court, it would be legitimate to take into account how much land was already tied up by injunctive relief because that would obviously affect the overall availability of timber to the industry and the economy. This approach is preferable to dealing with hypotheticals and mere possibilities.

In the *Lubicon* case, Forsyth J. at trial, and Kerans JA for the Court of Appeal, took an interpretation of *Cyanamid* which, with respect, seems closer to the spirit of Diplock's judgment than that taken by Gibbs. Both courts refrained from examining the legal merits of each side's case but both came to conclusions on the interpretation of *facts* which were arguably inappropriate at that stage and best left to trial. Both courts acknowledged that there was a serious question to be tried, but took the view that the band failed on the balance of convenience test to establish irreparable damage. On the other hand, the companies had established that granting the injunction would cause them damage, and "a loss of competitive position in the industry," for which the applicants would be unable to pay. Thus, like Gibbs in *Meares Island,* both Alberta courts placed some reliance on the fact that the applicant band would be unable to give a meaningful undertaking to the court as to the damages which might flow from an interim injunction were one to be granted.

In an attempt to establish irreparable harm the plaintiffs had suggested that drilling and associated activities would have a detrimental effect on wildlife which would, in turn, damage a traditional way of life. This claim was met with great scepticism by both courts. Forsyth was of the view that the plaintiffs could hardly establish a threat to a traditional way of life when they had already gone a long way towards joining the mainstream of twentieth century society. In other words, the Lubicon Band had nothing left worth protecting. That, with respect, seems to be a very harsh conclusion, and, more to the point, an inappropriate one to be made at the interim injunction stage. It also indicates a judicial view that the aboriginal peoples of Canada have rights so long as they remain in a fossilized or primitive state but their rights are progressively diminished to the extent that they avail themselves of the benefits and burdens of the twentieth century.

Kerans in the Court of Appeal did not dissent from the opinion expressed at trial. Instead he added to it, weighing the evidence which had been put in by the parties and coming to the conclusion that the plaintiffs hadn't established a causal link between the respondents' activities and reduction in wildlife or that such a reduction was critical. Neither had they established an imminent and real threat, even though there was evidence of destruction of traps and snares. Such a high standard of proof was appropriate because the claim was a *quia timet* claim.

The difficulty with this approach is that it is not clear what evidence would satisfy the court. The purpose of an interim injunction is always, in a sense "quia timet," for it lies to protect the subject matter of the dispute, pending trial. But here Kerans seems to be demanding solid proof of actual damage and destruction which has already occurred prior to a grant of injunctive relief. With respect this seems too stringent a test. The court goes too far when it requires the plaintiff band to establish that "there will be a serious red meat shortage", or "real harm" or that there is a "*critical*" reduction in wildlife.

The leading judgment for the majority in the British Columbia Court of Appeal in *Meares Island* was given by Seaton JA, and it, along with the separate concurring judgment of Macfarlane JA, establishes a test which is significantly easier for the plaintiff band to meet.

Both Seaton (Lambert JA concurring) and Macfarlane were easily satisfied that there was a serious issue to be tried, and, furthermore, that the court ought not to pass, at this stage, upon the relative merits of the applicants' claim to aboriginal title. The issues here were much too difficult and complex to be disposed of on a preliminary application. Neither was either judge prepared to dismiss the application on the basis of inadequate factual evidence as to the claim of title – an argument which had so appealed to Gibbs. All that was needed was sufficient evidence to establish that there was a serious question to be tried, and that test had been met.

On the second branch of the test for interim relief, Seaton was of the view that the Indians could establish irreparable harm but that MB could not. As Seaton put it, the timber would still be there if MB's claim was vindicated, whereas if MB were allowed to cut, "nothing will be left", "the forest that the Indians know and use will be permanently destroyed."[2] Such destruction represented a threat to something of material and symbolic importance but it was also a threat to family and social structure. Hence the band had been able to establish irreparable damage and MB had not. But Macfarlane and Seaton however were at pains to emphasize the peculiar importance of Meares Island to the Indians and they by no means suggested that the band would be able to obtain interim relief throughout its claim area.

Conclusions

Three major conclusions can be drawn from the above analysis. First, apart from the majority judgments of the Court of Appeal in *Meares Island* I would suggest that the judgments show a tremendous scepticism of the claims made by the bands and an unwillingness to take them seriously. Hence we have Gibbs' conclusion that

there is no serious issue to be tried and Craig's conclusion that even if the band were successful the provincial Crown would still be competent to act to determine the public interest.

Second, with the notable exceptions of Macfarlane and Seaton the judgments tend to frame the tests for the availability of interim relief very stringently. Thus, Gibbs suggests that the applicant band has to establish something like a prima-facie or winnable case, and both he and the Alberta courts required standards of proof at the interim stage which were more appropriately left to a determination of final relief.

Finally, the scepticism as the nature of Indian rights also extends to scepticism as to the need to protect a unique Indian way of life. This manifests itself in the comments of the Alberta courts about the Lubicon Band, but it is also inherent in the formulation of the balance of convenience by Gibbs and others. Thus Gibbs could not accept that the Indians could establish irreparable harm despite the historical and cultural significance of Meares Island. He further found MB's industrial imperatives to be of greater importance than the less easily quantifiable cultural interests of the Indians. By the same token, the Alberta courts favoured protection of the competitive position of the oil companies (as if they could not drill in location B instead, or in year three rather than year one). The courts appear to have taken this position partly because of the inability of the band to compensate the oil companies in the event that the band lost. Does this mean that a poor plaintiff can never obtain interim relief? One hopes not, and indeed the majority opinion in the British Columbia Court of Appeal proves otherwise. Mr. Justice Seaton, in a judgment which is truly a breath of fresh air in this area of the law, simply concluded that in the circumstances of the case, he would not exact an undertaking to pay damages, in the event that the claim of the Indians was subsequently found to be without merit.

Footnotes

1. This supposition seems to me to be very questionable. Surely the Province and MB would insist upon final determination at a trial of the action, or, failing that, discharge of the interim injunction.

2. This conclusion echoed that of Mahoney J in the *Baker Lake case* (1978), 87 DLR (3d) 342 (FCTD) at 348 "The minerals, if there, will remain; the caribou, presently there, may not."

The Federal Environmental Assessment and Review Process Guidelines Order

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Introduction

In 1973, the Government of Canada by cabinet directive established the federal Environmental Assessment and Review Process (EARP) to ensure that the environmental effects of federal proposls were assessed before binding commitments were made. Authority for the process was entirely administrative until the Government Organization Act, 1979[1] mandated the Minister of the Environment to undertake and co-ordinate governmental impact assessment programs for "new federal projects, programs and activities". If these proposals are found to have probable significant adverse effects, the results of the review are to be "taken into account",[2] presumably at the approval or implementation stages.

The legislation also authorized the same minister, with Cabinet approval, to establish "guidelines" for the use of various federal departments and agencies (including, where appropriate, regulatory agencies) in the carrying out of their duties. In June, 1984, following a Department of the Environment Discussion Paper, the Environmental Assessment and Review Process Guidelines Order (SOR/84-467) was issued. About the same time, other improvements to EARP were announced.

Changes to EARP

Before we analyze the Guidelines Order, a summary of the most important changes is in order:

1. The initial screening and assessment of proposals (undertaken by government departments to see if a full environmental assessment is required) is to be done in a more systematic manner.

2. Better scientific techniques for environmental assessment are being developed jointly by the Federal Environmental Assessment and Review Office (FEARO), federal departments, industry and other governments. A new Canadian Environmental Assessment Research Council (CEARC) has been created and $500,000 will be allotted annually for environmental assessment research and implementation.

3. A paper is being prepared on the subject of government-wide funding of intervenors in EARP.

4. Other procedural refinements are underway, and FEARO has recently issued a document on core procedures for public reviews.[3]

5. Whereas under the original cabinet directive proprietary Crown corporations and regulatory agencies were merely invited, not required, to participate, it is now intended that the new guidelines will apply to them "as long as there is no legal impediment to such application nor resulting duplication of responsibilities".[4]

6. An attempt has been made to reduce the duplication or conflict with the regulatory process by stressing the EARP review "as a planning tool at the earliest stages of the development of the proposal rather than as a regulatory mechanism" [Guidelines Order, s. 5(2)]. The results of the review are to be made available for use by regulatory agencies. Duplication of public reviews is, however, to be avoided where a proposal is subject to environmental regulation independent of EARP [ss.5(1) and 8].

7. Documentation of initial environmental screening of proposals by departments will be upgraded, under general guidelines provided by FEARO. Public access will be provided to decision records, panel reports and all information submitted to a panel [ss.15; 29(1), 31(2)]. This is considered by FEARO to be a significant reform.

8. EARP will now apply to transboundary impacts and in a limited way to foreign aid projects.

9. EARP's coverage of socio-economic issues has now been clarified to include social issues directly related to environmental issues. Provision is made in the Guidelines, however, for the initiating Minister and the Minister of the Environment to expand the review to "the general socio-economic effects of the proposal and the technology assessment of and need for the proposal." [s.25(3)].

10. Provisions have been made to improve government response to EARP panel reports. The initiating department must decide (in co-operation with other decision makers) which of the panel's recommendations should become project requirements. It must also ensure that the decisions made by the appropriate Ministers following the panel report "are incorporated into the design, construction and operation of that proposal and that suitable ... inspection and environmental monitoring programs are established". [s.33(1)(C). *See also* s.14].

Of the above list, numbers 1 and 5-10 are reflected in the Guidelines Order.

Legal issues

Space does not permit a detailed analysis of the Guidelines Order, but two interesting legal questions can be raised.[5]

• *What is the legal effect of the "guidelines" the Minister of the Environment is empowered to establish?*

This term does not appear to have been judicially defined, although one American case stated that it "implies *some* instruction for future conduct".[6] I am not aware of any other Canadian legislation which uses the word.

In many ways, the form of these "guidelines" is not too constraining since they refer to other guidelines, procedures or terms of reference being created [ss. 18(a), 26, 30 and 35]. Much of the language, however, is mandatory: in numerous sections, "the initiating department shall" do something [e.g., ss. 10(1), 11-17]. It could be argued that it does not matter whether the guidelines are legally binding since, in a hierarchical civil service, initiating departments can be ordered by Cabinet to follow these policies. Since the guidelines were approved by Cabinet, this argument neatly circumvents possible questions of the Minister of the Environment's legal power to bind all federal departments and agencies with his "guidelines".

However, the guidelines also purport to create responsibilities for a project *proponent* ("the organization or the initiating department") [s.2] who, as I read the document, can be a private sector organization. For example, the proposed Slave River hydroelectric project in Alberta clearly has a private proponent, and the federal discussion paper which preceded the Guidelines Order specifically identifies this as a project to which EARP applies. This is because it may have "an environmental effect on an area of responsibility," [s. 6(b)] that is, national parks, native rights and the northern territories. (*Quaere* whether this alone is sufficient to make the project "federal"). Yet it is not clear that the Department of the Environment Act meant to give the Minister of the Environment a mandate, through the Guidelines Order or otherwise, to require private proponents to prepare an EIS.

• *Where does the power to require socio-economic assessments come from?*

Here we can be unequivocal. The statutory mandate contains no reference to this type of impact and even if the Guidelines Order binds federal agencies, the attempt to require *private* proponents to prepare socio-economic impact assessments is *ultra vires*.

In private conversations I have been assured that FEARO does not claim such a power. However, if the proponents of the Slave River project can proceed to build it directly, without using either funds or lands of the Government of Canada, perhaps they are not legally obliged to submit any form of EIS. Certainly they could not be required to submit a socio-economic one. Where is the legal hook requiring them to do so? The EARP is a planning, not a regulatory process and the Guidelines Order resolutely tries to keep these processes apart.

Aside from wanting to accommodate the federal government, one suspects that private proponents can leap directly into the regulatory process and jump through whatever environmental hoops the regulatory agencies are mandated to require. Again, however, this assumes that the project involved requires no federal lands or funds. It also assumes private proponents who see some tactical advantage to standing on their strict legal rights.

Footnotes

1. S.C. 1978-79, c. 13, s. 14. Part III of this Act may be cited as the Department of the Environment Act R.S.C. 1970 (2nd Supp.) c. 140.

2. I see "taken into account" as similar to "having regard to", which involves an obligation to give "due weight" to the factors, but with an ultimate discretion (*Ishak* v. *Thowfeek,* [1968] 1 W.L.R. 1718 at 1725 (P.C.)).

3. FEARO, *Environmental Assessment Panels Procedures and Rules for Public Meetings.* (Ottawa: Minister of Supply and Services Canada, 1985 (Cat. No. En 106-1/1985).

4. Quoted from an unpublished summary of the improvements to EARP, distributed at 1985 briefing meetings by FEARO officials.

5. note 1.

6. *Board of Education* v. *School Committee of Amesbury* 452 NE 2d 302 at 306 (Mass. App. Ct.) (emphasis supplied).

Board of Directors

The Canadian Institute of Resources Law held its sixth annual meeting in Edmonton on November 22. That meeting was followed by a Board of Directors meeting at which several appointments were made to the Board. The following is a list of the current members of the Institute's Board of Directors.

Gary Holland, Vice-President and General Counsel of Gulf Canada Ltd., has served as Chairman of the Board of Directors of the Canadian Institute of Resources Law since its inception in 1979. He is a nominated director (designated by the Canadian Petroleum Law

Foundation).

Jean Bazin, Q.C., a senior partner of Byers Casgrain, in Montreal, is an elected director.

Don D. Detomasi, Dean of the Faculty of Environmental Design at The University of Calgary, is a nominated director (designated by the President of The University of Calgary).

Brian Flemming, Q.C., a senior partner of Stewart, MacKeen & Covert, in Halifax, is an elected director.

Rowland J. Harrison, a Professor of Law at the University of Ottawa, is an elected director.

John L. Howard, Q.C., Senior Vice-President, Law and Corporate Affairs of MacMillan Bloedel Limited, is an elected director.

Margaret E. Hughes, Dean of the Faculty of Law at The University of Calgary, is a nominated director (designated by The University of Calgary Faculty of Law Council).

Constance D. Hunt, Executive Director of the Canadian Institute of Resources Law and a law professor at The University of Calgary, is a nominated director (designated by The University of Calgary Faculty of Law Council).

John W. Ivany, Vice-President and General Counsel for Noranda Inc., in Toronto, is an elected director.

P. Donald Kennedy, Q.C., former General Counsel for Suncor Inc., is an elected director.

C. Merv Leitch, Q.C., currently a lawyer with the firm of Macleod Dixon, in Calgary, is an elected director.

Alastair R. Lucas, former Executive Director of the Canadian Institute of Resources Law, now a law professor at The University of Calgary, is a nominated director (designated by The University of Calgary Faculty of Law Council).

Peter A. Manson, Senior Vice-President, Corporate and Legal Affairs, the Bank of Montreal, is an elected director.

John P.S. McLaren, former Dean and now Professor of Law at The University of Calgary, is a nominated director (designated by The University of Calgary Faculty of Law Council).

Peter D. Middleton, Director, Operations & Liaison, Crown Corporations Directorate, Treasury Board and Department of Finance, is an elected director.

William M. Mustard, Q.C., a partner at Parlee Barristers and Solicitors, in Edmonton, is a nominated director (designated by the President of the Law Society of Alberta).

David R. Percy, a law professor at the University of Alberta, is a nominated director (designated by the Dean of the University of Alberta Faculty of Law).

Roy Romanow, Q.C., currently a senior partner in the Saskatoon law firm of Mitchell Taylor Romanow Ching, is an elected director.

Francis Saville, Q.C., a senior partner in the Calgary law firm of Fenerty, Robertson, Fraser & Hatch, is the Institute's Vice-Chairman. He is an elected director.

CIRL Essay Prize

The Institute recently awarded its annual essay prize, in the amount of $1,000, to Ms. Barbara A. Krahn for her paper entitled "Irrigation in Southern Alberta: A Legal Analysis". It was the first time in the prize's history that the award went to a University of Calgary student. Ms. Krahn, a 1985 University of Calgary LL.B. graduate, completed her pre-law studies at the Universities of Calgary and Saskatchewan. As a law student she received the Vallance Family Law Award and was a volunteer for Student Legal Assistance. Ms. Krahn is currently articling with Fennerty, Robertson, Fraser & Hatch.

Eighteen essays – a record number – were submitted for review by a Selection Committee comprised of Nigel D. Bankes, Faculty of Law, The University of Calgary (Chairman); P. Donald Kennedy, Q.C., formerly of Suncor Inc. and a member of the Institute's Board of Directors; and Douglas Rae, Vice President Legal of Asamera Inc.

Students wishing to submit an essay for the 1986 Essay Prize should contact their Dean of Law for an application form. The deadline for submission of essays is June 30, 1986.

Resources Law Endowment Fund

In cooperation with The University of Calgary, the Canadian Institute of Resources Law recently established a Resources Law Endowment Fund. The interest generated from this fund will be used for two major purposes: (1) to support the Institute's visiting scholar and speaker program, and (2) to support student attendance at Institute conferences, seminars, and workshops.

Donations to the Resources Law Endowment Fund may be sent to: The Canadian Institute of Resources Law, Room 430 Bio Sciences Building, The University of Calgary, 2500 University Drive N.W., Calgary, Alberta T2N 1N4. Cheques should be made payable to "The University of Calgary" and indicate that they are for The Canadian Institute of Resources Law Endowment Fund. All donations are tax deductible.

Water Law Workshop

The Institute's First Water Law Workshop was held on November 14 at the Four Seasons Hotel in Ottawa. The workshop was the first in a series of seminars the Institute will be convening in connection with its three-year project on Canadian water law, sponsored by the Donner Canadian Foundation. The seminars are designed to convey the results of Institute research to those most concerned with water management, with an emphasis on the practical implications of the findings. They are also structured to give Institute researchers a better idea of the issues as perceived by those with a direct

interest in management of the resource.

The theme of the first workshop was "Managing Interjurisdictional Waters: A Search for Solutions". The organizers began with the assumption that the problems associated with the interjurisdictional management of Canada's water resources are now generally well-known, having been both the subject of at least two recent conferences and a major topic addressed by the recent Inquiry on Federal Water Policy. In the Ottawa workshop the goal was to build on this foundation and explore what new solutions – or modifications of existing mechanisms – are required to deal with emerging problems of water management. The emphasis, then, was on suggesting a range of concrete alternatives which could be considered by senior water managers in dealing with joint control of the resource.

During the course of the day a small group of senior water managers from across Canada – representing federal, provincial, and territorial jurisdictions – were invited to respond to four presentations by legal scholars, each setting the theme for a separate session. These were: "Water Management: The Potential of Interjurisdictional Agreements" by Owen Saunders of the Institute; "Regulatory Boards and Emerging Water Problems" by Barry Barton, also of the Institute; "Managing Interjurisdictional Waters: The United States Experience" by A. Dan Tarlock, Professor of Law at the Chicago-Kent College of Law; and "A Changing Federal Role? The Pearse Inquiry" by David Percy, Professor of Law at the University of Alberta. The workshop was also fortunate to have the participation of Dr. Peter Pearse, Chairman of the recently concluded Inquiry on Federal Water Policy. The workshop was organized by Owen Saunders and Barry Barton and chaired by Mr. Saunders.

Other Institute Activities

• Constance Hunt, Executive Director of the Institute, was recently appointed to serve on the Federal Government's Task Force to Review Comprehensive Claims Policy, dealing with native land claims in Canada. Ms. Hunt has also been involved in a variety of other outside research activities: In August she presented "A Critique of Land Use and Conservation in the Arctic" at the Arctic Heritage Symposium in Banff, and in October she was a guest of the University of North Dakota where she presented two seminars, one to students in the Canadian-American law program, and the other, entitled "Strategic Considerations in Canadian-American Litigation," to the Homecoming Continuing Legal Education program. On October 17 she was a panelist at the Desk and Derrick Club's seminar on East Coast Exploration and Production.

• Ms. Hunt is also serving as the Canadian Oil and Gas Law Editor for the *Mineral Law Newsletter,* a publication of the Rocky Mountain Mineral Law Foundation. Institute Research Associate Barry Barton serves as the Canadian Mining Law Editor for the newsletter.

• On behalf of the Institute, Research Associate Christian Yoder has been attending joint meetings of the Canadian Petroleum Association and the Independent Petroleum Association of Canada on amendments to the Canada Oil and Gas Act. Mr. Yoder also teaches a course, "Introduction to Oil and Gas Law", through the University of Calgary's Faculty of Continuing Education.

• The Institute recently completed a research project entitled "Criteria for Conservation Investments in Utility Supply Planning". The research, which examines legal and regulatory constraints on the undertaking of conservation by electrical utilities, was done for the Canadian Energy Research Institute (CERI) as part of a larger work that CERI is preparing for the Canadian Electrical Association. The research was conducted primarily by Research Associate Janet Keeping, working under the supervision of Research Associate Owen Saunders. Mr. Nicholas Rafferty, of the University of Calgary Faculty of Law, provided input on the private law aspects of the issue.

• Following the Institute's Sixth Annual Meeting, held in Edmonton on November 22, the Institute hosted a reception attended by leading members of the business community and the legal profession as well as representatives of the Alberta government. The reception was held at the Centre Club and, like the Institute's previous receptions in Toronto and Ottawa, it was well attended and provided the Institute with a means of communicating information about Institute activities to interested professionals.

• In September and November Mr. Nick Rafferty and Ms. Constance Hunt offered the Institute's popular contract law courses to employees of Gulf Canada Resources. The contract law course is presented during a two-day period to an oil company's non-legal professional employees who deal extensively with contracts. Companies interested in having this course presented to their staff should contact the Institute's Executive Director.

Publications

A Reference Guide to Mining Legislation in Canada, by Barry Barton, Barbara Roulston, and Nancy Strantz. Working Paper 8. 1985. ISBN 0-919269-15-X. 120 p. $20.00

This publication consists of a series of tables that provide a reference guide to the mining legislation of each province and territory in Canada. It provides a general overview in summary form of how different subjects are treated in each jurisdiction. It is confined to Crown-owned hard-rock minerals; it therefore excludes privately-owned minerals, any separate legislation for placer mining (i.e., mining in alluvial deposits), quarriable industrial minerals, coal, petroleum and natural gas.

Each table covers one particular subject in mining law: Table 1 – Statutes and Regulations, Table 2 – Lands Withdrawn from Mining Activity, Table 3 – Preliminary Licensing Requirements, Table 4 – Exploration Licences, Table 5 – Acquisition of Mineral Interests, Table 6 – Rights Conferred by Mineral Interests, Table 7 – Physical Characteristics of Interests, Table 8 – Duration and Renewability, Table 9 – Work Requirements, Table 10 – Transfer of Interests, Table 11 – Cancellation of Interests, Table 12 – Acquisition of and Compensation for Surface Rights, Table 13 – Diagrams.

The Canadian Regulation of Offshore Installations, by Christian G. Yoder. Working Paper 9. 1985. ISBN 0-919269-18-4. 116 p. $15.00

In recent years, the Canadian oil industry has employed a variety of installations in the search for offshore petroleum resources. This paper is concerned with Canadian regulation of such installations. The unique technological features of these installations and the fact that they operate beyond the low-water mark raise complex and interesting legal questions about the interface between coastal state law and maritime law.

In the first four parts of the paper, four sources of law that impact on offshore installations are examined separately. They are: coastal state oil and gas regulatory law, maritime law, environmental law, and labour law. In part five, selected problems raised by the interface between these sources of law are discussed.

The paper's thesis is presented in the conclusion. It is that installations cannot be subsumed exclusively by either the coastal state or maritime legal regimes. Specific accommodation by each regime is required if installations are to be regulated effectively. Although some progress has been made in the Canadian legal regime, our offshore installations remain imperfectly regulated.

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

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

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

Canadian Maritime Law and the Offshore: A Primer, by W. Wylie Spicer. Canadian Continental Shelf Law 3; Working Paper 6. 1984. ISBN 0-919269-12-5. 65 p. $11.00

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

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

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

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

Petroleum Operations on the Canadian Continental Margin - The Legal Issues in a Modern Perspective, by Ian Townsend Gault. Canadian Continental Shelf Law 1; Working Paper 2. 1983. ISBN 0-919269-02-8. 113 p. $8.00

Environmental Law in the 1980s: A New Beginning, Proceedings of a Colloquium, The Banff Centre, November 27-29, 1981; Peter Z.R. Finkle and Alastair R. Lucas, eds. Proceedings 1. ISBN 0-919269-05-2. 233 p. $13.50

Environmental Regulation - Its Impact on Major Oil and Gas Projects: Oil Sands and Arctic, by C.D. Hunt and A.R. Lucas. 1980. ISBN 0-919269-00-1. 168 p. $10.95

Resources Law Bibliography. 1980. ISBN 0-919269-01-X. 537 p. $19.95

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Forthcoming Titles

Read the next issue of *Resources* for information about these soon-to-be-released publications:

Managing Natural Resources in a Federal State, Essays from the Second Banff Conference on Natural Resources Law, Banff, Alberta, April 17-20, 1985; J. Owen Saunders, ed. (Carswell Legal Publications).

A Guide to Appearing Before the Surface Rights Board of Alberta, (Second Edition), by Barry Barton and Barbara Roulston.