esources

No. 32 Fall 1990

The Newsletter of the Canadian Institute of Resources Law

ENVIRONMENTAL LAW: LESSONS FROM THE EUROPEAN COMMUNITY

*by Alastair R. Lucas**

European environmental law holds some surprises for Canadian environmental lawyers and policy makers. Many of the deficiencies that appear to hamper Canadian environmental law, including uncertainty about constitutional limits of federal and provincial legislative powers, substantial inability to deal with transnational environmental problems, and lack of direct linkages between economic policy and environmental law, are not only addressed by the European law, but are at the heart of recent European Community (EC) environmental policy and legal developments.

The European Community is a unique international institution. Under its founding treaties - principally the 1957 Treaty of Rome (the EEC Treaty), but including also the EURATOM Treaty and the European Coal and Steel Community Agreement (CECSC)[1] the EC, through its Council of Ministers, European Commission, and European Parliament, has power in a number of subject areas to establish laws and policies that are binding on its 12 member states.[2]

Inside

Indian Summer in the Supreme Court: The Sparrow Quartet (page 6)

Résumé

Les développements récents en droit de l'environnement dans la Communauté européenne offrent des ressemblances surprenantes avec les expériences d'états fédéraux tels que le Canada. Bien que le Traité de Rome, de même que la Constitution canadienne par exemple, ne traite pas de la question de l'environnement, depuis 1973, la Communauté a élaboré un certain nombre de programmes environnementaux. Si certains doutes relatifs à la compétence de la Communauté en matière de politique environnementale existaient au départ, plusieurs jugements de la Cour européenne de justice ont confirmé que l'intérêt de la Communauté est fondé au plan constitutionnel. L'Acte unique européen de 1987, qui consacre à l'Environnement un titre entier, présente un intérêt particulier. Mais il n'exclut pas la possibilité de futures disputes "constitutionnelles" sur la question de savoir quels objectifs sont le mieux atteints au niveau de la Communauté plutôt qu'au niveau national. Du fait néanmoins que la compétence de la Communauté est essentiellement de caractère économique, à un égard au moins la Communauté a dépassé un état comme le Canada, à savoir l'intégration plus complète des politiques environnementales et économiques.

E.C. Environmental Policy

The original concerns of the EC involved the reduction of trade barriers, economic rationalization, and some elements of foreign policy coordination. Environment did not appear as an issue in the EEC Treaty. Yet beginning with the adoption in 1973 of the first

Community Environmental Action Programme[3] by the Council of Ministers, EC environmental policy has developed to include over 150 items of legislation.[4] Three further environmental programmes were adopted - in 1977[5] (for 1977-1981), 1983[6] (for 1982-1986), and 1987[7] (for 1986-1992).

Within the context of the first programme, a wide range of emission standards was issued for air and water contaminants. The second programme emphasized measures to control the discharge of dangerous substances, including co-ordinated implementation of a number of international conventions on the control and prevention of marine pollution.

Integration of environmental protection with other policies, an approach closely related to the current concept of "sustainable development",[8] was a major objective of the third action programme. Basic emission control measures were not neglected. These included controls aimed at major polluting industries such as oil refineries and power stations.[9] Also included was the Directive on Environmental Impact Assessment Procedures.[10]

The fourth action programme was adopted during the same period as the approval by the member states of the Single European Act.[11] The latter, which amended the EEC Treaty in certain particulars, with a view to completion of the internal market, included a new title on Environment, as well as provisions concerning harmonization of national laws, including environmental laws. A significant feature of the fourth environmental action programme is its emphasis on environmental management - some commentators suggest on "prevention", as opposed to remediation.[12] The focus of this is the reduction of emissions of specific substances from all sources into each medium. Cross-media pollution control strategy is suggested, with greater attention to potential synergistic effects of contaminants.

"Constitutional" Issues

While the Community's environmental policy initially produced some scholarly debate concerning its basis in the EEC Treaty, there now appears to be little doubt about the EC's essential environmental policy competence.[13] No member state has challenged the Community's power to adopt a particular environmental directive or regulation. This issue has, however, been raised indirectly by states in response to judicial actions by the Commission alleging failure to implement, or inadequate implementation, of environmental directives. Notwithstanding the lack of specific environmental powers, the result of a number of judgments by the European Court of Justice is that Treaty articles 100 and 235, authorizing respectively "approximation" of member state laws that "directly affect the establishment or functioning of the common market",[14] and "action . . . necessary to attain in the course of the operation of the common market, one of the objectives of the Community . . . [where the] Treaty has not provided the necessary powers. . .,"[15] together with Article 2 which sets out the general Treaty objectives, give ample power to support provisions on the environment.[16] Although environmental measures must be linked to the establishment or functioning of the common market, the link, particularly if a directive is based on the more general Article 235, need not be rigorously direct. Thus, the Court stated in a case involving the Directive on Waste Oils that:

> [The] principle of freedom of trade is not to be viewed in absolute terms but is subject to certain limits justified by the objectives of general interest pursued by the Community, provided that the rights in question are not substantively impaired. There is no reason to conclude that the Directive exceeded those limits. The Directive must be seen in the perspective of environmental protection, which is one of the Community's essential objectives.[17]

The result of this non-technical and essentially policy-oriented approach is that the Community has so far experienced few problems of a "constitutional" nature, analogous to the uncertainties of Canadian constitutional federalism such as arose in *R.* v. *Crown Zellerbach Ltd.*[18] It must be remembered, however, that adoption of environmental measures under both Article 100 and Article 235 of the EEC Treaty requires unanimous approval of the member states.

The Single European Act, 1987

The new European Treaty, called the Single European Act (SEA) because it consolidates in one text both the provisions that amend the treaties establishing the European Communities and those concerning European foreign policy cooperation, includes a new Title VII headed "Environment". This new title is located in the part of the EEC Treaty that deals with the policies of the Community. Other provisions concerning environmental protection are included in the "internal market" chapter.

Article 130R(1) establishes the following objectives for Community environmental action:

- to preserve, protect and improve the quality of the environment.
- to contribute towards protecting human health.
- to ensure a prudent and rational utilization of natural resources.

Also stated are principles upon which this Community action should be based, namely: preventive action; polluter pays; dealing with environmental damage at source; and integration of environmental factors into other Community policies. Community responsibility and competence in the area of environmental protection is thus given formal recognition and the framework is established for comprehensive Community environmental policies.

Division of Powers

It appears that questions regarding the division of powers, analogous to those that arise in federal constitutions such as Canada's, may also have been introduced by the new environment articles. Article 130R(4) states that:

> The Community shall take action relating to the environment to the extent to which the objectives [of Community environmental policy] can be attained better at Community level than at the level of the individual states.

The difficult problem raised by the "subsidiarity" principle inherent in the article is what body decides, and what criteria must be applied to determine, whether a particular environmental subject matter is better regulated at the Community rather than national level.

There the court went some distance toward roughing out the conceptual framework for determining such issues.[19] This framework includes the concept of national concern as involving either extra-provincial or international considerations and effects. In particular, the definition or identification of a subject matter as one that is the subject of international action, through treaties or other state action, is not only a strong indication of national concern, but may also demonstrate that the subject matter is "distinct" and relatively coherent, as opposed to an amalgam of subject matters normally within provincial jurisdiction.

In the absence of authority, some commentators have concluded that Article 130R(4) provides a political guideline rather than a legal norm that defines the respective areas of Community and member-state competence.[20] The principal basis for this conclusion is the idea that the dynamic nature of EC political and judicial activities distinguishes the Community fundamentally from federal states, in which powers are more definitively allocated by national constitutions. Yet uncertainty remains, and other commentators have suggested that the European Court of Justice may accept jurisdiction over the issue of subsidiarity, though the scope of its review is likely to be limited to manifest error or abuse of power.[21]

The second article of the new Environmental Title[22] confirms that Community environmental actions require unanimous approval of the Council of Ministers. This may be a further indication of the essentially political character of issues involving competence with respect to environmental policy. However, the Council may define the matters on which action is to be taken by a qualified majority under a weighted numerical voting scheme. The final article of the Environmental Title[23] provides that states may adopt more stringent national environmental measures, provided that these are compatible with the Treaty.

International Environmental Protection

Transnational environmental protection may be addressed by the Community in two ways. First, it may exercise its now formidable environmental powers within the Community. To this end, the Community has developed overall environmental policies and has issued directives which are binding on member states as to results, certain directly binding regulations, and numerous guideline, planning and declaratory documents, with a view to implementing its policies. Impressive harmonization of environmental policies and laws among independent nations has been achieved.

Secondly, the Community has acted in its own right to exercise external powers, including entry into various international environmental obligations. This external role of the Community has been described as "unprecedented in the history of international co-operation and organization".[24] Yet the external powers, together with the related issues of direct application and priority of Community law, are supported by a substantial body of case law from the European Court of Justice.[25]

Community participation in environmental conventions has not been completely successful. For example, uncertainty remains about whether the provision in the new Article 130R(4), that the Community may act only if objectives can be better attained at the Community level than at the level of the member states, may constrain Community international action, especially where no internal Community rules have been established.[26] Member states may also be reluctant to permit Community accession to a convention because of uncertainty about the division of powers, and particularly about retention by states of powers to establish more stringent standards.

"Mixed agreements" - treaties to which both the Community and

one or more of its member states are parties - have created notable difficulties. Problems also arise because non-EEC states are uncertain about Community powers to bind member states. Thus, Community accession to the U.N. Convention on the Law of the Sea[27] was made conditional on ratification of the convention by a majority of its member states. In the case of the 1985 Vienna Convention on the Protection of the Ozone Layer,[28] the signature of at least one member state was required. Notwithstanding these difficulties, the basis has been established for realizing the advantages of direct representation of a major block of states in international environmental co-operation.

Environment and Economy

Despite some measure of co-ordination and consultation, environmental law and economic law remain largely separate subjects in Canada. Environmental implications of the Canada-United States Free Trade Agreement received some attention, but environment is not mentioned directly in either the Agreement or the implementing legislation.[29] Environmental impact assessment forces consideration of both environmental and economic factors,[30] but most environmental regulation, though it has clear economic implications, is viewed as distinct from economic regulation.

European environmental policy is linked directly or indirectly to the fundamental economic objective of the common market in goods and services. Apart from confirming Community competence in environmental policy by adding the Environment title, the Single European Act includes environmental powers[31] in the provisions for completion of the internal market, in which goods, services, persons, and capital will move freely by December 31, 1992. To this end, harmonization measures are being proposed by the Commission.

Under Article 100A, where these harmonization measures concern health, safety, environment or consumer protection, the Commission "will take as a base a high level of protection". At a later stage the Council will decide whether unharmonized state measures are "equivalent". This latter process recalls the difficult, and so far largely inconclusive, federal-provincial discussions on criteria for determining equivalency of provincial environmental laws for purposes of agreements on provincial exemption from regulations under the Canadian Environmental Protection Act.[32] The Council decisions under Article 100A, unlike those under Articles 130R-T, will not require unanimity, but may be taken by a qualified majority.

It is apparent, however, that harmonization of member-state environmental laws is no prescription for environmentally sustainable economic development - quite the contrary, it was argued by some states during the SEA negotiations. There was concern that harmonization of state standards would be based on a lowest common denominator, and imposed on more environmentally conscious states by a qualified majority.[33] While Commission environmental proposals must "take as a base" a high level of protection,[34] it is not clear that the final measure must always reflect this protection level.[35]

Consequently, Article 100A also provides that states may, after the adoption of harmonization measures by the Council acting on a qualified majority, apply more stringent national environmental requirements. It appears though, that this derogation is limited to existing state measures and does not authorize new tougher national environmental laws.[36] In the first case after adoption of the SEA to deal with environmental restrictions on a single market, the European Court of Justice confirmed that environmental protection is a mandatory requirement that may limit application of the import measures prohibition provisions of the EEC Treaty.[37] Another factor that militates against erosion of environmental standards is the SEA's new "cooperation" procedure[38], which involves a larger deliberative and advisory role for the traditionally environmentally conscious European Parliament.

Conclusion

There is little doubt that environmental protection has been accorded a clear and relatively high status within the overall context of European Community environmental policy. This emphasis is underlined by the Single European Act. European environmental policy and law has, so far at least, been relatively untroubled by concerns about division of powers or "competence" of the EC to approve binding environmental measures. While the SEA tends to confirm the legal basis for the Community's environmental competence, the test of whether objectives are "better" attained at the Community level introduces a division of powers or "subsidiarity" norm that has the potential to produce jurisdictional uncertainty analogous to that experienced in Canada.

The Community scores high marks on international environmental cooperation. Internally, it goes far beyond cooperation and lays down wide-

ranging environmental policies and requirements that are directly or indirectly (as to result) binding on member states. Moreover, though not without difficulties, the Community has developed external powers in its own right that permit direct involvement in international processes and accession to international environmental conventions.

The centrality of economic objectives to Community competence ensures that European environmental policy is more closely integrated with economic policy than is the case in Canada. Yet consideration of environment in the context of establishment and operation of the common market appears to hold the risk of subordination of environmental protection in the name of harmonization to avoid market distortion.

This risk of lowered environmental standards is minimized by provisions for derogation and for greater involvement by the European Parliament. Perhaps the strongest insurance, however, is the established environmental commitment, based on strong, popular support, that characterizes the environmental policies of a number of member states, including The Netherlands, Denmark, and Germany. With these safeguards present, the stage appears to be set under the most recent environmental programme for European environmental policy to move toward a goal of environmentally sustainable economic development.

**Alastair R. Lucas is a Professor of Law at The University of Calgary; Visiting Scholar, International Instituut Voor Energierecht, University of Leiden, The Netherlands.*

Notes

1. Thus there are three "Communities": The Economic Community (EEC) and the European Atomic Energy Community (EURATOM), both established in 1957, and the European Coal and Steel Community founded under a 1951 Treaty. It is now usual to refer to the European Community (EC).
2. EC regulations and directives (the former binding in their entirety and directly applicable, and the latter binding only as to the result to be achieved, so that national governments may choose the form and legal technique of implementation) have been held by the European Court of Justice to be directly effective, conferring rights directly on individuals, which can be asserted against member states in national courts. See J. Minor "Environmental Law: The European Dimension". In D. Hughes, *Environmental Law*, London: Butterworths, 1986, at pp. 103-105.
3. O.J. 1973, C 112/1.
4. See S. Johnson and G. Corcelle, *The Environmental Policy of the European Communities*. London: Graham and Trotman, 1989.
5. O.J. 1977, C 139/1.
6. O.J. 1981, C 305/2.
7. COM (86) 485 final, 9 Oct., 1986; Council Resol., 19 Oct., 1987, O.J. 1987 C328/1.
8. See J.O. Saunders (ed). *The Legal Challenge of Sustainable Development*, (Calgary: Canadian Institute of Resources Law, 1990).
9. The Directive limiting emissions from large combustion plants was proposed in 1984 and finally adopted in 1988: O.J. 1988, L 336/1.
10. O.J. 1985, L 175/40, in force July 3, 1988.
11. Single European Act, 1987 [hereinafter "SEA"].
12. Though as L. Hancher points out ("Energy and the Environment: Striking a Balance" (1989) 26 Common Market L. Rev. 475, 481 and fn. 34), there is disagreement about this.
13. See L. Krämer, "The Single European Act and Environmental Protection: Reflections on Several New Provisions in Community Law" (1987) 24 Common Market L. Rev. 659, 661.
14. EEC Treaty, Art. 100.
15. *Id.*, Art. 235.
16. Krämer, *supra*, note 13, at 661-663.
17. *Procureur de la République* v. *Ass'n de défense des bruleurs d'huiles usagées*, [1985] E.C.R. 531, 548.
18. (1988) 3 C.E.L.R. 1 (S.C.C.). See A. Lucas, Comment (1989) 23 U.B.C. L. Rev. 355.
19. *Id.*, partic. pp. 32-34 (CELR) per Le Dain J.
20. Krämer, *supra*, note 13, at 665-667; Hancher, *supra*, note 12, at 502.
21. D. Vandermeersch, "The Single European Act and the Environmental Policy of the European Community" (1987) 12 E.L. Rev. 407, 423.
22. Art. 130S.
23. Art. 130T.
24. A. Nollkaemper, "The European Community and International Environmental Cooperation: Legal Aspects of External Community Powers", (1987) 2 Legal Issues of European Integration, 55, 61.
25. See *Id.*
26. *Id.*, at 75.
27. United nations Convention on the Law of the Sea, 1982, A/Conf. 62/122 (1982). The Convention has not yet been ratified by the Community. See Nollkaemper, *supra*, note 24, at 68-69.
28. See Nollkaemper, *supra*, note 24, at 68-69.
29. However, Art. 1201 of the Agreement incorporates, subject to certain conditions, the provisions of Art. XX of the General Agreement on Tariffs and Trade, including, for example, Art. XX(b) which permits the adoption of measures "necessary to protect human, animal or plant life or health": 4 GATT BSID (1969).
30. The Preamble to the Proposed Canadian Environmental Assessment Act, Bill C-78, first reading, June 18, 1990, refers to "an appropriate balance between economic development and the preservation and enhancement of environmental quality", to "integrating environmental factors into planning and decision making processes...", and to "preventing the degradation of environmental quality and at the same time ensuring that economic development is compatible with the high value Canadians place on environmental quality.
31. SEA, Art. 100A.
32. Krämer, *supra*, note 13, at 679; Vandermeersch, *supra*, note 21 at 417-418.
33. Krämer, *supra* note 13 at 680-681; Vandermeersch, *supra*, note 21 at 417.
34. Art 100A(3).
35. Krämer, *supra*, note 13 at 679; Vandermeersch, *supra*, note 21, at 417-418.
36. Krämer, *id.*, at 679-681.
37. *Commission of the European Communities* v. *(The Danish Bottles Case)*, Case 302/86, [1989] 1 C.M.L.R. 619. (Mandatory deposit-return system for beverage containers upheld.)
38. Art. 130A.

INDIAN SUMMER IN THE SUPREME COURT: THE SPARROW QUARTET

by Richard Bartlett

The media made much of the developments on the barricades and in politics in aboriginal matters at Kanasatake and Kanawake. They made less of the developments in the Supreme Court of Canada which may be at least as significant. In a quartet of cases the Court enunciated positions which gave new power and scope to aboriginal rights. This note attempts to point out some of the possible implications of the decisions.

In *R.* v. *Horseman*,[1] handed down on May 3, 1990, the Supreme Court affirmed the need for a large and liberal interpretation of treaty rights and held that the right to hunt declared in Treaty #8 included the right to hunt commercially. This finding in favour of aboriginal rights was obviated in the Prairie Provinces by the conclusion of the majority that the right had been narrowed by the Natural Resources Transfer Agreements[2]. But in the Northwest Territory the finding is of great significance and immediately opened up for assessment the question as to whether the Dene-Metis Land Settlement Agreement provided better rights than those **already** guaranteed by treaty.

The Court did not consider the relationship between the Natural Resources Transfer Agreements and section 35 of the Constitution Act 1982. Section 35 entrenches "existing aboriginal and treaty rights". The Court gave full effect to the clause in the Transfer Agreements that narrowed the treaty rights. But the absence of consideration by the Court, and the approach adopted in *Sioui* and *Sparrow*, suggests that the relationship between the two constitutional enactments is not yet resolved.

In *R.* v. *Sioui*,[3] handed down on May 24, the Supreme Court unanimously declared the application of Quebec provincial parks legislation to be barred by the Terms of Submission of the Huron of 1760. The Court emphasized again the need for a large and liberal interpretation of such documents and held it to be a treaty within section 88 *Indian Act*. The Court held that the treaty right had at no time been extinguished, and stated that it could not be extinguished by agreements, such as the Treaty of Paris of 1763, to which the Huron were not a party. The language of the Court is very general. Did the Court mean to suggest that a treaty right could not be narrowed by the Natural Resources Transfer Agreements, to the contrary of that which it had just held in *Horseman*? Perhaps the finding of greatest significance made by the Court is the conclusion that at that time the Huron were a "nation" and that British policy contemplated "nation to nation" relations which "allowed them autonomy in their internal affairs".[4] The decision suggests inherent aboriginal sovereignty as a basis for aboriginal claims.

On May 31, 1990 the most significant of the decisions was handed down: *R* v. *Sparrow*.[5] The judgement was written by Chief Justice Dickson and Justice La Forest on behalf of a unanimous court. The case was concerned with the aboriginal right to fish of the Musqueam Band in British Columbia. It required the Court to consider the extent to which section 35 of the Constitution Act 1982 protected aboriginal and treaty rights. Section 35(1) provides that "existing aboriginal and treaty rights are hereby recognized and affirmed". The Court gave an expansive

Résumé

Aux mois de mai et juin 1990, la Cour Suprême du Canada a rendu quatre décisions, à savoir *Horseman, Sioui, Sparrow* et *Mitchell*, qui élargissent et renforcent les droits ancestraux des autochtones. Ces jugements ont réaffirmé vigoureusement la nécessité d'interpréter généreusement et libéralement les droits ancestraux ou issus de traités. *Sioui* et *Sparrow* ont peut-être une portée plus considérable. Dans l'affaire *Sioui*, la Cour a reconnu explicitement la souveraineté des Hurons au moment du premier contact avec les Européens. Dans l'affaire *Sparrow*, la Cour a conclu que les droits ancestraux et issus de traités qui n'avaient pas été complètement éteints étaient enchâssés constitutionnellement par l'article 35 de la *Loi constitutionnelle de 1982*. Même si ces droits étaient réglementés avant 1982, ils restent protégés contre toute atteinte fédérale et provinciale, à moins que cette atteinte ne soit justifiée par l'exercice d'un devoir fiduciaire par la Couronne. La souveraineté inhérente des peuples autochtones pourrait donc avoir été reconnue par la Cour. Cette reconnaissance impliquerait des changements majeurs eu égard au gouvernement des peuples autochtones, de leurs territoires et de leurs ressources.

meaning to the subsection and ordered a re-trial consistent with its analysis. It equated existing with unextinguished, and distinguished between regulation and extinguishment. Only if an aboriginal and treaty right had been extinguished, and not merely regulated, could it be said that it was no longer existing. The Court rejected the argument that the *Fisheries Act* and its detailed regulations had demonstrated a sufficiently "clear and plain" intention to extinguish the aboriginal right to fish. Thus it may be argued, and probably will, that the inherent aboriginal right to sovereignty may have been regulated in the past but has not been extinguished. Inherent aboriginal sovereignty may be constitutionally protected and entrenched by section 35.

The Court stressed that aboriginal and treaty rights must be given a modern meaning, or, to use the words of the Court, "the phrase "the existing aboriginal rights" must be interpreted flexibly so as to permit their evolution over time".[6] Could aboriginal title to land include, for example, commercial development of mineral resources?

The Court concluded its analysis by stressing that constitutionally protected aboriginal and treaty rights could be infringed or abrogated but only if justification were shown. Any justification must be consistent with the honour of the Crown and the fiduciary or trust relationship to aboriginal people. The analysis raises many questions as to the obligations of Canada and the rights of the aboriginal peoples. A particularly current issue is whether or not Canada can, consistent with its fiduciary relationship and section 35, insist on the termination of aboriginal rights as a condition of any claims settlement.

The last of the quartet of cases is *Mitchell* v. *Peguis Indian Band*[7] handed down on June 21, 1990. The case concerned the interpretation of sections 87, 89 and 90 of the *Indian Act*, dealing with the Indian exemption from taxation and seizure of property. La Forest J. for the majority conducted a lengthy examination of the history and object of the sections. He stressed the object of protecting Indians from dispossession by non-natives of the property which they hold *qua* Indian – i.e. their land base, their chattels thereon and the benefits promised by treaty. All are immune from taxation and seizure. In reaching this conclusion La Forest J. referred to the United States jurisprudence on Indian immunity from taxation, a jurisprudence which is founded on the concept of inherent aboriginal sovereignty. Further, he seemed to suggest that it was proper to regard "education, housing and health and welfare" as treaty rights, the first declaration of that kind by the Court.

The implications of the quartet of decisions are profound. They have significantly enhanced aboriginal and treaty rights. In particular the decisions may form the basis for the development of a Canadian doctrine of inherent aboriginal sovereignty which could dramatically change the structure of government as it affects aboriginal peoples and their lands and resources. The decisions have also made this area of the law highly uncertain, and accordingly only the future will reveal whether the significance I have attributed to the decisions is properly grounded or not.

** Richard Bartlett is Professor of Law at the University of Western Australia.*

Notes

1. [1990] 3 C.N.L.R. 95 (S.C.C.).
2. Constitution Act, 1930, R.S.C. 1985, App. II, No.26.
3. [1990] 3 C.N.L.R. 127 (S.C.C.).
4. Id., 145-146, 147.
5. [1990] 3 C.N.L.R. 160 (S.C.C.).
6. Id., 171.
7. [1990] 3 C.N.L.R. 46 (S.C.C.).

New Board Members

The Institute has three new Board members effective November 26, 1990.

Nicholas S. Rafferty was appointed to the Institute's Board as one of the representatives of the Faculty of Law Council of the University of Calgary. Mr. Rafferty is Professor of Law at the University of Calgary where his teaching and research interests include Contract Law, Tort Law and The Conflict of Laws. Before coming to Calgary in 1977, Mr. Rafferty taught law at the University of Manitoba in Winnipeg. He has participated in the course offered by CIRL on Contract Law for Oil and Gas Personnel since its inception in 1984.

Mr. John U. Bayly is a Yellowknife lawyer in private practice. He has been involved in the field of resources law chiefly through his representation of aboriginal peoples and environmental groups. He is presently the Chairman of the Denendeh Conservation Board and is a former member of the Canadian Arctic Resources Committee.

Mr. C. Kemm Yates is a partner of the law firm Fenerty, Robertson, Fraser & Hatch of Calgary. His principal practice is in the field of energy-related administrative law. He has lectured and written articles on various aspects of regulatory law and practice, and is a member of the Canadian Petroleum Law Foundation and the Energy and Natural Resources Section of the International Bar Association.

5th CIRL CONFERENCE ON NATURAL RESOURCES LAW / *5e CONFÉRENCE DU ICDR SUR LE DROIT DES RESSOURCES NATURELLES*

"Growing Demands on a Shrinking Heritage: Managing Resource Use Conflicts"

"Pressions à la hausse sur un patrimoine en dimunution: la gestion des conflits nés de l'utilization des ressources"

May 9 - 11, 1991 / 9 - 11 mai 1991 Ottawa

Convened by the Canadian Institute of Resources Law and The University of Ottawa Law School, Common Law Section

Among the topics to be covered at this Conference are:

- Resource Use Rights and Resource Use Conflicts
- Wilderness Preservation
- Land Claims Agreements as a Mechanism for Resolving Resource Use Conflicts
- International Resource Use Conflicts
- Co-Management of Natural Resources
- EIA and Resource Use Conflicts
- Non-Conventional Legal Techniques for Resolving Resource Use Conflicts
- Integrated Resource Management

Registration fees are:

$350 + $24.50 GST regular

$150 + $10.50 GST academic/non-profit

$50 + $3.50 GST students

Contact:
Canadian Institute of Resources Law
The University of Calgary
430 Bio Sciences
Calgary, Alberta T2N 1N4
Phone (403) 220-3200
Fax (403) 282-6182

Organisée par le Institut canadien du droit des ressources et la Faculté de droit de l'Université d'Ottawa, section common law

Au nombre des sujects traités lors de la conférenece figurent notamment:

- Le droit à l'utilisation des ressources et les conflits nés de cette utilisation
- La conservation de la nature
- Les ententes sur les revendications territoriales perçues comme mécanisme de résolution des conflits nés de l'utilisation des ressources
- Les conflits internationaux nés de l'utilisation des ressources
- La cogestion des ressources naturelles
- Les techniques juridiques non conventionnelles de résolution des conflits nés de l'utilisation des ressources
- La gestion intégrée des ressources

Frais d'inscription:

350 $ + 24,50 TPS régulier

150 $ + 10,50 TPS universitaire ou d'associations à but non lucratif

50 $ + 3,50 TPS etudiant

Veuillez vous mettre en rapport avec:
Institut canadien du droit des ressources
L'Université de Calgary
430 Bio Sciences
Calgary, Alberta T2N 1N4
Téléphone: (403) 220-3200
Télécopieur: (403) 282-6182

NOTICE

For all publication orders within Canada, please add 7% GST.

Resources
No. 32 Fall 1990

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

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

Canadian Institute of Resources Law
430 Bio Sciences Building
The University of Calgary
2500 University Drive N.W.
Calgary, Alberta T2N 1N4
Telephone (403) 220-3200
Facsimile (403) 282-6182