

## NOVA Pipeline Jurisdiction: Federal or Provincial?

by Steven A. Kennett\*

### Introduction

Pipelines may seem an unlikely flash-point for federal-provincial conflict in Canada. This possibility should not, however, be discounted. Jurisdictional uncertainty regarding the NOVA Gas Transmission Ltd. (NGTL) gathering system in Alberta could well result in legal and political fireworks.

NGTL is a key component of Alberta's energy infrastructure and has always been provincially regulated. Decisions of the National Energy Board<sup>1</sup> (NEB) and the Federal Court of Appeal<sup>2</sup> appear to set the stage, however, for a legal challenge to the jurisdictional *status quo*. Authority over NGTL could shift, with a stroke of the judicial pen, from provincial to federal hands. As John Ballem commented – in a 1991 article that concluded in favour of federal jurisdiction over NGTL – the “political fallout ... would be horrendous.”<sup>3</sup>

Contrary to these initial appearances, a judicially-triggered “pipeline war” between the federal and Alberta governments is not inevitable. The argument outlined below is that the Constitution, if correctly interpreted,

gives primary jurisdiction over NGTL to Alberta. This approach, if adopted by the courts, would uphold the current allocation of regulatory authority.

This article summarizes the results of the author's recently completed study of pipeline jurisdiction. The project was funded by a grant from the Alberta Law Foundation, and the full study can be obtained from the Canadian Institute of Resources Law.<sup>4</sup>

### NGTL's Gathering System

NGTL is the primary system for transporting natural gas from processing facilities to delivery points within Alberta and to border stations for export.<sup>5</sup> NGTL is a wholly-owned subsidiary of NOVA Corporation. Its gathering system consists of 21,400 kilometres of pipeline.

NGTL delivered 4.3 trillion cubic feet of natural gas in 1995, approximately 80% of Canadian natural gas production. Market deliveries of gas transported by NGTL in 1995 were divided between Alberta (15%), British Columbia (1%), Eastern Canada (26%) and the United States (58%).

### Résumé

Cet article examine certaines questions litigieuses de compétence relatives au système de gazoduc de Nova Gas Transmission Ltd. (NGTL). Le système NGTL est un élément-clé de l'infrastructure énergétique de l'Alberta et a toujours été réglementé au niveau provincial. Toutefois, de récentes décisions de l'Office national de l'énergie et de la Cour d'appel fédérale soulèvent la possibilité que la compétence en matière du NGTL passe du provincial au fédéral.

Les questions juridiques concernent l'interprétation de l'article 92(10)(a) de la *Loi constitutionnelle* de 1867, en vertu duquel les ouvrages et entreprises interprovinciaux relèvent de la compétence du gouvernement fédéral. L'auteur soutient qu'une interprétation exacte de cet article confirme que le NGTL relève de la compétence provinciale. La démarche proposée par l'auteur distingue clairement entre ouvrages et entreprises. Elle explique les résultats des principales décisions judiciaires en matière de pipeline et de chemin de fer et offre une base intelligible sur laquelle les causes futures pourraient être jugées. L'auteur envisage aussi la possibilité d'un rôle limité du gouvernement fédéral eu égard au NGTL en vertu de sa compétence en matière d'échanges et de commerce.

## The Constitutional Issue

Jurisdiction over NGTL turns on the interpretation of s. 92(10)(a) of the *Constitution Act, 1867*. This section applies to works and undertakings involved in transportation and communications. Pipelines and railways are two examples. It places interprovincial and international (henceforth extraprovincial) works and undertakings within federal jurisdiction, while leaving "local works and undertakings" under provincial authority.<sup>6</sup>

The Supreme Court of Canada has stated that s. 92(10)(a) establishes federal jurisdiction over two categories of works and undertakings:<sup>7</sup> (1) those that are extraprovincial; and (2) those that, while not extraprovincial themselves, are integral to a federal work or undertaking. The second category has the greatest relevance to NGTL. The cases indicate that the "integral" and "essential" tests are used to determine whether an intraprovincial work or undertaking should be swept into federal jurisdiction by operation of s. 92(10)(a).

The "integral" test is the broader of the two. A range of physical and operational characteristics are examined to determine whether the necessary "nexus" exists between the intraprovincial work or undertaking and its extraprovincial counterpart. These characteristics include ownership, control, operational integration, physical connection, and purpose.<sup>8</sup>

The problem with the "integral" test is its indeterminacy. Each case is decided on its facts.<sup>9</sup> The result is a tendency in decisions to marshal an array of characteristics supporting either federal or provincial jurisdiction, relying on precedents or analogies without a clear statement of principles or framework of analysis. Predicting outcomes in individual instances is therefore difficult.

The indeterminacy of the "integral" test is addressed to some extent by the "essential" test. This test brings a work or undertaking within federal jurisdiction if it is essential to the operation of an extraprovincial work or undertaking.<sup>10</sup> The dependence of the latter on the former establishes the "necessary nexus".<sup>11</sup>

## The Case for Federal Jurisdiction

The nexus between NGTL and extraprovincial pipeline systems underlies the two arguments for federal jurisdiction. The first argument is set out in the NEB's *Altamont* decision.<sup>12</sup> The second is most clearly stated in an article by Ballem.<sup>13</sup>

The *Altamont* decision concerned a proposal to link NOVA's (now NGTL's) gathering system with an American gas pipeline at the Alberta-Montana border. The project was to consist of two components: (1) a NOVA pipeline (the "Wild Horse Mainline") extending from Princess, Alberta to a point near the border; and (2) Altamont's "sausage-link" pipeline, to provide the border link between the NOVA and American systems. This type of arrangement had been used elsewhere in Alberta and, until *Altamont*, the NEB had only exercised jurisdiction over the sausage-link segments. In this instance, the NEB asserted jurisdiction over both segments, thereby bringing the NOVA pipeline under the federal regulatory regime. This conclusion was based on two alternative arguments.

First, the NEB held that the two pipeline segments were in fact a single extraprovincial work. The Board based this conclusion on the "physical connection test".<sup>14</sup> Its brief reasoning noted the coordinated construction of the two segments and the "manner in which the two lines will operate upon commencement of deliveries."<sup>15</sup>

The NEB's alternative reasoning relies on the "integral" or "essential" analysis. The Board held that: the Wild

Horse Mainline is so closely connected with, or essential to, the Altamont Canada line as to cause the proposed NOVA Wild Horse Mainline to lose its characteristics as a provincial work and become, together with the Altamont Canada line, one pipeline subject to federal jurisdiction.<sup>16</sup>

The explanation for this conclusion is uncomplicated: "without gas supply from and the operational support of NOVA, the Altamont Canada line would cease to function."<sup>17</sup> The Altamont analysis leads to the conclusion that a potentially significant – but not clearly delineated – component of the NGTL pipeline network consists of works under federal jurisdiction.

The second argument for federal jurisdiction applies the "essential" test to NGTL as a whole. According to Ballem:

In the final analysis, ... it is difficult to see how NOVA could avoid the consequences of the "essential" test. The three extraprovincial pipelines, all of which are federal undertakings, simply cannot function without the natural gas which is delivered to them by the NOVA system. Without that gas, Foothills and Alberta Natural Gas would have nothing to transport and TCPL [TransCanada Pipelines] would be left with a reduced throughput that would be completely uneconomic. Thus, the NOVA system, in relation to these federal undertakings, goes beyond being essential to being indispensable.<sup>18</sup>

Ballem's analysis of s. 92(10)(a) points to federal jurisdiction over NGTL as a single undertaking.

## An Alternative Analysis

The two arguments for federal jurisdiction over NGTL appear consistent with the generally accepted interpretation of s. 92(10)(a). On closer examination, however, this interpretation is itself a source of confusion. The approach proposed here is intended to provide a more satisfac-

tory basis for explaining the case law and applying s. 92(10)(a).

The starting point is the distinction between works and undertakings. This distinction is frequently overlooked or obscured in the case law.<sup>19</sup> When it is addressed directly, however, the cases indicate that these terms are to be read disjunctively, with "work" referring to a "physical thing"<sup>20</sup> and an "undertaking" being "not a physical thing, but an arrangement under which ... physical things are used."<sup>21</sup>

### (1) NGTL Pipelines as Works

The argument here is that s. 92(10)(a) should be applied to works in the following relatively narrow and precise manner. Intraprovincial works are physical things located entirely within the boundaries of a province. Extraprovincial works cross provincial or international boundaries. The former are within provincial jurisdiction; the latter come under federal authority.

Courts and tribunals should take works as they find them when applying s. 92(10)(a). In other words, a work should be defined as it is conceived by the proponent. Extraprovincial works are "physical things" that are self-contained, constructed as a single entity, and transboundary in nature. This category could therefore include both a small sausage-link segment and a single pipeline extending from Alberta to Ontario.

This approach reflects the absence of a satisfactory basis for redrawing divisions between works. Attempts to do so that rely on physical or operational connection, the two most obvious options, are inappropriate for the following reasons.

The problem with a physical connection test is that it effectively reads out of existence provincial jurisdiction over local works. As noted by Dickson C.J. in the *Central Western* case:

Railways, by their nature, form a network across provincial and national boundaries. As a consequence, purely local railways may very well "touch", either directly or indirectly, upon a federally regulated work or undertaking. That fact alone, however, cannot reasonably be sufficient to turn the local railway into an interprovincial work or undertaking .... Furthermore, if the physical connection between rail lines were a sufficient basis for federal jurisdiction, it would be difficult to envision a rail line that could be provincial in nature: most rail lines located within a province do connect eventually with interprovincial lines.<sup>22</sup>

Mere physical connection cannot, therefore, support a conclusion that pipeline segments, such as the NOVA line and the *Altamont* sausage link, are a single work. Not surprisingly, the NEB referred to operational factors when applying the "physical connection test" in *Altamont*.

The focus on the operational connection, however, is inconsistent with the distinction between works and undertakings. The operational connection between the NOVA and *Altamont* segments relates to the way that these "physical things" are used; it is relevant to them as undertakings (or components of undertakings), rather than as works.

This approach to works explains the "seemingly anomalous"<sup>23</sup> decision in *Kootenay Railway*.<sup>24</sup> This case upheld provincial jurisdiction to authorize construction of a rail line that stopped just short of the Canada-U.S. boundary. The majority opinion found that the work was intraprovincial, although it might subsequently be used as part of an extraprovincial undertaking coming within federal jurisdiction.<sup>25</sup>

The proposed interpretation of s. 92(10)(a) leads to the conclusion that *Altamont* was wrongly decided. The NEB's principal error was to focus on the operational connection between

the two pipeline segments. Operational factors are irrelevant to the application of s. 92(10)(a) to works. The proper approach, on the *Altamont* facts, is to take the two pipeline segments as self-contained entities, one intraprovincial and the other extraprovincial, and decide the jurisdictional issue accordingly.

This critique of *Altamont* is supported by the *Consumers' Gas* case.<sup>26</sup> The issue was whether the Ottawa East Line, a part of the Consumers' Gas delivery network, was a federal work or undertaking by virtue of the fact that it supplied gas to – and was therefore essential to – the interprovincial Niagara Line. The court stated that:

There is no question, of course, that the [Ottawa East] line is a work, a physical thing, but as such it is wholly within the limits of Ontario and the simple fact of its physical connection to an interprovincial work, the Niagara Line, does not give it a federal character. As an undertaking, the Ottawa East Line simply has no separate existence.<sup>27</sup>

Applied to *Altamont*, this analysis indicates that the NOVA pipeline is an intraprovincial work under provincial jurisdiction. As a single component of the NOVA system, the Wild Horse Mainline would also have had "no separate existence" as an undertaking.

The conclusion that NGTL's pipelines, as works, are within provincial jurisdiction does not resolve the entire jurisdictional issue. Ballem's argument that NGTL is a federal undertaking remains to be addressed.

### (2) NGTL as an Undertaking

Section 92(10)(a) is generally interpreted as establishing federal jurisdiction over extraprovincial undertakings and intraprovincial undertakings that satisfy the "integral" or "essential" criteria. The alternative approach proposed here involves a two step

analysis. The first step is to identify the undertaking. Second, the undertaking is characterized as either intraprovincial or extraprovincial. Jurisdiction is determined by the answer at the second step.

The first step applies general principles regarding the nature of undertakings. The courts use "undertaking" in a manner equivalent to "organization" or "enterprise".<sup>28</sup> The clearest analogy is with a business. The question that the courts should ask is simply: What is the relevant business?

In fact, the indicia used in the "integral" and "essential" tests are the defining characteristics of business enterprises. These characteristics include: common ownership, control and direction, operational coordination, and a common purpose. Facilities or activities that share these operational characteristics are generally viewed as a single business.

For example, common ownership and control distinguishes the case of a business enterprise that manufactures and distributes a product from that where two separate enterprises, one engaged in manufacturing and the other in distribution, are linked contractually. In the latter situation, one would not normally speak of a single business enterprise. Not surprisingly, the courts have rarely found that two separately-owned and controlled businesses, regardless of their commercial or operational inter-relationships, form a single undertaking.<sup>29</sup>

Although ownership and control are important factors in identifying undertakings, they are not determinative.<sup>30</sup> When separate businesses are owned in common, other indicia may assume greater importance. As Hogg has noted:

a company may engage in more than one undertaking, in which case that company's operations may become subject to dual legislative authority. The fact

that various business operations are carried out by a single proprietor does not foreclose inquiry as to whether or not those operations consist of more than one undertaking for constitutional purposes. *It is the degree to which the operations are integrated in a functional or business sense that will determine whether they constitute one undertaking or not.*<sup>31</sup>

Once the undertaking is identified, it must be classified as intraprovincial or extraprovincial. If an undertaking has extraprovincial facilities or its business involves the transportation of goods or people, or the transmission of communications signals, across provincial or international boundaries, then it is extraprovincial and within federal jurisdiction. If the undertaking's facilities, staff and business operations are contained within a single province, it is intraprovincial and comes under provincial jurisdiction.

This interpretation of s. 92(10)(a) applies the "integral" and "essential" tests to define the scope of the undertaking, not to answer directly the question of federal or provincial jurisdiction. These tests determine whether facilities and business operations constitute a single undertaking. They should not be used to bring intraprovincial undertakings into federal jurisdiction.

The consistency of this approach with what the courts are in fact doing – as opposed to what they sometimes say they are doing – is illustrated by two recent pipeline decisions. Both the *Westcoast* and *Consumers' Gas* cases fit easily into the two step analysis outlined above.

In *Westcoast*, the court held that Westcoast Energy Inc.'s gathering system in British Columbia was an integral part of its federally-regulated extraprovincial operations, not a separate local undertaking for s. 92(10)(a) purposes. This decision

appears directly relevant to NGTL. Federal jurisdiction over NGTL might be justified on the grounds that its gathering system is also integral or essential to interprovincial and international pipeline undertakings.

In fact, the court's reasoning does not support this conclusion regarding NGTL. Hugessen J.A. summarized his analysis as follows:

In my view, the combination of ownership, direction and control in the hands of *Westcoast*, together with the other factors which I have enumerated above, lead ineluctably to the conclusion that *Westcoast* is a single undertaking engaged in the interprovincial and international transportation of natural gas. As such, it is subject to federal jurisdiction ....<sup>32</sup>

The two step analysis is clear: the gathering system forms part of Westcoast Energy Inc., which is an extraprovincial business enterprise.

If the intraprovincial gathering system and related facilities were not subject to the same "ownership, direction and control" as the mainline system, the answer to the first question would be different, as would the jurisdictional outcome. This possibility is alluded in Hugessen J.A.'s statement that:

a finding that the gathering and processing facilities owned and operated by Westcoast are a part of its transportation undertaking does not necessarily establish that the gathering and processing operations carried on by others are vital or essential to the Westcoast undertaking so as to become themselves subject to federal jurisdiction.<sup>33</sup>

While Hugessen J.A. expresses no final opinion on how a case involving these other operations would be decided, the analysis proposed here is that they would not be characterized as part of the Westcoast undertaking.

In *Consumers' Gas*, the court found in favour of provincial jurisdiction. As noted above, the pipeline at issue was part of the Consumers' Gas Co. business enterprise, which operated an intraprovincial gas distribution system. The fact that the interprovincial link depended for its gas supply on the Consumers' Gas system, or some part of it, was insufficient to place some or all of that intraprovincial system under federal jurisdiction.

The implications for NGTL can be briefly summarized. There is little doubt that NGTL is itself an undertaking. It has a corporate identity, staff, business operations and physical facilities.<sup>34</sup> Although it is functionally integrated with extraprovincial undertakings such as TransCanada Pipelines, it is unlikely that a court would conclude that NGTL and TransCanada constitute, for s. 92(10)(a) purposes, a single business enterprise or undertaking.

The second question is whether NGTL is an intraprovincial or an extraprovincial undertaking. The NGTL gathering system is within Alberta, as are the NGTL operations, staff, and other facilities. The business of NGTL is not to transport gas across provincial or international boundaries; it moves gas within Alberta, delivering it to local distribution networks or to transfer points from where the gas passes either directly or through sausage links into extraprovincial pipeline systems. NGTL is therefore an intraprovincial undertaking, coming within provincial jurisdiction under s. 92(10)(a).

### Federal Regulation of NGTL

Undertakings are within either federal or provincial jurisdiction for purposes of s. 92(10)(a).<sup>35</sup> There is no divided jurisdiction. Jurisdictional exclusivity is not, however, preserved under the Constitution as a whole. A subject matter having both federal and provincial aspects may be regulated by both orders of government.<sup>36</sup> Legislation on a matter of federal juris-

diction may therefore incidentally affect areas of provincial authority. Consequently, provincial jurisdiction under s. 92(10)(a) does not preclude a federal regulatory role in relation to NGTL.

Under the proposed approach to s. 92(10)(a), the "essential" test cannot bring NGTL within federal jurisdiction. Nevertheless, the fact remains that NGTL is essential to interprovincial pipelines and gas exports. NGTL's operations have important implications for federal undertakings, the effectiveness of the federal regulatory regime governing these undertakings, the national economy (which depends in significant respects on interprovincial energy transportation), and Canada's international economic relations in the area of gas exports. It would therefore be surprising if NGTL were completely immune from federal regulation.

A federal role to address these issues is in fact permitted by s. 91(2) of the *Constitution Act, 1867*. This section grants federal jurisdiction over "the regulation of trade and commerce". The courts have distinguished two branches of this power, one of which establishes federal jurisdiction over "interprovincial and international" trade and commerce. For the same reasons that NGTL is not an extraprovincial undertaking, it could not easily be regulated under this first branch.

The second or "general" branch, however, provides a more appropriate basis for federal economic regulation in relation to NGTL. The Supreme Court of Canada set out a five-element test for the general trade and commerce power in the *General Motors* case. These elements are:<sup>37</sup>

- (1) a "general regulatory scheme";
- (2) the "oversight of a regulatory agency";
- (3) a concern "with trade as a whole rather than with a particular industry";

(4) "the legislation should be of a nature that the provinces jointly or severally would be constitutionally incapable of enacting"; and

(5) "the failure to include one or more provinces or localities in a legislative scheme would jeopardize the successful operation of the scheme in other parts of the country."

Suppose that Parliament enacted legislation for the purpose of ensuring the unimpeded flow of gas through Canada's national pipeline system and to markets in the United States. Furthermore, assume that this legislation applied to certain aspects of NGTL's operations. How would such legislation fare under the test for the general trade and commerce power?

The precise analysis would depend on the details of the legislation. The basic approach, however, would be as follows. First, there is a general regulatory scheme relating to gas transportation throughout Canada and to U.S. markets. Second, that scheme could be overseen by a regulatory agency – the National Energy Board. Third, the legislation would be directed at national economic objectives, as opposed to industry-specific concerns. The fact that it applies to a particular sector is not an impediment to federal jurisdiction.<sup>38</sup> Fourth, the legislation in question could not be enacted by the provinces since it applies to the national pipeline system, a significant part of which is federally regulated. Finally, the success of the scheme depends on its operation in all jurisdictions. A blockage at one point could have system-wide effects.

The trade and commerce analysis has a further implication. Provincial legislation that seriously disrupts the national energy transportation system or effectively neutralizes federal regulatory authority in relation to interprovincial pipelines or gas exports would be vulnerable to constitutional challenge. If such legislation were found by the courts to

regulate a subject matter coming within exclusive federal authority under the trade and commerce power, it would be struck down as unconstitutional.

## Conclusion

This article sets out a new approach to interpreting s. 92(10)(a) of the Constitution. The arguments presented here lead to the conclusion that NGTL is an intraprovincial undertaking and its individual pipelines are intraprovincial works. If accepted by the courts, this approach upholds provincial jurisdiction over NGTL for purposes of s. 92(10)(a). A federal regulatory role remains possible, however, on the basis of the general branch of the trade and commerce power.

In jurisprudential terms, this analysis is much closer to a reformulation than a revolution. The approach proposed here requires the courts to give up very little beyond the explanation of what they are doing in s. 92(10)(a) cases. For example, the "integral" and "essential" tests and the indicia underlying them are still of value. Their use, however, is not to bring intraprovincial undertakings into federal jurisdiction but rather to identify undertakings themselves. This approach is consistent with the results in most of the leading s. 92(10)(a) cases, if not with the courts' explanation of their reasoning. It makes sense of an apparently confusing body of case law and provides a coherent analytical framework for dealing with future cases.

From the perspective of the pipeline industry, the results of this approach are significant. If accepted, it would eliminate much of the current jurisdictional uncertainty. The reasoning of courts and regulatory tribunals would be more intelligible, and results in new cases easier to predict. For NGTL, the risk of either an incremental or a wholesale transition from provincial to federal regulation would be eliminated.

More generally, the outcome regarding NGTL is consistent with the constitutional values underlying Canada's division of powers. Alberta would retain authority over the many aspects of NGTL that relate directly to matters of local concern. A federal presence would be justified, however, where national economic interests are at stake. The risk of intergovernmental conflict over pipeline jurisdiction would thus be avoided in a manner that both orders of government should be able to live with.

\* Steven A. Kennett is a Research Associate with the Canadian Institute of Resources Law. The research assistance of KayLynn Goelzer-Litton is gratefully acknowledged.

## Notes

1. National Energy Board, Reasons for *Decision in the Matter of Altamont Gas Transmission Limited*, GHW-1-92, February, 1993 (hereinafter *Altamont*).
2. *In the Matter of the National Energy Board Act*, (9 February 1996) Nos. A-545-95 and A-606-95 (Federal Court of Appeal) (hereinafter *Westcoast*).
3. John Bishop Ballem, "Pipelines and the Federal Transportation Power" (1991) 29 *Alta L. Rev.* 617 at 631.
4. Steven A. Kennett, *Pipeline Jurisdiction in Canada: The Case of NOVA Gas Transmission Ltd.*, CIRL Occasional Paper #1 (Calgary: Canadian Institute of Resources Law, June 1996). To order, see "New Publication" notice on page 8.
5. The factual information in this section was obtained from the NGTL "Fact Card" (December 31, 1995) and "NOVA at a Glance", available through the NOVA Home Page on the Internet.

6. *Constitution Act, 1867*, s. 92(10)(a).
7. *United Transportation Union v. Central Western Railway Corp.*, [1990] 3 S.C.R. 1112, at 1124-1125 [hereinafter *Central Western*].
8. An early, but frequently cited, enumeration of these indicia is *Re Westspur Pipe Line Co. Gathering System* (1957), 76 C.R.T.C. 158 at 177-178 (Board of Transport Commissioners); see also Ballem, *supra* note 3 at 620-621.
9. *Alta. Govt. Tel. v. C.R.T.C.*, [1989] 5 W.W.R. 385, at 410 (S.C.C.).
10. Ballem, *supra* note 3 at 623-627.
11. *Re National Energy Board Act*, [1988] 2 F.C. 196 at 216 (F.C.A.).
12. *Altamont*, *supra* note 1.
13. Ballem, *supra* note 3.
14. *Altamont*, *supra* note 1 at 20.
15. *Ibid.* at 20-21.
16. *Ibid.* at 21.
17. *Ibid.* at 22.
18. Ballem, *supra* note 3 at 630.
19. Peter W. Hogg, *Constitutional Law of Canada*, 3rd Edition, (Toronto: Carswell, 1992) at 568.
20. *Montreal v. Montreal St. Ry.*, [1912] A.C. 333 at 342.
21. *Re Regulation and Control of Radio Communication in Canada*, [1932] A.C. 304, at 315; see, Hogg, *supra* note 19 at 568.
22. *Central Western*, *supra* note 7 at 1129.
23. Ballem, *supra* note 3 at 629.

24. *Kootenay and Elk Railway Co. v. Canadian Pacific Railway* (1972), 28 D.L.R. (3d) 385 (S.C.C.).
25. *Ibid.* at 405-406.
26. *The Consumers' Gas Co. Ltd. v. National Energy Board*, (13 March 1996), No. A-777-95 [hereinafter *Consumers' Gas*].
27. *Ibid.* at 3-4.
28. Hogg, *supra* note 19 at 568.
29. Peter W. Hogg, "Jurisdiction over Telecommunications: *Alberta Government Telephones v. CRTC*" (1990) 35 McGill L.J. 480 at 486.
30. *Central Western, supra* note 7 at 1131.
31. Hogg, *supra* note 19 at 575 (emphasis added).
32. *Westcoast, supra* note 2 at 29.
33. *Ibid.* at 35.
34. Ballem, *supra* note 3 at 630, concedes the strength of the argument that NGTL "is an undertaking complete unto itself".
35. Hogg, *supra* note 19 at 571-573.
36. *Ibid.* at 381-383.
37. *General Motors v. City National Leasing*, [1989] 1 S.C.R. 641 at 661-662.
38. John D. Whyte, "Constitutional Aspects of Economic Development Policy" in Richard Simeon, Research Coordinator, *Division of Powers and Public Policy* (Toronto: University of Toronto Press, 1985) 29 at 45-46, 60.

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*Gerald Godsoe, a long-serving member of the Institute's Board of Directors, passed away in Halifax, Nova Scotia on April 11, 1996. Mr. Godsoe was a member of the Board from 1986 to 1994, and was an enthusiastic supporter of the Institute and its activities.*



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