Canadian Institute of Resources Law
Institut canadien du droit des ressources

Enforcing Wildlife Law

Arlene Kwasniak

Assistant Professor of Law
University of Calgary

Canadian Wildlife Law Project

Paper #2

March 2006

MFH 3330, University of Calgary, 2500 University Drive N.W., Calgary, Alberta, Canada T2N 1N4
Tel: (403) 220-3200 Fax: (403) 282-6182 E-mail: cirl@ucalgary.ca Web: www.cirl.ca

Printed in Canada

Canadian Institute of Resources Law

The Canadian Institute of Resources Law was incorporated in 1979 with a mandate to examine the legal aspects of both renewable and non-renewable resources. Its work falls into three interrelated areas: research, education, and publication.

The Institute has engaged in a wide variety of research projects, including studies on oil and gas, mining, forestry, water, electricity, the environment, aboriginal rights, surface rights, and the trade of Canada's natural resources.

The education function of the Institute is pursued by sponsoring conferences and short courses on particular topical aspects of resources law, and through teaching in the Faculty of Law at the University of Calgary.

The major publication of the Institute is its ongoing looseleaf service, the *Canada Energy Law Service*, published in association with Carswell. The results of other Institute research are published as books and discussion papers. Manuscripts submitted by outside authors are considered. The Institute publishes a quarterly newsletter, *Resources*.

The Institute is supported by the Alberta Law Foundation, the Government of Canada, and the private sector. The members of the Board of Directors are appointed by the Faculty of Law at the University of Calgary, the President of the University of Calgary, the Benchers of the Law Society of Alberta, the President of the Canadian Petroleum Law Foundation, and the Dean of Law at The University of Alberta. Additional members of the Board are elected by the appointed Directors.

All enquiries should be addressed to:

Information Resources Officer
Canadian Institute of Resources Law
Murray Fraser Hall, Room 3330 (MFH 3330)
University of Calgary
Calgary, Alberta, Canada T2N 1N4

Telephone: (403) 220-3200
Facsimile: (403) 282-6182
Internet: cirl@ucalgary.ca
Website: www.cirl.ca

Institut canadien du droit des ressources

L'institut canadien du droit des ressources a été constitué en 1979 et a reçu pour mission d'étudier les aspects juridiques des ressources renouvelables et non renouvelables. Son travail porte sur trois domaines étroitement reliés entre eux, soit la recherche, l'enseignement et les publications.

L'institut a entrepris une vaste gamme de projets de recherche, notamment des études portant sur le pétrole et le gaz, l'exploitation des mines, l'exploitation forestière, les eaux, l'électricité, l'environnement, les droits des autochtones, les droits de surface et le commerce des ressources naturelles du Canada.

L'institut remplit ses fonctions éducatives en commanditant des conférences et des cours de courte durée sur des sujets d'actualité particuliers en droit des ressources et par le truchement de l'enseignement à la Faculté de droit de l'Université de Calgary.

La plus importante publication de l'institut est son service de publication continue à feuilles mobiles intitulé le *Canada Energy Law Service*, publié conjointement avec Carswell. L'institut publie également les résultats d'autres recherches sous forme de livres et de documents d'étude. Les manuscrits soumis par des auteurs de l'extérieur sont également considérés. L'institut publie un bulletin trimestriel intitulé *Resources*.

L'institut reçoit des subventions de la Alberta Law Foundation, du gouvernement du Canada et du secteur privé. Les membres du conseil d'administration sont nommés par la Faculté de droit de l'Université de Calgary, le recteur de l'Université de Calgary, les conseillers de la Law Society of Alberta, le président de la Canadian Petroleum Law Foundation et le doyen de la Faculté de droit de l'Université d'Alberta. D'autres membres sont élus par les membres du conseil nommés.

Toute demande de renseignement doit être adressée au:

Responsable de la documentation
Institut canadien du droit des ressources
Murray Fraser Hall, Room 3330 (MFH 3330)
University of Calgary
Calgary, Alberta, Canada T2N 1N4

Téléphone: (403) 220-3200
Facsimilé: (403) 282-6182
Internet: cirl@ucalgary.ca
Website: www.cirl.ca

Table of Contents

Foreword

This publication is the second in a series of papers on Canadian Wildlife Law being published by the Canadian Institute of Resources Law. The research and writing of these papers has been made possible as the result of generous grant by the Alberta Law Foundation, and the Institute thanks the Foundation for its support of this work. The Foundation of course bears no responsibility for the content of the papers and the opinions of the various authors. The Canadian Wildlife Law Project was originally developed and proceeded under the direction of John Donihee, then a Research Associate with the Institute. Following Mr. Donihee's return to private practice, the supervision and general editorship of the project has been assumed by Institute Research Associate Monique Passelac-Ross. I would like to thank both these individuals and all those who have contributed to the success of the project for their efforts towards developing a greater awareness of this important area of natural resources law.

Wildlife and a concern for wildlife are fundamental aspects of the Canadian heritage, and the fur trade and the harvest of wild game were essential parts of Canadian history. The need to provide a land base and the habitat to sustain wildlife populations is a recurring theme in both national and provincial natural resources policy; in particular, there has been a growing recognition of the need to preserve habitat for endangered species. Similarly, wildlife and access to wildlife have a particular importance for aboriginal peoples, and the rights to wildlife have been central among the concerns of First Nations in Canada. Finally, internationally, Canada is party to numerous conventions whose goals are the protection and sound management of wildlife – perhaps most notably in recent years, the Convention on International Trade in Endangered Species and the Biodiversity Convention.

Despite the obvious importance of wildlife to Canadians in all these contexts, surprisingly little has been written about wildlife law, and certainly no comprehensive overview of such law exists in Canada. The purpose of this series of papers is to begin to remedy this shortfall in Canadian legal literature.

J. Owen Saunders
Executive Director
Canadian Institute of Resources Law

Calgary, Alberta
March 2006

Preface

Most would readily assert that without enforcement, wildlife laws would not have significant impact. Yet it is not always clear what enforcement is and how it is carried out. This paper explains components of enforcement. The paper is meant to be accessible to both the legally trained and the non-legally trained. The paper describes kinds of offences, explicates the notions of compliance and non-compliance, and sets out the potential consequences of non-compliance. It addresses who may enforce wildlife laws, what kind of discretion they possess in determining whether to carry out investigation, enforcement and prosecution activities, and what potential role there is for citizen enforcement. The paper highlights the role of direct and incidental takings of wildlife in enforcement. It also addresses promoting enforcement by bringing international attention to situations where governments allegedly are not effectively enforcing environmental laws. Throughout the paper provides examples from provincial and federal wildlife legislation.

Many people contributed to this paper. Sue Parsons of CIRL assisted in editing and formatting. Diane Volk (2001) and Christine Plante (2004), both researchers with CIRL, provided valuable background information. The contributions of John Donihee (formerly with CIRL), and Mike Wenig and Monique Ross (with CIRL) must be recognized. John spearheaded the larger wildlife project and, I am happy to say, asked me to contribute to it. Mike Wenig carried the project forth and Monique Ross adroitly brought it to fruition. Susan McRory, Environmental Prosecutions Coordinator Regulatory Unit, Alberta Government, reviewed a final draft of the Enforcing Wildlife Law paper and provided very useful critical comments. My sincere thanks to all.

Arlene Kwasniak
Faculty of Law
University of Calgary

March 2006

Introduction

Wildlife laws, like other laws, normally make non-compliance an offence. They create arrays of enforcement tools for investigators and enforcement authorities to enable consequences for those who fail to comply with the law. This paper concerns the enforcement of wildlife laws. It is divided into three parts. Section 1 provides an overview of how legislation in Canada is enforced. It uses wildlife legislation to illustrate numerous elements of enforcement. Section 2 focuses on an enforcement issue unique to wildlife legislation. This is whether provisions in wildlife legislation that prohibit the taking of wildlife or of nests or dens apply only to direct, intentional takings such as through hunting, or whether such provisions apply to incidental takings, such as through agricultural or industrial activities that result in takings. Section 3 looks at relatively unconventional ways to effect or encourage enforcement. These are through private prosecutions and through citizens' submissions to the North American Commission for Environmental Cooperation.

1. Overview of Enforcement of Legislation in Canada

1.1. What is Enforcement?

In its broadest sense, as one author puts it, "[e]nforcement is any government or private action or intervention taken to determine or respond to non-compliance."[1] "Compliance" is the achievement of some prescribed process or standard.[2] "Non-compliance", then, is not achieving the prescribed process or standard. With wildlife legislation, non-compliance largely consists of committing an offence by virtue of failing to comply with statutory or regulatory requirements. Thus enforcement of wildlife legislation largely involves government or private action to determine non-compliance, through investigation, or to respond to it, through taking action such as ticketing or prosecution. The nature of the response depends on the seriousness of the offence.

---

[1] L.F. Duncan, *Effective Environmental Enforcement: The Missing Link to Sustainable Development* (LL.M. Thesis, Dalhousie Law School, 1999) at 13-18, excerpts reprinted in E. Hughes, A. Lucas & W. Tilleman, *Environmental Law and Policy*, 3rd ed. (Toronto: Emond Montgomery, 2003) at 348.

[2] *Ibid.* at 349.

1.2. Nature of the Offence

1.2.1. "What is the Nature of an Offence?"

The question "what is the nature of an offence?" could be asking many different things. It could be asking, is an offence a true crime or whether it is a regulatory offence? Is the offence a *mens rea*, strict liability, or absolute liability offence? Is it a continuing offence? Is it an indictable, summary conviction or hybrid offence? This section approaches the question "what is the nature of an offence?" from each of these perspectives.

1.2.2. True Crimes and Regulatory Offences

Under subsection 91(27) of the *Constitution Act, 1867*,[3] only the federal Parliament may enact criminal laws. Criminal offences often are called "true crimes". The *Criminal Code of Canada*[4] contains most criminal offences in Canada though other federal legislation may also create true crimes.[5] Common examples of true crimes are murder, sexual assault, theft, and robbery.

In contrast to true crimes are regulatory offences, sometimes called "public welfare offences". Provinces create such offences under subsection 92(15) of the *Constitution Act, 1867*, which provides that provinces may create offences for matters within their jurisdiction. Regarding wildlife laws, these constitutional powers would include the right of provinces to legislate in matters relating to provincial property (s. 92(5), such as wildlife since wildlife is considered to be provincial property until legally taken), property and civil rights (s. 92(13)), and matters of a local and private nature (s. 92(16)). Federal parliament may create regulatory offences under constitutional powers other than the power to create criminal laws. Relevant to wildlife, these powers include legislative authority over federal public property (s. 91(1A), such as laws concerning national parks

---

[3] *Constitution Act, 1867*, formerly the *British North America Act, 1867*, (U.K.) 30 & 31 Vict., c. 3.

[4] *Criminal Code of Canada*, R.S.C. 1985, c. C-46.

[5] For example, the Supreme Court of Canada's 1997 decision in *R. v. Hydro-Quebec* ([1997] 3 S.C.R. 213, 151 D.L.R. (4th) 32) upheld Part II of the *Canadian Environmental Protection Act* (R.S.C. 1985 (4th Supp.), c. 16) as a valid exercise of federal constitutional power to pass criminal laws. The challenged exercise of federal authority was an Executive order banning the release of PCB's into the environment in excess of specified quantities. However the Court made it clear that any valid exercise of federal criminal law power must not be colourable, that is, must not be passed only to gain legislative right over matters otherwise within provincial constitutional jurisdiction.

and wildlife found in national parks), seacoast and inland fisheries (s. 91(12)), and the power to implement international treaties which Great Britain entered on behalf of Canada (s. 132, for example, legislated implementation of the 1916 *Migratory Birds Convention*).[6]

Mr. Justice Cory in *R. v. Wholesale Travel Group Inc.*[7] succinctly distinguished legislation creating true crimes from legislation creating regulatory offences as follows:

> "The objective of regulatory legislation is to protect the public or broad segments of the public … from the potentially adverse effects of otherwise lawful activity. Regulatory legislation involves a shift of emphasis from the protection of individual interests and the deterrence and punishment of acts involving moral fault to the protection of public and societal interests. While criminal offences are usually designed to condemn and punish past, inherently wrongful conduct, regulatory measures are generally directed to the prevention of future harm through the enforcement of minimum standards of conduct and care."

Although federal wildlife legislation may create either true crimes or regulatory offences, it is safe to say that the mainstay of federal wildlife offences are of a regulatory nature. Because of the mentioned constitutional limitations, all provincial offences are regulatory offences. Municipalities in a province may also create regulatory offences insofar as the province has delegated its authority to do so to municipalities. Typically municipal wildlife offences will be found in municipal bylaws.

1.2.3. Mens Rea, Strict Liability and Absolute Liability Offences

Offences are divided into three categories:[8]

- *Mens rea* offences, meaning that liability follows only if it can be shown beyond a reasonable doubt that the activities that constitute the offence were carried out with intent or with recklessness. In other words the Crown (the government) must prove the conduct or act that the offence describes (the *actus reus*) and intent or recklessness (the *mens rea*). True crimes are *mens rea* offences, although regulatory offences also may be *mens rea* offences.

---

[6]The current legislation that implements this treaty is the *Migratory Birds Convention Act, 1994*, S.C. 1994, c. M-7.01.

[7]*R. v. Wholesale Travel Group Inc.*, [1991] 3 S.C.R. 154 at 219.

[8]The Supreme Court of Canada established the three categories in *R. v. Sault Ste. Marie*, [1978] 2 S.C.R. 1299, (1978) 40 C.C.C. (2d) 353 at 373-374.

- Strict liability offences, meaning that the Crown need not prove intent but due diligence is a defense to the offence. The Crown need only prove the *actus reus* beyond reasonable doubt and then the onus shifts to the defendant to prove that he or she took reasonable care on a balance of probabilities. "Reasonable care" means doing what a reasonable person would have done in the circumstances. This defense is available "if the accused reasonably believed in a mistaken set of facts which, if true, would render the act or omission innocent, or he took all reasonable steps to avoid the particular event."[9] The former noted defense often is referred to as "mistake of fact" and the latter "due diligence".

- Absolute liability offences, meaning that the Crown does not need to prove intent, nor is reasonable care a defense. The Crown need only establish the *actus reus* and then liability follows. Legislation may only create absolute liability offences when it is clear from the words of the statute that guilt would follow on mere proof of the act that constitutes the offence.

Here are some examples of the categories of offences as they apply to wildlife law:

- Subject to certain exceptions, subsection 36(1) of the Alberta *Wildlife Act* provides that "A person shall not willfully molest, disturb or destroy a house, nest or den of prescribed wildlife or a beaver dam in prescribed areas and at prescribed times."[10] Since this is a provincial offence it is a regulatory or public welfare

---

[9] *Ibid.* at 373-374.

[10] Alberta *Wildlife Act*, R.S.A. 2000, c. W-9. Section 96 of the *Wildlife Regulation* (Alta. Reg. 143/97) prescribes that s. 36(1) of the Act applies to:

> "(a) to the nests and dens, so far as applicable, of:
>
> > (i) endangered animals that are treated under section 7 the same as non-game animals other than raven, throughout Alberta and throughout the year;
> >
> > (i.1) upland game birds throughout Alberta and throughout the year;
> >
> > (ii) migratory game birds, migratory insectivorous birds and migratory nongame birds as defined in the Migratory Birds Convention Act (Canada), throughout Alberta and throughout the year; and
> >
> > (iii) snakes, except prairie rattlesnakes, and bats, throughout Alberta and from September 1 in one year to April 30 in the next;
>
> (a.1) to the dens of prairie rattlesnakes used as hibernacula, throughout Alberta and throughout the year;
>
> (b) to the houses and dens of beaver, on any land that is not privately owned land described in section 1(1)(z)(i) or (ii) of the Act throughout the year;

offence. This provision creates a *mens rea* offence since the offence depends on the Crown establishing both the act of molesting, disturbing or destroying, and the willfulness in performing the act.

- Subsection 33(1) of the British Columbia *Wildlife Act*[11] provides that "A person commits an offence if the person has live wildlife in his or her personal possession except as authorized under a licence or permit or as provided by regulation." The absence of words *mens rea* indicators such as "willfully", "intentionally", and so on indicates that this is a strict liability offence. Thus the Crown need only establish that the defendant has wildlife in his or her possession, then the onus shifts to the defendant to see if he or she can establish the defense of reasonable care.

- In the absence of definitive caselaw, it is difficult to give incontrovertible examples of wildlife absolute liability offences. However, if there are absolute liability offences in wildlife legislation they likely would include minor ticketing type offences, such as for failure to display a license where required to by law.

1.2.4. Continuing Offences

Legislation may specify that an offence is a continuing offence. This means that the defendant commits a new offence for every day that the act or event that constitutes the offence persists. Some wildlife laws create continuing offences. For example, subsection 81(4) of Manitoba's *The Wildlife Act*[12] states that a "violation of this Act that continues for more than one day constitutes a separate offence on each day during which it continues." So, for example, if a person violates Manitoba's *The Wildlife Act* by trapping without a license,[13] the person commits a new offence for each day that he or she traps without a license.

(c) to the houses, nests and dens of all wildlife, in a wildlife sanctuary throughout the year; and

(d) to the nests of game birds, in a game bird sanctuary throughout the year."

[11]B.C. *Wildlife Act*, S.B.C. 1996, c. 488.

[12]Manitoba *The Wildlife Act*, C.C.S.M., c. W130.

[13]*Ibid.*, s. 15(1).

1.2.5. Summary Conviction, Indictable and Hybrid Offences

The *Criminal Code* establishes three categories of offences: summary conviction offences, indictable offences, and what are known as "hybrid offences". The differences among the categories concern the procedure that is followed in the prosecution of an offence. Indictable offences are the most serious offences. With most indictable offences the accused may elect a trial by a judge of the provincial court, or a justice of the Court of Queen's Bench, sitting alone, or a court composed of a judge and jury in the Court of Queen's Bench. Summary conviction offences are less serious. They proceed in provincial court before a judge alone. Hybrid offences may be prosecuted either by summary conviction or indictment. The prosecutor chooses which way to proceed, usually depending on the seriousness of the offence and the circumstances surrounding its commission.

All offences created by provincial statute are summary conviction offences. Federal offences may be indictable, summary conviction, or hybrid. For example, section 13 of the *Migratory Birds Convention Act, 1994*,[14] provides that violations of the Act or regulations may constitute a summary conviction or an indictable offence. Accordingly the offences created by this legislation are hybrid offences. There are similar provisions in the *Canada Wildlife Act*,[15] the federal *Fisheries Act*,[16] *a*nd the federal *Species at Risk Act*.[17]

1.3. Typical Wildlife Offences

Many behaviours may constitute offences under wildlife legislation in Canada. Although it is not possible to set forth all wildlife offences in Canada, certain patterns throughout wildlife legislation are evident. Here are some examples of common offences:

- hunting without statutory authorisation, such as a without a hunting license or permit;
- contravening terms of any statutory authorisation, for example violating a hunting or trapping permit;

---

[14] *Migratory Birds Convention Act, 1994*, *supra* note 6.

[15] *Canada Wildlife Act*, R.S. 1985, c. W-9.

[16] *Fisheries Act*, R.S. 1985, c. F-14.

[17] *Species at Risk Act*, S.C. 2002, c. 29.

- hunting outside of season, in unauthorised places, or at unauthorised times;
- hunting while impaired or in a careless or disruptive manner;
- possessing or using unauthorised hunting equipment;
- hunting in an unauthorised or prohibited manner (*e.g.* while wildlife are swimming, from a helicopter where prohibited);
- disturbing or destroying endangered or threatened species nests or dens;
- interference with other people's hunting or trapping;
- possessing wildlife without statutory authorisation;
- buying or selling wildlife in an unauthorised manner;
- importing or exporting wildlife without statutory authorisation;
- not properly controlling dogs while hunting;
- not cooperating with wildlife officers;
- making false or misleading statements to wildlife officers; and
- not reporting as required by legislation.

1.4. Consequences of Non-Compliance

1.4.1. Investigation and Enforcement Discretion and Prosecutorial Discretions

There is a range of potential consequences of non-compliance from no consequences to substantial penalties and imprisonment. Nothing may happen because of the principles of investigation and enforcement discretion and prosecutorial discretion. Under the principle of investigation and enforcement discretion, law enforcement agencies may decide whether to investigate an offence or whether to lay a charge against someone. Governments may have policies that focus on the agencies' exercise of this discretion. Where a charge is laid, the prosecution agency also has discretion whether to prosecute an offence. This discretion is called "prosecutorial discretion". A failure to exercise

investigation or enforcement discretion may be challenged in court,[18] but a failure to exercise prosecutorial discretion cannot be challenged.

If an offence does proceed to prosecution there may be a number of potential ramifications. These are set out in the legislation that created the offence. The following sections describe some consequences as they pertain to wildlife legislation.

1.4.2. Fines and Imprisonment

Here are some of the most common features of fines and imprisonment type penalties found in wildlife laws:

- Imprisonment follows only for the most serious[19] or repeat offences. Specific fines and terms of imprisonment vary in ranges between the minimum and maximum penalties.

- Some jurisdictions double the penalties for a subsequent conviction of the same offence.

- Legislation makes corporate offenders liable for higher fines than individual persons. As well, most jurisdictions enable a court to attach vicarious liability to corporations, directors, employers and others who aid, abet or counsel an offence.

1.4.3. Seizure and Forfeiture

Wildlife legislation typically provides for the forfeiture of anything seized by officials during the investigation or arrest of the accused. The laws usually enable a statutory delegate, such as the appropriate minister, investigator or wildlife officer, to dispose of forfeited items, including by destroying or selling them.[20] In most jurisdictions, where

---

[18]See, for example, *Swanson Estate v. Canada*, 1990 F.C.J. No. 195, where the court found the Crown to be one-third liable in negligence for failing to inspect and enforce aeronautic legislation in relation to an air carrier despite the carrier's apparent contraventions.

[19]Here are some examples of serious offences: Trafficking in wildlife may attract a term of imprisonment, for example, s. 13(2) of the *Migratory Birds Convention Act, 1994*, *supra* note 6, provides for a maximum five-year term of imprisonment for trafficking in game birds; s. 97 of the *Species at Risk Act*, *supra* note 17, imposes a maximum five year sentence for individuals convicted of taking extirpated, endangered or threatened species, or to destroying habitats.

[20]For example, *Migratory Birds Convention Act, 1994*, *supra* note 6, s. 14; *Species at Risk Act*, *ibid.*,

there has not been an order for forfeiture, the lawful owner of seized items may apply for their return. Typically, where the ownership cannot be ascertained, the items are forfeited to the Crown for disposal.[21]

1.4.4. Creative Sentencing

Legislation may give courts latitude to make additional orders at the time of conviction orders outside of traditional sentencing options of fines, imprisonment and seizure and forfeiture. These orders, called "creative sentencing" give courts added flexibility in redressing the harm done by the offence. For example, section 16 of the *Canada Wildlife Act*,[22] enables a court, in addition to other penalties, to by order prohibit any act or activity that may result in continuation or repetition of offence and to order the offender to take action to remedy or avoid harm to wildlife from the commission of the offence. Section 93.4 of the Alberta *Wildlife Act*[23] enables a court to order payment to promote wildlife management or conservation or protection of wildlife and endangered species, including their habitats. British Columbia's *Wildlife Act*'s creative sentencing provisions include the right of a court to direct the convicted offender "to take any action the court considers appropriate to remedy or avoid any harm to the environment or any wildlife, endangered species or threatened species, that resulted or may result from the commission of the offence" or to pay funds into designated wildlife trusts.[24]

---

ss. 87(2), 103 and 104; B.C. *Wildlife Act*, R.S.B.C. 1996, c. 488, s. 98; New Brunswick *Fish and Wildlife Act*, S.N.B. 1980, c. F-14.1, ss. 28-30; Nova Scotia *Endangered Species Act*, S.N.S. 1998, c. C-11, s. 24; and the P.E.I. *Wildlife Conservation Act*, S.P.E.I. 1998, c. W-4.1, s. 25.

[21]For example, the Alberta *Wildlife Act*, *supra* note 10, ss. 74-75; B.C. *Wildlife Act*, *supra* note 11, s. 98; *Species at Risk Act*, *supra* note 17, s. 87; Manitoba *The Wildlife Act*, *supra* note 12, s. 78; P.E.I. *Wildlife Conservation Act*, *ibid.*, ss. 23-24; Quebec *Conservation and Development of Wildlife*, R.S.Q./L.R.Q., c. C-61.1, s. 19-21; Saskatchewan *Wildlife Act, 1998*, S.S. 1998, c. W-13.12, s. 80; and Yukon *Wildlife Act*, S.Y. c. 229, s. 129.

[22]*Canada Wildlife Act*, *supra* note 15.

[23]Alberta *Wildlife Act*, *supra* note 10.

[24]B.C. *Wildlife Act*, *supra* note 11, ss. 84.1(b) and (e).

1.5. Implementation of Enforcement Provisions

1.5.1. Who May Enforce?

Wildlife legislation, like any legislation with enforcement provisions, sets out who has the right to implement enforcement provisions. Enforcement powers may be shared among different kinds of enforcement authorities. These might include the responsible minister, wildlife and other officers of various nomenclature, and regular police, depending upon the wording of the provisions. Even without specific mention in wildlife laws, police may have powers under other legislation to generally enforce laws within a jurisdiction, including wildlife laws. However care must be taken as the scope of police powers might not be clear where police are not specifically authorized to enforce provisions in wildlife legislation.[25]

The scope of enforcement powers may vary depending upon the category of enforcement officer and the nature of the enforcement activity. For example, some provisions might only be enforceable by enforcement officers who are designated to enforce those provisions, such as conservation or wildlife officers who are designated under wildlife laws. Or, legislation might specify that inspection type activities may be carried out by one kind of enforcement officer while actual investigation, such as seizing materials and charging a person with an offence, are carried out by another. There may be a number of reasons for such separation of duties. For example people might be more likely to cooperate with inspectors if someone else carries out investigation of offences. As well, since evidentiary rules regarding seizure and charging must be strictly complied with, these activities might be best carried out by persons primarily engaged in law enforcement.

---

[25]Provincial policing statutes give police the authority to enforce federal and provincial laws. They do not normally distinguish between regulatory type offences. Accordingly, police should have some authority to enforce wildlife legislation even if they are not specifically named as enforcement officers. However it might not be clear what enforcement powers police possess when they are not named enforcers of regulatory legislation. For example, apart from statutory authority there is not common law right to search and seize except in respect of stolen goods (J. Fontana, *The Law of Search Warrants in Canada* (Toronto: Butterworth, 1974) at 139). Search and seizure authority under the *Criminal Code*, *supra* note 4, is limited to federal offences (R. Salhany, *The Police Manual of Arrest, Seizure and Interrogation*, 3rd ed. (Toronto: Carswell, 1986)). Presumably, then, police may not legally exercise search and seizure powers in provincial wildlife legislation unless police are appropriately named as enforcement officers. For a further discussion of police enforcement of environmental laws see A. Kwasniak, "Policing the Environment" (1992) 16:1 Canadian Police Journal 1.

1.5.2. Statutory Example of Enforcement Authorities

It is critical to effective enforcement that the entity that carries out an enforcement function is authorized to carry out that function. If there is a lack of statutory authorisation the enforcement action could be declared to be *ultra vires* by a court. That overstepping statutory authority is within the realm of possibility is evident from the following discussion of the British Columbia *Wildlife Act*[26] enforcement implementation provisions.

Subsection 1(1), the definition provision of the Act, defines a number of entities to which the Act gives potential enforcement authority. The relevant ones are:

- "Conservation officer" meaning a conservation officer defined in subsection 1(1) of the *Environment Management Act*.[27] The *Environment Management Act* defines a "conservation officer" to include persons employed by the Environment Minister to serve as a chief conservation officer, and persons designated by the chief conservation officer to serve as conservation officers.[28]

- "Constable" meaning an officer of the Royal Canadian Mounted Police or either of a designated constable or municipal constable as defined in the *Police Act*.[29] Under the *Police Act* a "designated constable" is appointed to provide designated services[30] and a "municipal constable" provides policing services at a municipal level.[31]

- "Officer" meaning:

> "(a) a constable, a conservation officer, the director, an assistant director, a regional manager, or
>
> (b) an employee of the government designated by name or position as an officer, by regulation of the minister."

- In respect of wildlife other than fish, "director" means the director of the Wildlife Branch. In respect of fish it means a person designated by Cabinet.

---

[26]B.C. *Wildlife Act*, *supra* note 11.

[27]*Environment Management Act*, R.S.B.C. 1996, c. 488.

[28]*Ibid.*, s. 8.1.

[29]*Police Act*, R.S.B.C. 1996, c. 367.

[30]*Ibid.*, s. 4(11).

[31]*Ibid.*, s. 26.

- "Regional manager" means a regional manager of the recreational fisheries and the director of the Wildlife Branch.

Keeping these distinctions in mind, examples of enforcement authority under *the Wildlife Act* are as follows:

- Any *officer* may enter premises where live wildlife or fish are kept, for the purpose of determining compliance with the Act and regulations.[32] Recall that "officer" comprises the largest class of entities with enforcement authority under the Act, as it includes persons who are not typical law enforcement agents, such as regional managers and a director of the Wildlife Branch.

- A *conservation officer* or a *constable* may require a person to produce a fire arm and may inspect it, for the purposes of the *Wildlife Act.*[33] Note that production and inspection authority is more limited than authority to enter premises. Here the persons are more limited.

- An *officer* may inspect a firearm found in a vehicle or boat, and may inspect a camp occupied by a hunter or angler for the purposes of the *Wildlife Act*.[34]

- Only *conservation officers* or *constables* may search with or without a warrant and seize wildlife, fish, firearms, and other items that the officer or constable believes on reasonable and probable grounds may have been used in the commission of an offence.[35]

- Any *officer* may stop vehicles for the purposes of the Act to determine whether occupants have been hunting, fishing or trapping and to obtain information about wildlife or game they possess.[36]

- Only *conservation officers* or *constables* may arrest anyone found committing an offence under the Act.[37]

---

[32]B.C. *Wildlife Act*, *supra* note 11, s. 89(1).

[33]*Ibid.*, s. 90(1).

[34]*Ibid.*, ss. 90(2) and 91.

[35]*Ibid.*, ss. 92-94.

[36]*Ibid.*, s. 95.

[37]*Ibid.*, s. 87.

- Only *conservation officers* or *constables* may require a hunter to relinquish a firearm and licence where, on reasonable and probable grounds, they believe the person to be impaired by reason of alcohol consumption or drug use.[38]

- Only *conservation officers* may issue a dangerous wildlife protection order directing a person in charge of land to effectively deal with food, waste, compost or garbage that may attract dangerous wildlife.[39]

2. Wildlife Offences: Direct and Incidental Takings

2.1. Taking Wildlife, Disturbing Wildlife and Like Offences

Prohibitions against unauthorized taking or disturbing of wildlife or habitats are key offences in wildlife legislation. Such offences are important as they provide government and wildlife enforcement authorities with critical tools to regulate the use and well being of wildlife resources.

The offences vary in scope depending upon whether they cover only what might be called a "direct" taking, disturbing etc. (in this Part called a "taking"), or whether they also include "incidental" takings.[40] A direct taking occurs when a taking is the direct, and intentional result of an action, for example, killing a fox as a result of shooting it. The killing of the fox is the direct consequence of the action of firing a firearm, and not an incidental effect. An incidental taking occurs when the taking is incidental to some other activity, for example, killing birds as a result of logging operations. Here the direct and intentional consequence of the logging is the felling of trees. The incidental effect is the killing of birds and destruction of nests that are in the trees. Other examples of activities that could result in incidental takings include mining, oil and gas development, agricultural activities, water developments and water use, and rural or urban development.

Although direct takings are intentional, incidental takings could be either unintentional or intentional, though they probably usually are unintentional. An example of an unintentional incidental taking is a person who carries out mining operations where

---

[38]*Ibid.*, s. 88.

[39]*Ibid.*, s. 88.

[40]The author made this distinction as "direct" and "indirect" takings in A. Kwasniak, *Alberta Wetlands: A Law and Policy Guide* (Edmonton: Environmental Law Centre & North American Waterfowl Management Plan, 2001) at 156.

rock is deposited into a stream and destroys migratory bird eggs, though the person carrying out this activity is unaware of the incidental effect. An example of an intentional incidental taking is a person who cuts down a tree knowing that it will kill resident hatchlings.

Whether a wildlife offence involves or includes incidental takings is of utmost importance to those concerned with the protection of wildlife and habitat. If an offence only covers direct takings then a defendant may only be prosecuted for primarily hunting or trapping offences, and not for carrying on industrial, agricultural or developmental activities that result in the taking of wildlife but are not aimed at such taking.

2.2. Determining Whether an Offence Applies to Incidental Takings as well as Direct Takings

It may not always be crystal clear whether an offence applies only to direct takings or whether it also covers incidental takings. The use of *mens rea* words such as "intentionally", "wilfully", "deliberately", and so on indicates that an offence applies only to direct takings. For example, subsection 36(1) of the Alberta *Wildlife Act*[41] states that a "person shall not wilfully molest, disturb or destroy a house, nest or den of prescribed wildlife or a beaver dam in prescribed areas and at prescribed times." The use of the word "willfully" indicates that the offence applies to only direct molestations, disturbances or destruction, for example intentionally crushing a nest in ones' hands. It is a *mens rea* offence. It will not apply to, for example, strip mining operations that destroy burrowing owl nests unless the person conducting the mining operations knows of the nests and willfully molests, disturbs or destroys them through strip mining. Accordingly, the offence could apply to intentional incidental takings but likely would not apply to unintentional incidental takings.

A taking offence that lacks *mens rea* words normally indicates a strict liability offence that applies to both direct and incidental takes. For example section 35 of the regulations under the *Migratory Birds Convention Act, 1994*[42] provides that subject to certain exceptions, "no person shall deposit or permit to be deposited oil, oil wastes or any other substance harmful to migratory birds in any waters or any area frequented by migratory birds." This section applies whether or not harm to birds was intended. The Federal Court Trial Division in *Alberta Wilderness Association v. Cardinal River Coals*

[41] Alberta *Wildlife Act*, *supra* note 10. Note 11 also explains "prescribed".

[42] *Migratory Bird Regulations*, C.R.C., c. 1035.

Ltd.[43] found that this regulation could apply to coal mining activities which involved millions of tonnes of rock being deposited into creek beds frequented by migratory birds and containing their nests.[44] Interestingly, the court found that the substance itself did not have to be harmful, provided that it was harmful in sufficient quantities. Another example is section 6 of the regulations under the *Migratory Birds Convention Act, 1994* which provides that "no person shall … disturb, destroy or take a nest, egg, nest shelter, eider duck shelter or duck box of a migratory bird … except under authority of a permit …."[45] Here the lack of the presence of *mens rea* words indicates that incidental disturbances or destructions of nests or eggs etc. without a permit are offences.[46] They would be strict liability offences.

The Canadian Wildlife Service, the agency of Environment Canada that administers much of the *Migratory Birds Convention Act*, has represented that the prohibitions of the *Migratory Birds Convention*, as legislated in the *Migratory Birds Convention Act, 1994* and regulations, apply to both direct and incidental takings.[47] The author agrees that this is the case for many of the prohibitions as reduced to legislation. However, it likely is not true of all prohibitions in the *Migratory Birds Convention Act* and regulations. For example, section 5 of the regulations provides that "No person shall hunt a migratory bird except under authority of a permit therefor".[48] The regulation defines "hunt" broadly to mean "chase, pursue, worry, follow after or on the trail of, lie in wait for, or attempt in any manner to capture, kill, injure or harass a migratory bird, whether or not the migratory bird is captured, killed or injured."[49] An argument could be made that since the words or phrases included in the definition of "hunt" suggest actions that reflect an

---

[43]*Alberta Wilderness Association v. Cardinal River Coals Ltd.* (1999), 3 F.C. 425.

[44]*Ibid.* at 104.

[45]*Alberta Wilderness Association v. Cardinal River Coals Ltd.*, *supra* note 43.

[46]Section 3 of this paper, which looks at other ways of promoting enforcement of wildlife laws, considers how alleged *Migratory Birds Convention Act* violations through incidental takes of birds or nests can attract international scrutiny.

[47]A power point presentation provided to the author by Paul Gregoire, Wildlife Biologist, Canadian Wildlife Service, Habitat Conservation and Assessment Division in 2000, clarifies the government's position on incidental takes. The second slide states "Incidental Take – Is unintentional take, incidental to some other activity, prohibited by the Migratory Bird Convention? – Yes". A later slide provides "there is no solid basis to provide an exemption to the Convention's prohibitions in the case of incidental take". The power point presentation later sets out the provisions of the *Migratory Birds Convention Act* and regulations that codify the convention prohibitions.

[48]*Migratory Bird Regulations*, *supra* note 42.

[49]*Ibid.*, s. 2, definition of "hunt".

intention to affect wildlife, the section applies only to direct takings. Using the same reasoning, it is arguable that the section does not apply to intentional incidental takings since the prohibited activities are activities that fall under the definition of "hunt" that result in takings, and not other activities such as mining, forestry, agricultural, etc., operations that result in takings.

3. Unconventional Ways to Enforce or Encourage Enforcement of Wildlife Legislation

3.1. Private Prosecution

Government holds primary responsibility for enforcing laws and prosecuting offenders. However not all wildlife offences are prosecuted. Government law enforcement and prosecution agencies have discretion, meaning the authority to decide whether to exercise enforcement and prosecutorial powers against offenders.[50] In other words, government can choose not to enforce or prosecute violations.[51]

Whether or not government prosecuted a suspected violation of law, under Canadian law, any citizen has the right to bring evidence of the breach before the court.[52] This right of action is an important civil liberty and safeguard against government inaction and laxity.[53] Subject to any statutory bar, the citizen right to institute a private prosecution applies to all statutory offences. However, there must be a statutory offence for a private prosecution to proceed. Accordingly, attention must be paid to the sections of the law creating the offence to ensure that non-compliance constitutes a violation without the need for further government action. For example if a statute states that a certain behaviour is a violation if a minister is of the opinion that it is, then there can be no private prosecution unless the minister has somehow made it clear that he or she is of that opinion. However, most offences are not so discretionary. They are more direct in that they simply state that certain behaviour, such as violating a statutory authorization, is an offence.

---

[50]Parts of this section are derived from Kwasniak, *supra* note 40 at 29-30.

[51]*See* discussion of prosecutorial discretion in Section 1.4. of this paper.

[52]For a comprehensive discussion on private prosecutions, see J. Mallet, *Enforcing Environmental Law: A Guide to Private Prosecution*, 2d ed. (Edmonton: Environmental Law Centre, 2004).

[53]J. Swaigen, "Introduction" in L. Duncan, *Enforcing Environmental Law: A Guide to Private Prosecution* (Edmonton: Environmental Law Centre, 1990).

A citizen, or the citizen's agent or legal counsel, commences proceedings by laying an information before a local justice of the peace or provincial court judge in the jurisdiction where the alleged offence occurred. An information is a statement by the citizen, who is called the "private informant", alleging an offence and evidence in a prescribed form.[54] Before laying an information, it always is advisable that the informant makes a formal complaint to the government authority responsible for enforcing the law in question.

The justice of the peace or judge who receives an information must hear and consider *ex parte* (without notice to the alleged offender) the informant's allegations and any witnesses. The judge or justice of the peace in his or her discretion may commence the prosecution by issuing process, which is a summons or warrant compelling the accused to appear. If the judge or justice declines to issue process, it is open to the private informant to reapply for process to another judge or justice of the peace.[55]

The Attorney General has the power to intervene and exercise control over a prosecution. Then the Attorney General has three choices. The Attorney General may carry the prosecution, apply to the court to withdraw the charges, or may enter a stay of prosecution. Under our law, if the Attorney General enters a stay and fails to proceed within one year, the proceedings are deemed never to have occurred.[56] In the past the Attorney General has proven quite willing to exercise this power.[57] Nevertheless, in appropriate circumstances, it can be effective to commence a private prosecution. The Attorney General may decide not to step in and allow the private prosecution to proceed. Or, the Attorney General could carry the prosecution.[58] Even if the Attorney General opts

---

[54]Form 2, Part XXVIII of the *Criminal Code*, *supra* note 4.

[55]There is case authority that the informant must swear new information. See *R. v. Allen*, 20 C.C.C.

[56]*Criminal Code*, *supra* note 4, s. 579(2).

[57]For example, in the late 1980s and early 1990s, Dr. Martha Kostuch, a Canadian environmental activist, successfully laid numerous information in respect of violations of the *Fisheries Act* (R.S.C. 1985, c. F-14) in connection with the construction of the Oldman Dam in southern Alberta. The Attorney General stayed each prosecution. See I. Cartwright, "A Private Prosecution in Alberta – A Painful Process" (1991) 1 J.E.L.P. at 110.

[58]For example, in *Fletcher v. Kingston (City)* ((1998), 28 C.E.L.R. (N.S.) 229 (Ont. Ct. Prov. Div.)), the government assumed control over a private prosecution but was assisted by the Sierra Legal Defence Fund, which originally acted for the prosecution. The case concerned leachate from a City landfill that had entered fish habitat. *R. v. United Aggregates Ltd.* ((2001), 49 W.C.B. (2d) 16 (Ont. C.J.)) was a private prosecution that concerned excavating and removing materials without the development permit required by provincial law. The Crown decided not to take conduct of the prosecution and allowed it to continue with Sierra Legal Defence Fund lawyers acting for the prosecution.

to take over the prosecution and enter a stay, the process itself may expose unlawful action to public scrutiny where it would otherwise have been unheeded.

3.2. Promoting Enforcement Through Proceedings under Article 14 of the North American Agreement on Environmental Cooperation

The North American Agreement on Environmental Cooperation (NAAEC) is the environmental side agreement established under the North American Free Trade Agreement (NAFTA).[59] Article 14 of the NAAEC establishes a process that allows residents of NAFTA member countries to file submissions to the Secretariat of Environmental Cooperation, established under the NAAEC,[60] alleging that a party to the NAFTA and NAAEC is not effectively enforcing its environmental laws. After reviewing a submission, the response by the country subject of the submission, and other relevant information, the Secretariat decides whether it will recommend to the Council that a factual record be produced. A factual record sets out a summary of the submission and response by the party allegedly not enforcing its environmental laws, a summary of any other relevant factual information, and the Secretariat's understanding of the facts. Although production of a factual record does not compel the country subject of the submission to enforce its laws, it does bring international scrutiny to that country's enforcement practices and could result in better enforcement.

A recent submission under Article 14 demonstrates how this process could be used in respect of wildlife law. The submission, filed in February of 2002 by the Sierra Legal Defence Fund, was made on behalf of the Canadian Nature Federation, Canadian Parks and Wilderness Society, Earthroots, Federation of Ontario Naturalists, Great Lakes United, Sierra Club (United States), Sierra Club of Canada and Wildlands League (the "Submitters").[61] The Submitters estimated that "in the year 2001 clear-cutting activity destroyed over 85,000 migratory bird nests in areas of Central and Northern Ontario" and they alleged that the Canadian Wildlife Service, which primarily is responsible for enforcing the *Migratory Birds Convention Act, 1994*, failed to take virtually any action to enforce subsection 6(a) of the regulations as against "logging companies, logging

[59]NAFTA, 32 I.L.M. 289 (1993) (table of contents, preamble, parts I-III) and 32 I.L.M. 605 (1993) (parts IV-VII, annexes). NAAEC side agreement, 32 I.L.M. 1480 (1993) (Environmental Cooperation). The NAAEC came into force January 1, 1994.

[60]NAAEC, Art. 8.

[61]The submission together with published documentation relating to it is available on the Secretariat's website at <http://www.cec.org/citizen/index>. The submission title is Ontario Logging, Submission ID: SEM-02-001.

contractors and independent contractors".[62] As noted earlier in this chapter, this subsection prohibits the disturbance of nests or eggs without a permit. As well the Submitters claimed that notwithstanding "widespread destruction of bird nests, an access to information request revealed no investigations or charges in Ontario for violations of section 6(a)."[63] The Secretariat notified the Council that the Secretariat recommended that a factual record be developed and in March 2004, the Council instructed the Secretariat to prepare a factual record. In October 2004, the Submitters filed an additional application that provided further harvesting information. In April 2005, the Council directed the Secretariat to prepare a consolidated factual record.[64] At the date of writing,[65] the factual record is being prepared. After a factual record is produced the Council must decide whether to make it public.[66] It will be interesting to watch how this submission develops to see to what extent it brings international attention to Canada's enforcement practices and to whether it leads to more effective enforcement.

---

[62]*Supra* note 42.

[63]"Summary of the matter addressed in the submission" *ibid.* at <http://www.cec.org/citizen/submissions/details/index.cfm?varlan=english&ID=70>.

[64]See <http://www.cec.org/news/index.cfm?varlen=english@ID=2662>

[65]March 25, 2006.

[66]See *Bringing the Facts to Light – A Guide to Articles 14 and 15 of the North American Agreement on Environmental Cooperation* (Montreal: CEC, 2001) at 13 (p. 18 ff).

CIRL Publications

Occasional Papers

Wildlife Corridors and the Three Sisters Decision: Lessons and Recommendations for Implementing NRCB Project Approvals
Steven A. Kennett
$15.00 sc
2005 33 pp.
Occasional Paper #16

The Trapping Rights of Aboriginal Peoples in Northern Alberta
Monique M. Passelac-Ross
$20.00 sc
2005 79 pp.
Occasional Paper #15

Spinning Wheels in the Castle: A Lost Decade for Sustainability in Southwestern Alberta
Steven A. Kennett
$15.00 sc
2003 59 pp.
Occasional Paper #14

Oil Sands, Carbon Sinks and Emissions Offsets: Towards a Legal and Policy Framework
Steven A. Kennett
$15.00 sc
2003 24 pp.
Occasional Paper #13

Aboriginal Peoples and Resource Development in Northern Alberta
Monique M. Passelac-Ross
$15.00 sc
2003 32 pp.
Occasional Paper #12

Integrated Resource Management in Alberta: Past, Present and Benchmarks for the Future
Steven A. Kennett
$15.00 sc
2002 35 pp.
Occasional Paper #11

Legal and Institutional Responses to Conflicts Involving the Oil and Gas and Forestry Sectors
Monique M. Passelac-Ross
$15.00 sc
2002 38 pp.
Occasional Paper #10

The Evolution of Wildlife Law in Canada
John Donihee
$15.00 sc
2000 73 pp.
Occasional Paper #9

Towards a New Paradigm for Cumulative Effects Management
Steven A. Kennett
$15.00 sc
1999 53 pp.
Occasional Paper #8

Recent Developments in Oil and Gas Law
Nigel Bankes
$15.00 sc
1999 68 pp.
Occasional Paper #7

Resource Developments on Traditional Lands: The Duty to Consult
Cheryl Sharvit, Michael Robinson and Monique M. Passelac-Ross
$10.00 sc
1999 26 pp.
Occasional Paper #6

In Search of Public Land Law in Alberta
Steven A. Kennett and Monique M. Passelac-Ross
$15.00 sc
1998 56 pp.
Occasional Paper #5

New Directions for Public Land Law
Steven A. Kennett
$15.00 sc
1998 51 pp.
Occasional Paper #4

Towards Sustainable Private Woodlots in Alberta
Monique M. Passelac-Ross
$10.00 sc
1997 25 pp.
Occasional Paper #3

A History of Forest Legislation in Canada 1867-1996
Monique M. Passelac-Ross
$15.00 sc
1997 50 pp.
Occasional Paper #2

Pipeline Jurisdiction in Canada: The Case of NOVA Gas Transmission Ltd.
Steven A. Kennett

$15.00 sc
1996 45 pp.
Occasional Paper #1

Canadian Wildlife Law Project Papers

Enforcing Wildlife Law
Arlene Kwasniak

$10.00 sc
2006 19 pp.
Wildlife Law Paper #2

International Wildlife Law
Nigel Bankes

$20.00 sc
2006 50 pp.
Wildlife Law Paper #1

Human Rights and Resource Development Project Papers

Albertans' Concerns about Health Impacts and Oil and Gas Development: A Summary
Nickie Vlavianos

$10.00 sc
2006 16 pp.
Human Rights Paper #3

How Human Rights Laws Work in Alberta and Canada
Linda MacKay-Panos

$15.00 sc
2005 48 pp.
Human Rights Paper #2

Health, Human Rights and Resource Development in Alberta: Current and Emerging Law
Nickie Vlavianos

$15.00 sc
2003 35 pp.
Human Rights Paper #1

Books and Reports

A Guide to Impact and Benefits Agreements
Steven A. Kennett

$35.00 sc
1999 120 pp.
ISBN 0-919269-48-6

Local Benefits from Mineral Development: The Law Applicable in the Northwest Territories
Janet M. Keeping

$35.00 sc
1999 122 pp.
ISBN 0-919269-47-8

Agricultural Law in Canada 1867-1995: With particular reference to Saskatchewan
Marjorie L. Benson

$35.00 sc
1996 192 pp.
ISBN 0-919269-43-5

Forest Management in Canada
Monique Ross

$59.00 sc
1995 388 pp.
ISBN 0-919269-42-7

Comprehensive Land Claims Agreements of the Northwest Territories: Implications for Land and Water Management
Magdalena A.K. Muir

$30.00 sc
1994 152 pp.
ISBN 0-919269-44-3

Canadian Law of Mining
Barry J. Barton

$135.00 hc
1993 522 pp.
ISBN 0-919269-39-7

A Citizen's Guide to the Regulation of Alberta's Energy Utilities
Janet Keeping

$5.00 sc
1993 75 pp.
ISBN 0-919269-40-4

Environmental Protection: Its Implications for the Canadian Forest Sector Management
Monique Ross and J. Owen Saunders
$30.00 sc
1993 175 pp.
ISBN 0-919269-34-6

Energy Conservation Legislation for Building Design and Construction
Adrian J. Bradbrook
$12.00 sc
1992 87 pp.
ISBN 0-919269-36-2

Managing Interjurisdictional Waters in Canada: A Constitutional Analysis
Steven A. Kennett
$15.00 sc
1991 238 pp.
ISBN 0-919269-31-1

Security of Title in Canadian Water Rights
Alastair R. Lucas
$13.00 sc
1990 102 pp.
ISBN 0-919269-22-2

Toxic Water Pollution in Canada: Regulatory Principles for Reduction and Elimination with Emphasis on Canadian Federal and Ontario Law
Paul Muldoon and Marcia Valiante
$13.00 sc
1989 117 pp.
ISBN 0-919269-26-5

The Offshore Petroleum Regimes of Canada and Australia
Constance D. Hunt
$10.00 sc
1989 169 pp.
ISBN 0-919269-29-X

Interjurisdictional Issues in Canadian Water Management
J. Owen Saunders
$13.00 sc
1988 130 pp.
ISBN 0-919269-27-3

Aboriginal Water Rights in Canada: A Study of Aboriginal Title to Water and Indian Water Rights
Richard H. Bartlett
$30.00 sc
1988 237 pp.
ISBN 0-919269-23-0

A Reference Guide to Mining Legislation in Canada
Barry Barton, Barbara Roulston and Nancy Strantz
$10.00 sc
Second Edition – 1988 123 pp.
ISBN 0-919269-25-7

Maritime Boundaries and Resource Development Options for the Beaufort Sea
Donald R. Rothwell
$5.00 sc
1988 61 pp.
ISBN 0-919269-24-9

Acid Precipitation in North America: The Case for Transboundary Cooperation
Douglas M. Johnston and Peter Finkle
$5.00 sc
1983 75 pp.
ISBN 0-919269-02-8

Conference Proceedings

Resource Development and the *Mackenzie Valley Resource Management Act*: The New Regime
John Donihee (Contributing Editor), Jeff Gilmour and Doug Burch
$40.00 sc
2000 281 pp.
ISBN 0-919269-49-4

Mineral Exploration and Mine Development in Nunavut: Working with the New Regulatory Regime
Michael J. Hardin and John Donihee, eds.
$35.00 sc
1998 160 pp.
ISBN 0-919269-46-X

Disposition of Natural Resources: Options and Issues for Northern Lands
Monique M. Ross and J. Owen Saunders, eds.
$45.00 sc
1997 282 pp.
ISBN 0-919269-45-1

Law and Process in Environmental Management
Steven A. Kennett, ed.
$80.00 hc
1993 422 pp.
ISBN 0-919269-41-9
Sixth Institute Conference on Natural Resources Law

Growing Demands on a Shrinking Heritage: Managing Resource-Use Conflicts
Monique Ross and J. Owen Saunders, eds.

$80.00 hc
1992 431 pp.
ISBN 0-919269-35-4
Fifth Institute Conference on Natural Resources Law

Public Disposition of Natural Resources
Nigel Bankes and J. Owen Saunders, eds.

$25.00 hc
1985 366 pp.
ISBN 0-919269-14-1
First Institute Conference on Natural Resources Law

Discussion Papers

Alberta's Wetlands: Legal Incentives and Obstacles to Their Conservation
Darcy M. Tkachuk

$10.00 sc
1993 38 pp.
ISBN 0-919269-37-0

Instream Flow Protection and Alberta's Water Resources Act: Legal Constraints and Considerations for Reform
Steven J. Ferner

$10.00 sc
1992 44 pp.
ISBN 0-919269-38-9

Successor Liability for Environmental Damage
Terry R. Davis

$10.00 sc
1989 46 pp.
ISBN 0-919269-30-3

Surrounding Circumstances and Custom: Extrinsic Evidence in the Interpretation of Oil and Gas Industry Agreements in Alberta
David E. Hardy

$10.00 sc
1989 36 pp.

Classifying Non-operating Interests in Oil and Gas
Eugene Kuntz

$10.00 sc
1988 31 pp.

Views on Surface Rights in Alberta
Barry Barton, ed.

$10.00 sc
1988 77 pp.

Working Papers

Liability for Drilling- and Production-Source Oil Pollution in the Canadian Offshore
Christian G. Yoder

$10.00 sc
1986 84 pp.
ISBN 0-919269-20-6
Working Paper #12

A Guide to Appearing Before the Surface Rights Board of Alberta
Barry Barton and Barbara Roulston

$10.00 sc
Second Edition - 1986 124 pp.
ISBN 0-919269-19-2
Working Paper #11

Crown Timber Rights in Alberta
N.D. Bankes

$10.00 sc
1986 128 pp.
ISBN 0-919269-24-9
Working Paper #10

The Canadian Regulation of Offshore Installations
Christian G. Yoder

$10.00 sc
1985 116 pp.
ISBN 0-919269-18-4
Working Paper #9

Oil and Gas Conservation on Canada Lands
Owen L. Anderson

$10.00 sc
1985 122 pp.
ISBN 0-919269-16-8
Working Paper #7

The Assignment and Registration of Crown Mineral Interests with Particular Reference to the *Canada Oil and Gas Act*
N.D. Bankes

$10.00 sc
1985 126 pp.
ISBN 0-919269-11-7
Working Paper #5

The International Legal Context of Petroleum Operations in Canadian Arctic Waters
Ian Townsend Gault

$5.00 sc
1983 76 pp.
ISBN 0-919269-10-9
Working Paper #4

Canadian Electricity Exports: Legal and Regulatory Issues
Alastair R. Lucas and J. Owen Saunders

$5.00 sc
1983 42 pp.
ISBN 0-919269-09-5
Working Paper #3

Other Publications

Resources: The Newsletter of the Canadian Institute of Resources Law

Free sc
Quarterly
ISN 0714-6918

Annual Report

Free sc

Available from Carswell

Canada Energy Law Services

Canada Energy Law Service (Federal) · 2 vols. · 0-88820-409-4 (Publication #20154)
Canada Energy Law Service (Alberta) · 1 vol. · 0-88820-410-8 (Publication #20162)
Canada Energy Law Service (Full Service) · 3 vols. · (Publication #20146)

Order from:

Carswell
Thomson Professional Publishing
One Corporate Plaza
2075 Kennedy Road
Toronto, Ontario M1T 3V4
Canada

For more information, call Customer Relations:

(Toll Free Canada & US) 1.800.387.5164
(Toronto & Int'l) 416.609.3800
(Toll Free Canada) Fax: 1.877.750.9041
Fax: 416.298.5082
Customer Relations:
customerrelations@carswell.com
Website: www.carswell.com
Website Inquiries: comments@carswell.com

CIRL Order Information

All book order enquiries should be directed to:

Canadian Institute of Resources Law
Murray Fraser Hall, Room 3330 (MFH 3330)
University of Calgary
Calgary, Alberta, Canada T2N 1N4
Tel 403.220.3200; Fax 403.282.6182
E-mail cirl@ucalgary.ca Website www.cirl.ca

Business Hours
0830 to 1630 (MST except MDT April-October)

Discount Policy for Bookstores and Book Wholesalers
20% on 1 to 4 books
40% on 5 or more books

GST
All Canadian orders are subject to the 7% Goods and Services Tax (GST). If GST exempt, please indicate in writing. CIRL's GST Registration No. 11883 3508 RT

Payment Terms
Net 60 days.
- Payment or numbered, authorized purchase order must accompany all orders.
- MasterCard or Visa account number with expiry date will be accepted.

Shipping
Please allow four to five weeks for delivery.

Return Policy
(Applies ONLY to bookstores and book wholesalers.)
All books may be returned for credit within one year of the invoice date, provided that they are in a clean and resaleable condition. Please write for permission to return books and supply original invoice numbers and discounts. Returns must be shipped prepaid. Defective books are replaceable at no charge.

Please note:
- All books are softcover unless otherwise noted
- All prices are subject to change without notice
- Make cheque or money order payable to the *University of Calgary*

CIRL Order Form

Please return completed order form to:

Canadian Institute of Resources Law
MFH 3330, University of Calgary
Calgary, Alberta, Canada T2N 1N4
Tel 403.220-3200; Fax 403.282.6182
E-mail cirl@ucalgary.ca;
Website www.cirl.ca

Method of Payment

Payment or purchase order must accompany order.
Please make cheques payable to **University of Calgary**

☐ Cheque ☐ Money Order

☐ Visa ☐ MasterCard

Credit Card Number_____

Expiry Date_____

Cardholder Name_____

Daytime Telephone_____

Name _____

Company Name _____

Address _____

City _____Province/State_____

Postal/Zip Code_____Country_____

Please send me the following books

Title	Quantity	Price	Subtotal
Subtotal			
Add Shipping and Handling*			
Add 7% GST for orders placed in Canada (CIRL GST No. 11883 3508 RT)			
Total (All prices subject to change without notice)			

*Add Shipping and Handling

Within Canada: first book $5.00; each additional book $2.00
Outside Canada: first book $10.00; each additional book $4.00

February 2006