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APPLICATION OF THE ENVIRONMENTAL ASSESSMENT REVIEW PROCESS BY THE NATIONAL ENERGY BOARD

by Murray J. Samuel

Until recently, applicants for a licence to export gas from Canada under Part VI of the National Energy Act (R.S.C. 1985 c. N-7) considered that their task was done following the evidentiary portion of their hearing. Applicants would put the details of their sale on the record, including supply, market and transportation data. The NEB and interveners would then scrutinize the project, using criteria such as the Canadian public interest and the availability of gas on similar terms and conditions to Canadians. Following the close of the hearing, if the NEB delivered a positive decision, the order granting the licence would go to the federal Cabinet for approval. However, this state of affairs changed significantly in February 1990 with the application of the federal Environmental Assessment and Review Process (EARP)[1] to NEB decision-making. This article reviews the impact that EARP requirements are having on a number of major applications before the NEB.

1. *BACKGROUND*

The NEB is no stranger to environmental concerns, and environmental review is a significant portion of its mandate. For example, the NEB has long required applicants for construction of new pipeline facilities to provide comprehensive information concerning the environmental effects of the construction. Extensive environmental and socio-economic reports are prepared, mitigation measures are considered, and notice and consultation with affected members of the public is required.

The use of environmental information, however, has been confined to applications to construct facilities under Part III of the Act; potential environmental effects have not been an issue in licences to

Résumé

L'Office national de l'énergie a déjà examiné les effets environnementaux de la construction de gazoducs, mais il n'a encore jamais examiné les effets environnementaux des licences d'exportation de gaz ni appliqué le Décret sur le processus d'évaluation et d'examen en matière d'environnement (PEEE) de 1984. La décision de la Cour fédérale dans la cause du barrage Rafferty-Alameda ainsi que l'intervention ministérielle ont changé cet état de choses, le résultat étant que l'Office a commencé à effectuer le genre d'examen requis par le Décret sur le PEEE. Plusieurs demandes dont l'Office a déjà traité ou qui sont en voie d'être traitées ont ainsi été soumises à un examen. L'Office a décidé de procéder à un examen préalable des demandes de licences et des demandes de construction de pipelines afin de déterminer s'il est nécessaire d'effectuer un examen supplémentaire. L'application du PEEE soulève plusieurs questions sur lesquelles l'Office n'a pas encore eu à se prononcer, notamment la question de savoir si l'Office est tenu de (ou compétent pour) prendre en compte les effets environnementaux de la production gazière en amont, ainsi que celle de savoir si l'Office a compétence pour prendre en compte les effets environnementaux du transport et de l'utilisation du gaz aux États-Unis.

remove gas from Canada under Part VI of the Act. As well, the environmental information provided by applicants for pipeline construction has related directly to environmental effects of building and operating the pipeline, and has not dealt with effects at the production and consumption ends of the pipeline. For example, where export sales from the TransCanada system were concerned, the Energy Resources Conservation Board of Alberta, not the federal government, regulated the production of the gas and its transportation to the Alberta/Saskatchewan border, and the environmental effects of transportation and use in the United States were reviewed under the Export Impact Assessment process set up under the U.S. National Environmental Policy Act (18 CFR Part 180). The NEB did not extend its view beyond the direct effects resulting from construction and operation of the pipeline.

The federal Environmental Assessment and Review Process affects a wide range of activities within federal jurisdiction but had generally been considered not to be binding on the activities of the NEB. The EARP Order of June 1984, which gave the process a legislative base, was thought to be of solely persuasive force, so following the letter of the Guidelines was not a concern. Therefore, the Board followed its own procedure and did not apply the guidelines to such high-profile projects as the 1989 Part VI application to remove Mackenzie Delta gas from Canada, which drew environmental attention even though the facilities required to transport the gas were not before the NEB. Therefore, prior to the December 1989 decision of the Federal Court construction of facilities received an environmental review from the NEB, but not according to EARP criteria, and applications to export gas were not reviewed for their environmental impacts.

However, a reading of the EARP Order reveals that it could potentially apply to most of what the NEB does. The EARP Order requires federal departments to ensure that at least an initial screening for environmental and social effects, including extraterritorial effects, be done for proposals which may have significant environmental consequences, where the department is "the decision making authority for the proposal" (s.2). The department must then make a finding as to whether further review is required by the Department of the Environment because of significant adverse impact, whether there should be further study because impacts are unknown, or whether the project can proceed because environmental effects are insignificant or mitigable. The EARP Order provides that some specified types of projects will automatically not be subject to screening because they do not produce adverse environmental effects, but gas exports licences and facilities construction are not on that list. The review process applies to any project which may have an effect on an area of federal responsibility, and interprovincial pipelines and international trade in gas, which are regulated by the National Energy Board, are clearly within that scope.

The December 28, 1989, decision of the Trial Division of the Federal Court of Canada in the Rafferty-Alameda Dam case[2] dramatically changed the accepted understanding of the status of the EARP Order: the Court was of the view that the EARP Guidelines were "binding, authoritative legislation" (at 22). And, in the course of finding that the federal government's attempts at review were inadequate in the context of the EARP Order, Justice Muldoon delivered a stinging statement regarding ministerial responsibility (at p. 22):

> The respondent Minister's counsel urge that, if the Court finds that the Minister did not comply with the *EARP* then the Court should nevertheless exercise a discretion to excuse that lawbreaking. It is notionally easier to excuse an individual tangled in regulations and bureaucracy than it is to excuse a Minister of the Crown from non-compliance with relevant, binding legislation, whether regulatory or not. If there be anyone who ought scrupulously to conform to the official duties which the law casts upon him or her in the rôle of a high State official, it is a Minister of the Crown. That is just plainly obvious.

On February 8, 1990, Jake Epp, the Minister of Energy, Mines and Resources, wrote to Roland Priddle, Chairman of the NEB, stating that the Canadian Environmental Law Association had requested that the Cabinet refuse to approve certain licences, including the Mackenzie Delta licence, until the environmental impacts of the licences were assessed.

Mr. Epp advised Mr. Priddle that the Cabinet would not be approving the licence applications before it until it was indicated how the NEB had complied, or would comply, with the federal EARP Order . The result has been that both the NEB and applicants to the NEB have suddenly found themselves on a steep learning curve with respect to EARP. The EARP question must now be addressed by any applicant, whether applying for a gas export licence or for the construction of pipelines.

2. *THE NEB'S REQUEST*

The Federal Court decision and the Minister's letter happened to catch one of the largest groups of pending applications in the NEB's history. The Board had already approved four licences for deliveries of gas to the Northeast United States (and shortly thereafter approved another four following review applications), had approved the Mackenzie Delta application for gas export and were about to embark on another proceeding which included seven gas export licence applications. As well, the NEB had before it a large application by TransCanada Pipelines Limited (GH-5-89) to construct $2.6 billion worth of additional facilities on that company's pipeline system. There are 14 gas export licence applications rolled into that expansion, as well as applications

by the major Eastern Canadian local gas distribution companies, all of which require construction of new facilities on the TransCanada system, and most of which require construction of significant downstream facilities, such as gas-fired electrical generating units.

The NEB had to decide on how to meet the demands of EARP. It did so by initiating a process of information gathering and pre-screening. The Board was required by the EARP Order to proceed before an irrevocable decision had been made, and as early in the approval process as possible. With some of the applications, this meant holding the approved licence in limbo while a new "hearing" was carried out for enviromental pre-screening by means of an exchange of written materials. The GH-5-89 proceeding was at early enough a stage that the pre-screening could be incorporated in the main proceeding. The NEB asked all applicants, including TransCanada, two broad questions. The first related to the environmental and social impacts of the construction of facilities in Canada, and elsewhere, which would be used in the production, transmission, or distribution of the gas. The second question related to the environmental and social impacts of the end use of the natural gas. The net effect of the questions was to inquire into the environmental effects of 1) the construction of the pipeline, 2) the production of the gas, and 3) the end use of the gas. This included an inquiry into areas where the NEB is generally thought not to have jurisdiction and where it had traditionally not ventured, for example, into the production of the gas proposed for export and the transportation and use of the gas in the United States.

3. *RESPONSE OF THE APPLICANTS*

The response to the NEB's questions can be split into two categories. The first is the response of the export licence applicants, and the second is the response of TransCanada.

Export applicants were faced with questions which were entirely different from anything they had dealt with previously, with little guidance from the NEB as to either the content or the format of the response. The Independent Petroleum Association of Canada ("IPAC") consulted with applicants and provided assistance by coordinating a filing with the NEB of environmental legislation from all the relevant provincial, federal, and state jurisdictions. The response of the applicants to the pre-screening can be characterized as process-oriented. Rather than making detailed references to environmental impact studies, most of the applicants relied on descriptions of the regulatory mandates and activities of the various jurisdictions involved in order to show that environmental effects were considered and, where necessary, mitigated. For example, IPAC filed a detailed summary of the applicable United States environmental laws and regulations, which was relied on by many of the applicants to show the extent of U.S. environmental regulation. The applicants also referred to evidence filed by IPAC concerning gas industry emissions of greenhouse gases such as carbon dioxide and methane.

TransCanada initially took a more aggressive approach to the questions asked in the GH-5-89 proceeding. While most other applicants had indicated some doubts as to the jurisdiction of the NEB to investigate upstream and downstream impacts, but answered the questions anyway, TransCanada refused to answer questions concerning downstream and upstream effects that were not related to the construction of the incremental facilities on the TransCanada system. TransCanada's response to one request for information stated that: "...the construction and operation of upstream, downstream and end use facilities do not themselves constitute environmental effects of TransCanada's proposal as those facilities do not fall within the categories referred to in Sections 4 and 5 of the Act." Therefore, TransCanada did not answer questions relating to the production and gathering of the gas that would be transported through the system or the burning of the gas once it was delivered. TransCanada also stated that the words "including any effects that are external to Canadian territory" in s. 4(1)(a) of the EARP Order meant that the environmental effects of the facilities construction on the United States should be taken into account, not the export of the gas, since the export of the gas itself did not have environmental effects. TransCanada indicated that it was in the process of determining whether additional information concerning the environmental effects of its construction program would be required.

The NEB's reply to TransCanada's response was that the information requested was still required. TransCanada then filed evidence responsive to the questions, including details of what it had already done to deal with environmental concerns, and evidence concerning airborne emissions. TransCanada will speak to that evidence later in the GH-5-89 proceeding.

TransCanada was not the only party to make strong submissions concerning the NEB's jurisdiction. The Alberta Petroleum Marketing Commission ("APMC"), in a submission on behalf of the Government of Alberta, noted that it was prepared to cooperate with the Environmental screening process in order to expedite the proceeding, but did not prejudice any rights it might have to challenge the NEB's jurisdiction. The APMC also noted that it considered review of Alberta gas development redundant, since that function was already performed by agencies of the Alberta government, and that any environmental effects in Alberta were fully reviewed, and, if necessary, mitigated.

4. *CONCLUSION*

Although the NEB has received responses to its questions regarding environmental impact, and will be following up on the answers given to information requests in the GH-5-89 proceeding, there remain a number of questions concerning the process:

a) What decision will the Board render under the pre-screening process? At the time of writing the Board was clearly still weighing the adequacy of applicants' responses and considering the proper format.

b) What is the extent of the NEB's jurisdiction, particularly upstream and downstream of the regulated jurisdiction? At the time of writing there was no actual challenge, but the Alberta government clearly perceived the application of EARP as an intrusion into provincial jurisdiction.

c) What effect would regulations to be made under Bill C-78, the proposed new *Canadian Environmental Assessment Act*, have on the environmental impact process applied by the NEB? Many involved in the process, both in government and industry, would hope that new procedures would be easier to follow and more clear-cut than the EARP Order. Similarly, many parties would like more guidance on what would happen were the NEB to order a full-blown environmental review.

Murray Samuel is a corporate counsel with Western Gas Marketing Limited.

Notes

1. EARP initially had no statutory basis, but in 1984 it came under the Environmental Assessment and Review Process Guidelines Order, S.O.R./84-467, now authorized under the Department of the Environment Act, R.S.C. 1985 c.E-10, s.6.

2. *Canadian Wildlife Federation* v. *Minister of the Environment*, Federal Court of Canada, Trial Division, December 28, 1989. Unreported decisionT-2102-89.

THE GREENING OF CANADA: THE OLDMAN RIVER CASE UNDER APPEAL

by P.S. Elder and Janet Keeping

The Federal Environmental Assessment and Review Process (EARP) which has been the source of so much controversy over the past year, has existed as policy for more than a decade. It was intended "to ensure that the environmental impacts of federal projects, plans and activities are assessed early in their planning, before any commitments or irrevocable decisions are made".[1] Originally set up in 1973 by Cabinet directive, it had no statutory basis of authority until 1979. In that year, s.6 of the *Department of the Environment Act*[2] was amended to authorize the Minister of the Environment to undertake and coordinate governmental impact assessment programs:

> 6. For the purposes of carrying out his duties and functions related to environmental quality, the Minister [of the Environment] may, by order, with the approval of the Governor in Council, establish guidelines for use by departments, boards and agencies of the Government of Canada and, where appropriate, by ... regulatory bodies in the exercise of their powers .... [words in brackets supplied].

The Minister's "duties and functions" include the duty to initiate programs designed "to ensure that new *federal* projects, programs and activities are assessed ...".[3]

In 1984 the Guidelines Order[4] contemplated by s.6 of the Act was promulgated, providing a legislatively based structure for environmental assessment across the entire federal government. Commentators had thought that the Order would bind only because of Cabinet's ability to direct the public service and not because of the bite of "guidelines".[5] How wrong we were.

A series of decisions by the Federal Court and the Federal Court of Appeal has established that the Guidelines Order is, indeed, legally binding. Thus, every proposed action in Canada which requires federal permits, funds or land comes under EARP, and if significant adverse environmental effects are predictable any such proposal must go to public review. However, the Alberta government has sought leave to appeal the most recent of these decisions, that of the Federal Court of Appeal in *Friends of the Oldman River Society* v. *Canada (Minister of Transport)*.[6] This article briefly examines two of the issues that may be canvassed before the Supreme Court: firstly, whether the Guidelines Order is binding at all in law, and secondly, if

Résumé

Cet article décrit brièvement l'histoire législative du Décret sur les lignes directrices visant le processus d'évaluation et d'examen en matière d'environnement (PEEE) et note que, au cours de l'année dernière, la Cour fédérale et la Cour d'appel fédérale ont établi le caractère obligatoire au plan juridique du Décret sur les lignes directrices. Il est également fait état du fait que le gouvernement de l'Alberta cherche à obtenir la permission d'interjeter appel de la décision la plus récente de la Cour d'appel fédérale dans la cause *Friends of the Oldman River* v. *Canada (Minister of Transport)*. Les auteurs examinent ensuite deux questions qui pourraient bien être débattues devant la Cour suprême du Canada, à savoir: le Décret sur les lignes directrices a-t-il un caractère obligatoire en droit? et, le cas échéant, à quelles propositions s'applique-t-il?

it is, to what proposals does it apply?

In litigation challenging the failure of the Minister of the Environment to invoke EARP for the Rafferty-Alameda dam project in Saskatchewan, the Federal Court of Appeal upheld Cullen J.'s decision that the Guidelines were binding.[7]

In his brief reasons for judgment from the Bench,[8] Hugessen J.A. held that s.6

> is unquestionably capable of supporting a power to make binding subordinate legislation. The word "guidelines" in itself is neutral in this regard. Finally, there is nothing in the ... Guidelines themselves which indicates that they are not mandatory: on the contrary, the repeated use of the word "shall" throughout ... indicates a clear intention that the guidelines shall bind those to whom they are addressed, *including* the Minister of the Environment himself.[9]

Unfortunately, the Federal Court of Appeal's decision in the *Oldman River* case added nothing to the cursory reasoning on this point by Cullen J. and Hugessen J.A. in the Rafferty-Alameda case, but merely relied on them.

But are the Guidelines binding? It can be argued that the Rafferty-Alameda judgments erred on this point. Firstly, it will be noted that Hugessen J. used the language of the order itself to buttress his conclusions that it was binding: he observes that the word "shall" is used throughout. But this cannot be determinative, as it begs a question in issue - whether Parliament meant guidelines to bind. Secondly, Parliament is presumed to know the law and there must have been a reason why it chose the word "guidelines" - rare from a legislative point of view - instead of the more straightforward "regulation". Thirdly, there is a middle ground between the Guidelines being legally binding and their having no legal force at all. Parliament could have meant that decision-makers must give "due regard" to them. The Privy Council has explained this level of obligation as follows: "They must take them into account and consider them and give due weight to them, *but they have an ultimate discretion* ...".[10]

The Supreme Court, of course, will no doubt consider these points, but there is yet another consideration that might be relevant to the question whether the Guidelines Order was intended to be binding. It is this: it can be established that its drafters were clearly instructed to ensure as far as possible that EARP look robust, but that the Guidelines Order should *not* be binding when push came to shove.[11] The word "guidelines" was chosen in the hope it would achieve this goal. The interesting question is, what should be made of such evidence?

The Supreme Court of Canada had occasion to consider the admissibility and weight of somewhat similar evidence in *Reference re the B.C. Motor Vehicles Act*.[12] Section 94(2) of the statute provided a minimum penalty of one week in jail for driving without a licence, or with a suspended licence. This penalty was imposed whether or not the person convicted knew, or should have known, that there was no valid licence in existence. The issue was whether that mandatory period of incarceration violated s.7 of the Charter of Rights, which guarantees, among other things, the right not to be deprived of liberty "except in accordance with the principles of fundamental justice". In order for the Court to hold that s.7 had been violated, it had to accept that the "principles of fundamental justice" extend to matters of substance, not just procedural issues, for what was being complained of was incarceration for an offence which the accused did not know he or she was committing.

Some of the evidence relied upon by the province to deny that s.7 had been violated was the testimony of two public servants and the then Minister of Justice before the Joint Committee of the House of Commons and the Senate, which showed that the drafters of the Charter had been instructed that s.7 should not extend to matters of substance. Although the Supreme Court was prepared to treat this material as admissible, it attached very little weight to it.

In the Court's view, the testimony of people prominent in the government may constitute "the considered views of the speakers at the time they were made, but cannot be said to be expressions of the intent" of the relevant law making body.[13] Such testimony is said by the Supreme Court to be "inherently unreliable" evidence of the intention of that body.[14] It seems that the Court is saying here at least two things. First, the views expressed, for example, before a Parliamentary committee are not expressed at the relevant time, which would presumably be at the moment of passage. Second, and more fundamentally, such testimony is at best an expression of the particular individuals' understandings of what they or some other individuals intended, i.e. their views cannot be taken as the intention of Parliament:

> ... the Charter is not the product of a few individual public servants, however distinguished, but of a multiplicity of individuals who played major roles in the negotiating, drafting and adoption of the Charter. How can one say with any confidence that within this enormous multiplicity of actors ... the comments of a few federal civil servants can in any way be determinative?[15]

Not as many people were involved with the preparation of the EARP guidelines as with the Charter, so the point would not apply with the same force in the *Oldman* appeal But it would nonetheless apply.

Another point made by the Supreme Court is that to adopt the Committee proceedings as determinative of s.7's meaning would have the following unfortunate effect:

> ... in so doing, the rights, freedoms and values embodied in the Charter [would] in effect become frozen in time to the moment of adoption with little or no possibility of growth, development and adjustment to changing societal needs. Obviously, in the present case, given the proximity in time of the

Charter debates, such a problem is relatively minor, even though it must be noted that even at this early stage in the life of the Charter, a host of issues and questions have been raised which were largely unforeseen at the time of such proceedings. If the newly planted "living tree" which is the Charter is to have the possibility of growth and adjustment over time, care must be taken to ensure that historical materials, such as the Minutes of Proceedings and Evidence of the Special Joint Committee, do not stunt its growth.[16]

The *Oldman* appeal is not, of course, a constitutional case. It might therefore be insisted that the "living tree" approach to interpretation is not applicable to it. But there are those who would say that such a flexible approach should be, and in fact often is, used even in non-constitutional cases.[17]

Since the task of statutory interpretation is usually conceived to be one of divining the "intention" of legislators, the Supreme Court's approach in the *B.C. Motor Vehicle Act* case may strike some as perverse. It is strongly arguable, however, that the Court took the only approach truly available and that it will approach the *Oldman* appeal, if it is pursued to a judicial conclusion, in the same way. In other words, the fact that those who drafted the EARP Guidelines Order chose the word "guidelines" in an attempt to ensure that they would not be held to be binding would probably be viewed as relatively unimportant.

If the Supreme Court does uphold the Federal Court of Appeal's rulings that the Guidelines Order is binding, another issue will be to what proposals or actions the Order applies. The Court of Appeal made the Order's ambit very wide: each and every proposed action in Canada (and, thinking of CIDA, for example, perhaps abroad) which in any way falls under federal jurisdiction is subject to EARP. Obviously, projects like the gigantic James Bay hydro-electric project in Quebec, planned largely for power exports to the U.S., would require such review.[18] Indeed, the *Oldman* case's interpretation of the federal fisheries jurisdiction must have been the basis for the recent decision to require an EARP review of the proposed Point Aconi, N.S. coal-fired electricity generating plant. Similarly, there are very significant implications for future water management projects. The Alberta Government is planning onstream storage for the Milk River. The Milk flows into Montana and so it would seem that EARP will have to be followed, at least through a joint environmental impact assessment such as was carried out in the case of the Alberta Pacific Forest Industries Inc. (Al-Pac) pulp and paper mill proposed for the Athabasca River in northern Alberta.

It is not obvious that the legislation meant to make a provincially initiated project federal if it has any federal aspect whatever, for almost all projects would do so because of potential effects on, for example, fisheries, navigable waters, international rivers, interjurisdictional trade and commerce, migratory birds, Indians and lands reserved for Indians, or federally owned lands.

Whether the Federal Court of Appeal's decision in *Oldman* ultimately is declared legally correct is one thing. Its political acceptability is clearly another. Provincial governments have jurisdiction over numerous environmentally relevant issues and are understandably distressed over the implications of the Court of Appeal's approach. The Premier of Nova Scotia, for example, responded to the announcement that Point Aconi would be reviewed federally by asserting that the project would proceed in any event. The vexing problem of coordinating federal and provincial jurisdiction in this area will need more consideration; the long promised, and now recently introduced, *Canadian Environmental Assessment Act*[19] will be interesting in this regard. It is beyond this article to begin analysing the legal issues in Bill C78 , but it looks as if the litigation on EIA may have just begun!

P.S. Elder is Professor of Law in Environmental Design, The University of Calgary and Janet Keeping is a Research Associate, with the Canadian Institute of Resources Law .

Notes

1. Federal Environmental Assessment Review Office, *Revised Guide to the Federal Environmental Assessment Review Process* (1979), at 1.
2. Now R.S.C. 1985, c.E-10.
3. S.5, emphasis supplied.
4. S.O.R./84-467.
5. P.S. Elder, "The Federal Environmental Assessment and Review Guidelines Order", *Resources* No. 13 (1985).
6. Fed. C.A. No. A-395-89, March 13, 1990. As of this writing, the Supreme Court has not yet decided on whether to grant leave to appeal.
7. *Canadian Wildlife Federation* v. *Canada (Minister of the Ennvironment)*, [1989] 4 W.W.R. 526.
8. 99 Nat. Rep. 72 (1989).
9. *Id.*, at 73-74.
10. *Ishak* v. *Thowfeek* [1968] 1 W.L.R. 1718 at 1725 (emphasis supplied)
11. A question might arise as to whether other parties could elicit this evidence from federal public servants or whether this information would be protected by solicitor-client privilege.
12. 24 D.L.R. (4th) 536 (1985).
13. *Id.*, at 553, quoting with approval McIntyre J. in *Churchill Fall (Labrador) Corp. et at* v. *A.G. Nfld. et al (1984), 8 D.L.R. (4th) 1 at 20 (S.C.C.).*
14. *B.C. Motor Vehicle Case, id. at 554.*
15. *Id., at 554.*
16. *Id., at 554-555.*
17. *See for example, Ronald Dworkin, Law's Empire* (Cambridge Mass.: Harvard University Press, 1986), especially Chapter 9.
18. Craig McInnes "Ottawa, Quebec to assess impact of hydro project on environment", Globe and Mail (National Edition), June 5, 1990, at A10.
19. Bill C78, introduced in the House of Commons in June 18, 1990.

Institute Publications

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Canada Energy Law Service a five volume looseleaf service which provides a guide to the energy tribunals of the western provinces, Ontario, Quebec and Canada. For each tribunal considered there is a commentary, a collection of legislation, and a digest of board decisions and applicable judicial cases. It is available from: Richard De Boo Publishers, 81 Curlew Drive, Don Mills, Ontario, M3A 3P7. For more information you can call toll-free 1-800-387-0142 (Ontario and Quebec) or 1-800-268-7625 (other provinces, including area code 807).

Institute News

- The Institute, in conjunction with the Faculty of Law, University of Calgary, recently convened a one-week course on environmental law for practitioners. The course attracted approximately 65 participants from Canada, the United States and Australia.

- The Institute, together with the University of Calgary, Faculty of Law and the Law Reform Commission of Canada, will be hosting a 2-day seminar on "The Power of the Purse: Financial Incentives as Regulatory Instruments". The seminar will be held at the University of Calgary on October 12-13, 1990. The seminar will bring together individuals from diverse academic and professional backgrounds to explore in some depth the problems and opportunities associated with use of economic incentives as an alternative to more direct forms of governmental regulation relying on traditional "command-penalty" instruments.

- The Board of Directors of the Institute held its annual spring Board meeting in Halifax in May. This was accompanied by a reception for the Halifax community with an interest in natural resources law and policy.

- Janet Keeping had a comment on a February decision of the Alberta Court of Appeal published in the May issue of *Alberta Law Reports*. The case involved an appeal by the electric utilities of a Public Utilities Board decision.

Recent Visitors

Mr. Bruce O'Meagher
Policy Projects Unit
Australian Department of Primary Industries and Energy
Canberra, Australia

Barry Barton of the Institute recently hosted a meeting with officials from the federal Department of Indian and Northern Affairs and officials from the Yukon Territorial Government. Visitors from DIAND were Ian Sneddon, David Jennings, Lynn Hjartarson, and Cam Ogilvy. Visitors from the Yukon Territorial Government were Chris Cuddy, David Leverton and Steven Horn.

Recent Presentations

- Owen Saunders recently spoke on "A Legal Perspective on Sustainable Development" at a conference on Canadian Environmental Law for British lawyers held at Canada House, London, England.

- Owen Saunders recently participated in an Environmental Workshop sponsored by the Donner Canadian Foundation.

- Owen Saunders will be speaking on legal aspects of water exports at the 70th Annual Meeting of the Agricultural Institute of Canada in Penticton, B.C. on July 23rd.

Practitioner-in-Residence

Mr. Gordon Griffiths of the Calgary law firm, MacKimmie Matthews, will be in residence at the Institute over the next few months. During this period, Mr. Griffiths will be engaging in research on environmental impact assessment of northern energy projects.

Enclosed in this issue is the Author and Subject Index for Resources No.'s 1-30.

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

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