January 2002

Provincial Regulation of Natural Resource Exploitation

Martin Kaga

Follow this and additional works at: https://scholarlycommons.law.case.edu/cuslj

Part of the Transnational Law Commons

Recommended Citation

Available at: https://scholarlycommons.law.case.edu/cuslj/vol28/iss/44

This Speech is brought to you for free and open access by the Student Journals at Case Western Reserve University School of Law Scholarly Commons. It has been accepted for inclusion in Canada-United States Law Journal by an authorized administrator of Case Western Reserve University School of Law Scholarly Commons.
ALBERTA'S NATURAL RESOURCES

Canadians have been blessed with a wealth of natural resources. Nowhere is this more apparent than in Alberta, Canada’s “energy province.” According to recent statistics from the Alberta Energy and Utilities Board, Alberta produces roughly 69 percent of Canada’s energy. 1 The province contains 55 percent of Canada’s conventional oil reserves, 80 percent of the nation’s natural gas reserves, and 49 percent of the nation’s coal reserves. 2 Alberta also contains one hundred percent of Canada’s bitumen reserves 3, the world’s largest oil sands reserve, totalling 1.6 trillion barrels of oil in place, of which 300 billion barrels are recoverable. 4

Alberta also contains vast forest resources. Forests cover nearly 60 percent of Alberta’s landmass. 5 This equates to 94 million acres of forest and a combined annual allowable cut of 23.8 million cubic metres of timber. 6

So, how does this resource potential translate into activity? From a production perspective, 43.5 million cubic metres (274 million barrels) of oil was produced in 2000, 7 along with 140.7 billion cubic metres (5 trillion cubic feet) of natural gas 8 and 39 million cubic metres (245 million barrels) of

3 See id.
4 See id. at 15.
8 See id.
bitumen. From the point of view of facilities, this translates into more than 147,000 wells, nearly 176,000 miles of pipeline, over 440 sweet gas processing plants, over 240 sour gas processing plants, 5 refineries, 13 commercial in-situ and mining oil sands projects, 13 nearly 60 primary recovery oil sands projects, 11 coal mines and power generation of 9,200 megawatts. With respect to timber, 35 sawmills, 11 panel board mills and 7 pulp mills have produced an average, over the years 1996-2000, of 2.8 billion board feet of lumber, two billion square feet of structural panel board and 2.25 million metric tonnes of pulp and paper.

ECONOMIC LEADERSHIP

In large part due to this level of activity, Alberta has made a name for itself in the rest of Canada and elsewhere in the world as an economic leader. Albertans are justly proud of their accomplishments.

Newly-released national census data reveal that 140,000 new Albertans were welcomed to the province in the past five years. With a population growth of 10.3 percent – twice the national average – Alberta has been the undisputed Canadian hotspot, riding an economic boom fuelled in no small part by its thriving resource sector.

In the past three years, an additional 100,000 Albertans found jobs. More than one-quarter of the jobs created in Canada last year were in Alberta, providing the province with the lowest unemployment rate in 2001 among Canadian provinces, at 4.6 percent. We have consistently had the highest

10 See FAWCETT, supra note 7, at 6.
11 Id.
12 Id.
13 Id.
14 Id.
15 See Alberta Energy, supra note 1.
17 See id. at 4.
18 See Census Geography – Highlights and Analysis, at http://geodepot2.statcan.ca/Diss/Highlights/Page4/Page4_e.cfm (Mar. 12, 2002).
19 See id.
investment per capita among provinces. A total of $40.9 billion was invested in Alberta in 2001, up 87 percent since 1996.22

So, what has this meant to Alberta from the point of view of regulation of resource development? Higher levels of activity and increased population have put average Albertans in closer direct contact with the activities and facilities that contribute so greatly to their economic well-being. As resource development reaches the most remote corners of the province, increasing demands placed on the landmass require appropriate management of the interests competing for the use of that precious asset more than ever before.

With increased activity comes increased strain on environmental systems that cope with the physical consequences of that activity. Increasingly, reliance is placed on the regulatory systems to manage and balance these interests and to ensure that development occurs responsibly while keeping in mind the long-term interests of Albertans, Canadians, our economic partners, and all those who share our physical and economic environment. More than ever, these systems are called on to evolve to cope with these demands while continuing to provide the reliability, predictability and continuity that inspire the confidence of industry and the public in general.

REGULATION OF RESOURCE DEVELOPMENT

In General

Until 1947, Alberta’s economy was chiefly supported by agriculture. However, oil was discovered that year, and it brought a new source of revenue for the province. Since then, Alberta has prospered. Over the intervening 55 years, Alberta has developed a model for the exploration and development of its resources. The model is based on the principle that publicly owned resources can be more efficiently developed by private industry and that the government should not be in the business of being in business. A less intrusive market-based approach allows market players much more flexibility. It has led to significant private investment, economic development and employment.

The model has four overarching components that together make for a vibrant industry that works with government to assure the orderly and timely development of Alberta’s energy resources. These are (1) access to resources; (2) fair economic return to the owner; (3) an effective regulatory framework; and, (4) protection of the environment.

Access to Resources

The Albertan government, on behalf of Albertans, owns the mineral rights to 80 percent of the land in Alberta. The Department of Energy administers the minerals on government lands and awards leases of these rights to private-sector companies almost entirely through public tender to the highest bidder. The Department of Sustainable Resource Development administers the surface and forest resources on government land. Current allocation of forest resources to private sector companies also occurs largely on a competitive basis. The government is not involved in the awarding of rights to develop minerals and forest resources owned by private citizens, as this remains within the domain of private contract law.

Access to the surface is generally negotiated on a contractual basis with those awarded resource development rights. Where there is disagreement between those having interests in the surface and those having interests in developing resources, the Surface Rights Board is authorized to award rights of entry and to determine and to periodically adjust the corresponding compensation.

Fair Economic Return to the Resource Owner

As owners of much of the province's natural resources, the people of Alberta receive a fair return on the production of their minerals and forest products by industry.

Royalty rates are based on capturing for Albertans a fair share of economic rent and providing industry with the ability to recover their costs and to earn a reasonable rate of return. The royalties help pay for essential public services, such as health care and education. The levying and collecting of these revenues is administered by the Department of Energy in the case of minerals, and by the Department of Sustainable Resource Development in the case of forest resources.

Rates for privately-owned resources remain a matter of free-market contractual negotiation between the owners and industry; the government does not interfere with that process.

Effective Regulatory Framework

Exploration

Regulation of mineral exploration is managed by the Department of Sustainable Resource Development as part of its overall responsibility for the surface of publicly owned lands.

Part 8 of the Mines and Minerals Act and related regulations implement a regime involving the licensing of those who qualify to undertake exploration work, the granting of permits for the use of some types of exploration equipment, and approving plans of exploration governing how particular exploration programs will be conducted.

Restrictions are also established on the locations or the types of exploration work that can be conducted. There are certain specified requirements that must be met by those doing the work, including deposit requirements, public notification requirements that are imposed in the area where work will be conducted, as well as reporting and clean up requirements following completion of work. The Act includes specified sanctions for non-compliance, which include the government withdrawing its approvals and monetary penalties.

Development

At the development stage, the Alberta Energy and Utilities Board reviews and approves the technical, environmental, social and economic benefits of all energy resource projects.

The EUB was established in 1995 under the Alberta Energy and Utilities Board Act through the merger of the membership of two predecessor Boards, the Public Utilities Board and the Energy Resources Conservation Board which, in various incarnations, were in existence since 1915 and

\[24\] When I refer to exploration in this context, I refer largely to work involving lower levels of surface disturbance such as geophysical work as opposed to more intensive work such as drilling exploration wells.


\[26\] See id., ss.107(1), 108(c).

\[27\] See id., ss.107(2), 108(b).

\[28\] See id., s.108(a).

\[29\] See id., s.108(e).

\[30\] See id., s.112.


\[32\] See id., ss.3(1), 15(3)(c)-(d).
1932, respectively. This resulted in a single board having jurisdiction over both primary energy resource development and the regulation of public utilities.

Although the EUB falls within the Energy Ministry along with the Department of Energy from the perspective of ministerial responsibility, the EUB is in fact a separate corporate body, quasi-judicial in nature and independent from and not an agent of the government of Alberta. This independence is to some extent reinforced by the provisions made for funding EUB operations, which has government only contributing a third of the operating budget and industry contributing the balance.

The actual implementation of the oversight of energy resource development by the EUB occurs under a number of other statutes, each addressing different commodities or sectors of the energy industry. Under the Oil and Gas Conservation Act, the Oil Sands Conservation Act and the Coal Conservation Act, the EUB administers schemes for regulatory approval for the implementation and operations of schemes and the construction of related operations and facilities for conventional oil and gas, oil sands and coal development.

Both the regulations under these acts and the directives issued by the EUB specify the requirements for conducting development activities and provide for related standards and inspections. These regulations also create an "enforcement ladder" mechanism that imposes sanctions, which may include approval withdrawal, the issuance and enforcement of "stop orders" and monetary sanctions, all based on compliance experience. Furthermore, processes are in place to satisfy administrative law requirements for fairness and an opportunity for both proponents and objectors to be heard, as well as appeals for those not satisfied with the handling of applications.

It is not possible within the constraints of this discussion to delve into these provisions in any meaningful depth. It is important to note, however,
some of the key principles set out in the Energy Resources Conservation Act\(^\text{41}\) that guide the EUB in carrying out its functions. These include:

- the effecting of conservation of, and preventing the waste of, energy resources;
- [controlling] pollution and [ensuring] environmental conservation in the exploration for, processing, development and transportation of energy resources;
- [securing] the observance of safe and efficient practices in the exploration for, processing, development and transportation of...\(^{42}\)

The Act also requires the EUB, in relation to the individual decisions it reaches, to give consideration to whether the proposed activity is in the public interest, having regard for any social, economic and environmental effects.\(^{43}\) Thus, the EUB's function is to determine and implement the public interest from these perspectives and to decide whether and in what fashion the development of energy resources may occur in the province of Alberta.

With respect to the development of non-energy minerals, the approval of significant projects falls under the oversight of the Natural Resources Conservation Board (NRCB). As with the EUB, the NRCB is established as a separate corporate body, quasi-judicial in nature and independent from and not an agent of the government of Alberta. The NRCB also oversees the approval of significant forestry-related facilities such as sawmills, pulp plants and panel board plants.

Like the EUB legislation, the NRCB Act\(^\text{44}\) specifies that the intent of the Act is

\[\text{to provide for an impartial process to review projects that will or may affect the natural resources of Alberta to determine whether, in the Board's opinion, the projects are in the public interest, having regard to the social and economic effects of the projects and the effects of the projects on the environment.}\]  


\(^{42}\) \textit{Id.}, s.2(c)-(e).

\(^{43}\) \textit{Id.}, s.3.

\(^{44}\) National Resources Conservation Board Act, R.S.A. 2000, ch. N-3 (Can.), available at \url{http://www.qp.gov.ab.ca/documents/acts/N03.cfm}.

\(^{45}\) \textit{Id.}, s.2.
The Department of Sustainable Resource Development regulates timber harvesting and reforesting activities. It does so by applying and enforcing the provisions of the Forests Act\(^{46}\) and related regulations,\(^{47}\) and through the approval, monitoring and enforcement of timber management plans under the tenure system for allocating timber rights.

Environmental Protection

Alberta’s Department of Environment manages the use of Alberta’s diverse landscape to sustain a healthy environment, a prosperous economy and strong communities. It is committed to protecting the province’s air, land and water. Furthermore, the department also strives to be a leader in addressing climate change and waste management. Decisions are made on the basis of finding the right balance between preserving or protecting environmental resources and using them.

In relation to the development of natural resources, the Department carries out most of its responsibilities under the authority of the Environmental Protection and Enhancement Act (EPEA).\(^ {48}\) Enacted in 1992, the EPEA established a new framework in a single act that took an integrated approach to the protection of air, land and water resources.

By combining provisions of eight separate acts in a single piece of legislation\(^ {49}\) and by implementing a single application and approval process where several separate applications and approvals were previously required, the EPEA has essentially created a single window for those seeking environmental approval for activities that may have material impacts on the environment. Activities for which approval is required are listed in regulations under EPEA and include refineries, oil sands processing plants, gas processing plants and power plants, and may include conditions detailing specific operating requirements, such as emissions levels, in addition to those prescribed in the regulations.

---


An environmental impact assessment (EIA) may be required for projects prior to the approval stage. The regulations include lists of activities for which such an EIA is mandatory and those that are exempt.\textsuperscript{50} An EIA may be required at the discretion of a director appointed under EPEA for activities not listed, based on factors such as the location, size and nature of the proposed activity, the complexity of and technology used in the activity, public concerns and the presence of other similar activities.\textsuperscript{51}

Projects may be allowed to proceed to the approval stage or the Minister of Environment may make recommendations relating to the project after receipt of the assessment report. Findings in the report may be manifested as conditions of approvals, including approvals issued by the EUB or NRCB. The approval process thus acts as an early warning system by identifying and preventing potential problems before projects proceed.

In addition to the approval processes, EPEA addresses a multitude of environmental concerns, including releases of substances into the environment and related reporting requirements,\textsuperscript{52} remediation of contaminated sites,\textsuperscript{53} conservation and reclamation of land,\textsuperscript{54} environmental protection orders and remedial measures for adverse impacts on groundwater and potable water,\textsuperscript{55} measures to regulate and control hazardous substances\textsuperscript{56} to require the clean-up of unsightly property,\textsuperscript{57} and the recycling of waste.\textsuperscript{58}

The regulatory features of the Act are backed up by a range of enforcement measures, which include: investigation and monitoring,\textsuperscript{59} enforcement orders,\textsuperscript{60} withdrawal of approvals; offence provisions and

\textsuperscript{51} See EPEA, supra note 48, s.44(3).
\textsuperscript{52} See id., ss.110, 111.
\textsuperscript{53} See id., s.128.
\textsuperscript{54} See id., ss.134-146.
\textsuperscript{55} See id., ss.147-153.
\textsuperscript{56} See id., ss.154-167.
\textsuperscript{57} See id., s.183.
\textsuperscript{58} See id., ss.168-175.
\textsuperscript{59} See, e.g., s.113.
\textsuperscript{60} See id., s.210.
penalties of up to $1 million and up to two years in jail;\textsuperscript{61} and to allow those harmed by violations of the Act to sue for civil damages.\textsuperscript{62}

**ON THE HORIZON**

Increased resource development activity and the subsequent growth in population place increased demands on the environment and resources. This translates into increasing demands on the regulatory structures that determine the appropriate public interest balance between the progress that follows development and the need to protect those resources and the environment.

In an increasingly competitive world, regulatory structures must continue to evolve not only to satisfy these interests, but to also strive to do so in the most efficient ways. Alberta regulators and the Government of Alberta constantly seek out and implement these changes. Three of these are worthy of special note.

Petroleum Registry

In October of this year, the Petroleum Registry of Alberta will be implemented.\textsuperscript{63} The Registry is an interactive database, accessible through the Internet, which will be a repository of industry’s upstream oil and gas data.\textsuperscript{64} The data will be used by companies for their business needs, by the EUB for their monitoring and regulatory functions and by the Department of Energy to determine and assess royalties.

Through shared but controlled access to portions of a common database, rather than separate reporting to the EUB and the Department of Energy, the registry will enable more rapid and timely exchange of data among registry users. It will also eliminate a host of reporting errors and related penalties and remedial transactions that arise from transposing raw data into a multitude of reports utilized for different purposes.

\textsuperscript{61} See id., s.228(1):

A person who commits an offence referred to in section 60, 87, 108(1), 109(1) or 227(a), (d), (f) or (h) is liable

(a) in the case of an individual, to a fine of not more than $100,000 or to imprisonment for a period of not more than 2 years or to both fine and imprisonment, or

(b) in the case of a corporation, to a fine of not more than $1,000,000.

\textsuperscript{62} See id., ss.219, 235(1).

\textsuperscript{63} See Petroleum Registry of Alberta, http://www.petroleumregistry.gov.ab.ca/ (last visited May 24, 2002). At the time the website was visited, the “countdown clock” read, “The Registry Goes Live in 130 Days.”

\textsuperscript{64} See CAPLA Bulletin Board, at http://www.caplacanada.org/bulletin_board.htm (last visited May 24, 2002).
Comprehensive Water Strategy

In Alberta, our quality of life depends on having a healthy and sustainable supply of water for the environment, our communities and our economic well-being. The Alberta Department of Environment has embarked on the development of a comprehensive strategy to identify short-, medium- and long-term plans to effectively manage the quality and quantity of the province’s water supply and systems. This “Water for Life” strategy will address Alberta’s current water challenges and enable the province to proactively deal with water-related issues it may face in the future.

Alberta is seeing rapid industrial, agricultural and municipal growth, which is putting more pressure on existing water supplies and potentially affecting the quality of surface and groundwater. At the same time, nature’s unpredictability has placed overwhelming demands on existing water supplies. Three consecutive years of drought in most areas of Alberta have led to water shortages. While Alberta has adapted its water policies over time to keep pace with emerging issues and challenges, more needs to be done to ensure a safe and sustained water supply.

The second stage in the development of the policy, a public outreach and consultation process, has been completed; the input will be outlined in a report due in May. The third stage will be a ministerial forum involving 60-80 Albertans and experts who will review the input and discuss possible next steps and solutions. The Department of Environment will then fashion this work into specific recommendations and a framework that will comprise the Strategy. The target date for completion is late fall of 2002.

Specific objectives of the Strategy will include: healthy, sustainable ecosystems; a safe, secure supply of drinking water; reliable water supplies for a healthy economy; and a more complete database from which to make effective water management decisions. Alberta must develop a strategy to ensure we have an effective and sustainable way of conserving, managing and protecting water supplies, which will preserve the environment while maintaining a high quality of life for Albertans.

---

68 See Water for Life, supra note 65.
69 See id.
Resource Development Regulatory Review

Alberta is currently embarking on a fundamental review of the environmental, energy and resource regulatory framework used by the government of Alberta to develop and manage Alberta’s natural resources. A recent study by the Fraser Institute, an independent Canadian public policy organization, found that “if the federal and provincial governments want to increase productivity and improve the living standards of Canadians, they must aim to reduce the regulatory burden and improve accountability through comprehensive regulatory reform.”71 The key outcome of the review will be a more streamlined, efficient and effective delivery of the regulatory process.

Key objectives include the improved delivery of regulations, reducing the cost of regulatory requirement over time, maintaining Alberta’s high environmental standards and, ultimately, to further improve the business climate in Alberta. Along with the EUB, the Ministries of Energy, Sustainable Resource Development, Environment and Agriculture, Food and Rural Development will be involved in this review.

CONCLUSION

Despite all the natural blessings enjoyed by Albertans, manifest abundance and a high quality of life for Albertans can only come about from responsible stewardship of Alberta’s natural resources. Regulatory structures and processes in Alberta have been well-designed to meet these challenges in times of both lower activity and in the hectic pace of development Albertans are enjoying today. The standard of living enjoyed by Albertans both economically and environmentally is a testament to this success.

These levels of activity and the growth in population and economic capability of businesses and individuals in Alberta place increasing demands on our natural heritage and the structures put in place to manage them. Alberta will strive to maintain its leadership and the “Alberta Advantage” by constantly improving the regulatory systems and structures that play such a large part in the realization of those benefits.

---