

**ATTACHMENT “H”**



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

APR 22 2013

ASSISTANT ADMINISTRATOR  
FOR ENFORCEMENT AND  
COMPLIANCE ASSURANCE

Mr. Jose W. Fernandez  
Assistant Secretary  
Economic, Energy and Business Affairs  
U.S. Department of State  
Washington, DC 20520

Dr. Kerri-Ann Jones  
Assistant Secretary  
Oceans and International Environmental and Scientific Affairs  
U.S. Department of State  
Washington, DC 20520

Dear Mr. Fernandez and Dr. Jones:

In accordance with our authorities under the National Environmental Policy Act (NEPA) and Section 309 of the Clean Air Act, EPA has reviewed the Department of State's draft Supplemental Environmental Impact Statement (DSEIS) for a Presidential Permit application by TransCanada Keystone Pipeline, LP (TransCanada) to construct and operate the Keystone XL Project (Project). This DSEIS builds on the Department of State's August 2011 Final EIS, and includes information regarding a new proposed route in Nebraska.

NEPA serves an important role in the decision making process for federal actions that may have environmental effects. Through the NEPA process, federal agencies disclose and analyze the potential impacts of a proposed action and reasonable alternatives, as well as measures that could mitigate any potential harmful effects. NEPA brings transparency to the federal decision making process, requiring that other federal, state, tribal and local agencies, as well as citizens, are given a meaningful opportunity to provide comments, helping to ensure federal decisions are better informed.

EPA believes this DSEIS strengthens the analysis presented to date in the NEPA process. While we appreciate this effort, we also have several recommendations for improving the analysis and considering additional mitigation as you move forward to complete the NEPA process.

## Greenhouse Gas Emissions

We commend the Department of State's efforts to estimate the lifecycle greenhouse gas (GHG) emissions associated with oil sands development and the proposed Project, to analyze the effect of the Project on Canadian oil sands production and to consider measures to reduce GHG emissions. As recognized by the DSEIS, oil sands crude is significantly more GHG intensive than other crudes, and therefore has potentially larger climate impacts. The DSEIS reports that lifecycle GHG emissions from oil sands crude could be 81% greater than emissions from the average crude refined in the U.S. in 2005 on a well-to-tank basis, and 17% greater on a well-to-wheels basis.<sup>1</sup> This difference may be even greater depending on the assumptions made.<sup>2</sup> The incremental emissions from oil sands crude transported by the Project would therefore be 18.7 million metric tons CO<sub>2</sub>-e (carbon dioxide equivalent) per year when compared to an equal amount of U.S. average crudes, based on the Project's full capacity of 830,000 barrels of oil sands crude per day.<sup>3</sup> To place this difference in context, we recommend using monetized estimates of the social cost of the GHG emissions from a barrel of oil sands crude compared to average U.S. crude. If GHG intensity of oil sands crude is not reduced, over a 50 year period the additional CO<sub>2</sub>-e from oil sands crude transported by the pipeline could be as much as 935 million metric tons. It is this difference in GHG intensity - between oil sands and other crudes - that is a major focus of the public debate about the climate impacts of oil sands crude.

Although the DSEIS describes the GHG intensity of oil sands crude, the DSEIS nevertheless concludes that regardless of whether the Project permit is approved, projected oil sands production will remain substantially unchanged. This conclusion is based on an analysis of crude oil markets and projections of oil sands crude development, including the potential for other means of transport to bring oil sands crude to market. One of the alternative transport possibilities discussed in the DSEIS is the potential construction of other pipelines. As part of this discussion, the DSEIS appropriately recognizes that there is uncertainty about when, if ever, additional pipelines will be built. In light of these uncertainties, the DSEIS examines options for transporting oil sands crude by rail, and concludes that scaling up transport by rail is logistically and economically feasible, and that market forces will result in additional rail transport of oil sands crude if the Project is not built. It is this finding that supports the DSEIS' overall conclusion that approval of the permit will not by itself substantially affect GHG emissions or contribute to climate change.

<sup>1</sup> DSEIS, Table 4.15-22 "GHG Emissions for Producing Gasoline from Different Crude Sources from NETL 2009 and Estimates of the Impact of Key Assumptions on the Oil Sands - U.S. Average Differential." In addition to lifecycle emissions estimates from the Department of Energy's National Energy Technology Laboratory (NETL) study, the DSEIS also provides estimates from other analyses. See discussion in DSEIS section 4.15.

<sup>2</sup> DSEIS, p. 4.15-106, "Adjusting the NETL results to include other product emissions could increase the differential in incremental emissions from WCSB oil sands compared to the 2005 U.S. average crude oils by roughly 30 percent."

<sup>3</sup> DSEIS p. 4.15-105

The market analysis and the conclusion that oil sands crude will find a way to market with or without the Project is the central finding that supports the DSEIS's conclusions regarding the Project's potential GHG emissions impacts. Because the market analysis is so central to this key conclusion, we think it is important that it be as complete and accurate as possible. We note that the discussion in the DSEIS regarding energy markets, while informative, is not based on an updated energy-economic modeling effort. The DSEIS includes a discussion of rail logistics and the potential growth of rail as a transport option, however we recommend that the Final EIS provide a more careful review of the market analysis and rail transport options. This analysis should include further investigation of rail capacity and costs, recognizing the potential for much higher per barrel rail shipment costs than presented in the DSEIS. This analysis should consider how the level and pace of oil sands crude production might be affected by higher transportation costs and the potential for congestion impacts to slow rail transport of crude.

In its discussion of practicable options for mitigating GHG emissions, the DSEIS outlines ongoing efforts by the government of Alberta to reduce the GHG emissions associated with development of oil sands crude in Alberta. EPA recommends that the Final EIS complement this discussion with an exploration of specific ways that the U.S. might work with Canada to promote further efforts to reduce GHG emissions associated with the production of oil sands crude, including a joint focus on carbon capture and storage projects and research, as well as ways to improve energy efficiency associated with extraction technologies. With regard to the estimated GHG emissions from construction and operation of the proposed Project - primarily emissions associated with electrical generation for the pumping stations - we recommend that the Department of State explore specific commitments that TransCanada might make to implement the mitigation measures recommended in the DSEIS. This would complement the significant efforts already made to reduce the risk of spills and ensure community safety. Specifically, we recommend a focus on pumping station energy efficiency and use of renewable energy, as well as investment in other carbon mitigation options.

#### Pipeline Safety

We have learned from the 2010 Enbridge spill of oil sands crude in Michigan that spills of diluted bitumen (dilbit)<sup>4</sup> may require different response actions or equipment from response actions for conventional oil spills. These spills can also have different impacts than spills of conventional oil. We recommend that these differences be more fully addressed in the Final EIS, especially as they relate to the fate and transport of the oil and the remediation that will be required. The Enbridge spill involved a 30-inch diameter pipeline, smaller than the 36-inch diameter pipeline for proposed Project, and 20,000 barrels of oil sands crude were released. In that spill, oil sands crude sank to the bottom of the Kalamazoo River, mixing with the river bottom's sediment and organic matter, making the oil difficult to find and recover. After almost three years of recovery

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<sup>4</sup> As noted in the DSEIS, transporting oil sands crude via pipeline requires that it be mixed with a petroleum-based product (called a diluent), such as benzene, naphtha or natural gas condensate, to make a less viscous liquid called dilbit (diluted bitumen).



efforts, EPA recently determined that dredging of bottom sediments will be required to protect public health and welfare and the environment. This determination was based in large part on demonstrations that the oil sands crude associated with the Enbridge spill will not appreciably biodegrade.<sup>5</sup> We recommend that the Final EIS more clearly acknowledge that in the event of a spill to water, it is possible that large portions of dilbit will sink and that submerged oil significantly changes spill response and impacts. We also recommend that the Final EIS include means to address the additional risks of releases that may be greater for spills of dilbit than other crudes. For example, in the Enbridge spill, the local health department issued voluntary evacuation notices based on the level of benzene measured in the air. Given these concerns, it is important to ensure that the future response and remediation plans will protect communities from impacts due to spills.

The DSEIS also outlines specific measures that the Department of State would require TransCanada to undertake to prevent and detect oil discharges. The measures include commissioning an independent engineering analysis to review TransCanada's risk assessment of the potential impacts from oil discharges to surface and groundwater resources, as well as TransCanada's current proposals for placing mainline valves along the pipeline route and installing leak detection equipment. The DSEIS also notes that the Department of State will obtain concurrence from both EPA and PHMSA on both the scope of the engineering analysis and decisions regarding the need for any additional mitigation measures. We recommend that the Department of State provide an opportunity for public review and comment on the scope of the analysis, and an opportunity for public comment on a draft of the analysis when it is completed. We also recommend that the Final EIS consider requiring TransCanada to establish a network of sentinel or monitoring wells along the length of the pipeline, especially in sensitive or ecologically important areas, as well as where water supply wells are located and at stream crossings to provide a practical means for early detection of leaks that are below the proposed detection limit (1.5 – 2%) of the pipeline flow rate.

In addition to prevention measures, we agree with the DSEIS's suggestion that additional mitigation measures regarding preparedness to reduce the impacts of a spill may be appropriate (DSEIS, p. 4.13-79). For example, we recommend including the following measures as permit conditions:

- Requiring that the emergency response plan, as well as contingency plans address submerged oil, as well as floating oil, including in a cold weather response;
- Requiring pre-positioned response assets, including equipment that can address submerged oil;
- Requiring spill drills and exercises that include strategies and equipment deployment to address floating and submerged oil; and

<sup>5</sup> Order for Removal under Section 311(c) of the Clean Water Act, March 14, 2013  
(<http://www.epa.gov/enbridgespill/ar/enbridge-AR-1720.pdf>)

- Requiring that emergency response and oil spill response plans be reviewed by EPA.

The DSEIS also recognizes that dissolved components of the dilbit that may be transported through the pipeline, such as benzene, polycyclic aromatic hydrocarbons (PAHs), and heavy metals, could be slowly released back to the water column for many years after a release and could cause long-term chronic toxicological impacts to organisms in both the benthic and pelagic portions of the aquatic environment. We recommend that the Final EIS more clearly recognize that this characteristic of dilbit is different from the fate and transport of oil contaminants associated with conventional crude oil and refined product spills from pipelines. For that reason we recommend that as a permit condition TransCanada be required to develop a plan for long term sampling/monitoring in the event of an oil discharge to assess and monitor these impacts as part of the spill response plan. In addition, we recommend that the permit require TransCanada to provide detailed Material Safety Data Sheets and information about the diluent and the source crude oil to support response preparations and address safety concerns in advance of any spills.

#### Alternative Pipeline Routes

CEQ regulations implementing NEPA require the consideration of project alternatives in an EIS, and characterize the alternatives analysis as the "heart" of an EIS.<sup>6</sup> The DSEIS has been significantly improved by considering more alternative routes, including an alternative that would avoid crossing the Sand Hills Region in Nebraska, reducing impacts to this fragile ecosystem. Another significant issue in the consideration of alternative routes for this Project has been the potential for impacts to the Ogallala Aquifer in the event of a spill. The alternative route in Nebraska has avoided most of the impacts to the Sand Hills Region, but still crosses the Ogallala Aquifer. The alternative laid out in the DSEIS that would avoid the Ogallala Aquifer is the I-90 Corridor Alternative, which largely follows the path of existing pipelines. The I-90 Corridor Alternative would significantly reduce the length of pipeline crossing the Northern High Plains Aquifer system, which includes the Ogallala formation, and would further reduce the potential for adverse impacts to critical groundwater resources.

We are concerned, however, that the DSEIS does not provide a detailed analysis of the Keystone Corridor Alternative routes, which would parallel the existing Keystone Pipeline and likely further reduce potential environmental impacts to groundwater resources. By determining that these routes are not reasonable, the DSEIS does not provide an analysis of their potential impacts sufficient to enable a meaningful comparison to the proposed route and other alternatives. The Keystone Corridor Alternatives were determined not to be reasonable alternatives primarily on the basis that these routes are longer than the proposed Project's route, and that additional pipeline miles would be needed to connect to Bakken MarketLink project, which would allow the proposed Project to also transport crude from North Dakota and Montana. As we have indicated in the past, we believe these alternative routes could further reduce risks to

<sup>6</sup> 40 C.F.R. 1502.14

groundwater resources. We recommend that the Final EIS either provide more detailed information as to why these alternatives were not considered reasonable or analyze these alternatives in more detail.

#### Community and Environmental Justice Impacts

The DSEIS provides a comprehensive analysis of community demographics, including minority, low-income, and tribal populations, along TransCanada's proposed pipeline route. We are especially appreciative of the effort to identify and contact each of the Local Emergency Planning Committees regarding the status of their emergency response plans, and to provide that information in the DSEIS. We also commend your recognition that environmental justice communities may be more vulnerable to health impacts from a spill, and appreciate your efforts to consider communities' access to health care, including consideration of "Health Professional Shortage Areas and Medically Underserved Areas" located along the proposed pipeline route.

EPA appreciates TransCanada's commitment to conduct cleanup and restoration and to provide alternative water supplies to affected communities in the event of an oil discharge affecting not only surface waters, but also groundwater. We recommend that these commitments be clearly documented as proposed permit conditions. We believe this would give important assurances to potentially affected communities of TransCanada's responsibilities in the event of an oil discharge that affects either surface or groundwater resources.

#### Conclusion

Based on our review, we have rated the DSEIS as EO-2 ("Environmental Objections – Insufficient Information") (see enclosed "Summary of Rating Definitions and Follow-up Actions").

We look forward to continuing to work with you and to provide assistance as you prepare the Final EIS. We also look forward to working with you as you determine whether approving the proposed project serves the national interest under Executive Order 13337 "Issuance of Permits With Respect to Certain Energy-Related Facilities and Land Transportation Crossings on the International Boundaries of the United States".

Please feel free to contact me or have your staff contact Susan Bromm, Director, Office of Federal Activities, at (202) 564-5400 if you have any questions or would like to discuss our comments.

Sincerely,

  
Cynthia Giles

Enclosure



## Summary of Rating Definitions and Follow-up Action

### Environmental Impact of the Action

#### **LO--Lack of Objections**

The EPA review has not identified any potential environmental impacts requiring substantive changes to the proposal. The review may have disclosed opportunities for application of mitigation measures that could be accomplished with no more than minor changes to the proposal.

#### **EC--Environmental Concerns**

The EPA review has identified environmental impacts that should be avoided in order to fully protect the environment. Corrective measures may require changes to the preferred alternative or application of mitigation measures that can reduce the environmental impact. EPA would like to work with the lead agency to reduce these impacts.

#### **EO--Environmental Objections**

The EPA review has identified significant environmental impacts that must be avoided in order to provide adequate protection for the environment. Corrective measures may require substantial changes to the preferred alternative or consideration of some other project alternative (including the no action alternative or a new alternative). EPA intends to work with the lead agency to reduce these impacts.

#### **EU--Environmentally Unsatisfactory**

The EPA review has identified adverse environmental impacts that are of sufficient magnitude that they are unsatisfactory from the standpoint of public health or welfare or environmental quality. EPA intends to work with the lead agency to reduce these impacts. If the potentially unsatisfactory impacts are not corrected at the final EIS stage, this proposal will be recommended for referral to the CEQ.

### Adequacy of the Impact Statement

#### **Category 1--Adequate**

EPA believes the draft EIS adequately sets forth the environmental impact(s) of the preferred alternative and those of the alternatives reasonably available to the project or action. No further analysis or data collection is necessary, but the reviewer may suggest the addition of clarifying language or information.

#### **Category 2--Insufficient Information**

The draft EIS does not contain sufficient information for EPA to fully assess environmental impacts that should be avoided in order to fully protect the environment, or the EPA reviewer has identified new reasonably available alternatives that are within the spectrum of alternatives analyzed in the draft EIS, which could reduce the environmental impacts of the action. The identified additional information, data, analyses, or discussion should be included in the final EIS.

#### **Category 3--Inadequate**

EPA does not believe that the draft EIS adequately assesses potentially significant environmental impacts of the action, or the EPA reviewer has identified new, reasonably available alternatives that are outside of the spectrum of alternatives analyzed in the draft EIS, which should be analyzed in order to reduce the potentially significant environmental impacts. EPA believes that the identified additional information, data, analyses, or discussions are of such a magnitude that they should have full public review at a draft stage. EPA does not believe that the draft EIS is adequate for the purposes of the NEPA and/or Section 309 review, and thus should be formally revised and made available for public comment in a supplemental or revised draft EIS. On the basis of the potential significant impacts involved, this proposal could be a candidate for referral to the CEQ.



## **ATTACHMENT “I”**



# Final Report

## **Impact on GHG Emissions and Climate Targets of the Trans Mountain Expansion Project**

**May 14, 2014**

**Prepared for:**  
City of Vancouver

**Submitted by:**  
Mark Jaccard  
James Hoffele

**Contact:**  
Mark Jaccard  
jaccard@sfu.ca



**MKJA**  
MK Jaccard and  
Associates



## Introduction

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The Trans Mountain Expansion Project (TMEP) would provide additional transport capacity of 590,000 barrels per day (bd) for oil produced in western Canada to access offshore markets. The City of Vancouver is concerned with the direct risks from spills and other accidents when transporting oil by pipeline and tanker. It is also concerned with the contribution of the project to greenhouse gas (GHG)<sup>1</sup> emissions in Canada and abroad since the city will be significantly impacted by climate change and ocean acidification.

In this report, we focus on the contribution of the TMEP to GHG emissions by (1) estimating the GHG emissions it causes, and (2) calculating their effect on the Canadian government's promise to reduce GHG emissions significantly by 2020. If national governments such as Canada's are not committed to achieving GHG abatement promises, the best-available independent assessments – Intergovernmental Panel on Climate Change, Canada's National Roundtable on the Environment and the Economy – predict severe economic, ecological and social impacts to coastal cities such as Vancouver.

## Greenhouse gas emissions from the TMEP

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### *The effect of the TMEP on Alberta bitumen production*

The key effect of the TMEP is to increase the production of bitumen in Alberta's oil sands. For the following reasons, we assume that it will have negligible incremental effect in western Canada on the rates of production of conventional crude oil, synthetic crude oil or refined petroleum products.

In the case of conventional crude oil, its future rate of production will be determined primarily by the rate at which this declining resource is depleted. The TMEP does not change that. In the case of synthetic crude oil, decisions to produce it by upgrading bitumen (instead of transporting diluted bitumen) will depend on a host of market conditions, which are largely independent of the TMEP. Finally, refinery investments in Alberta (to produce more refined petroleum products) will also depend on a host of market conditions for which the TMEP should have negligible effect.

Thus, while the TMEP would probably transport some mix of diluted bitumen, synthetic crude oil and refined petroleum products, it is a mistake to equate the actual mix of

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<sup>1</sup> CO<sub>2</sub> is the most important GHG, especially from fossil fuel production and use, but methane and other emissions are also significant. We follow here the convention of sometimes using CO<sub>2</sub>e (e = equivalent) to show when we refer to all GHGs together in terms of their equivalent global warming potential.



products carried by the pipeline with its incremental effect on oil production and processing in Alberta. Its primary incremental effect would be to increase the production of bitumen (expanded exploitation of the oil sands), which one can assume would be transported as diluted bitumen from Alberta to the coast via the TMEP.<sup>2</sup>

In estimating this incremental effect, however, we must recognize that one barrel of additional pipeline capacity of the TMEP does not equate to one barrel of additional bitumen production in Alberta. First, maintenance and other operating considerations prevent the TMEP from being used at 100% of capacity. Second, the addition of condensate in order to convert bitumen into diluted bitumen for transport by pipeline reduces capacity for pure bitumen transport. These two factors must be included in estimating the incremental effect of the TMEP on Alberta bitumen production.

To convert the 590,000 bd of the TMEP capacity into Alberta bitumen production, we assume 95% for pipeline capacity utilization<sup>3</sup> and 28:72 for the ratio of condensate to bitumen.<sup>4</sup> The 590,000 bd of TMEP capacity must therefore be multiplied by .95 and then .72, which yields, all else being equal, an incremental increase of 403,560 bd of Alberta bitumen production resulting from the TMEP – a 21% expansion relative to 2012.<sup>5</sup>

### *Alberta bitumen production and GHG emissions*

Each stage in the production and consumption of fossil fuels is associated with CO<sub>2</sub> and other GHG emissions. All of these emissions together – through the entire chain from initial land disturbance to production to transport to final consumption – are referred to as the full-cycle or well-to-wheel emissions. The following diagram depicts all of the stages entailed in calculating well-to-wheel emissions, as well as the stages involved in calculating only well-to-refinery and well-to-tank.

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<sup>2</sup> The spurious argument is sometimes offered that a given pipeline from the oil sands has no effect on bitumen production because if it were not built another pipeline would be built instead. If one applied this logic to each proposed pipeline, and on that basis decided not to build each one (since it would have no product to transport), then no pipelines would be built – and the current level of Alberta bitumen production would somehow occur with zero pipeline capacity to transport it to market. As one would expect, growth in the production of bitumen is strongly correlated with growth in pipeline capacity connected to the oil sands.

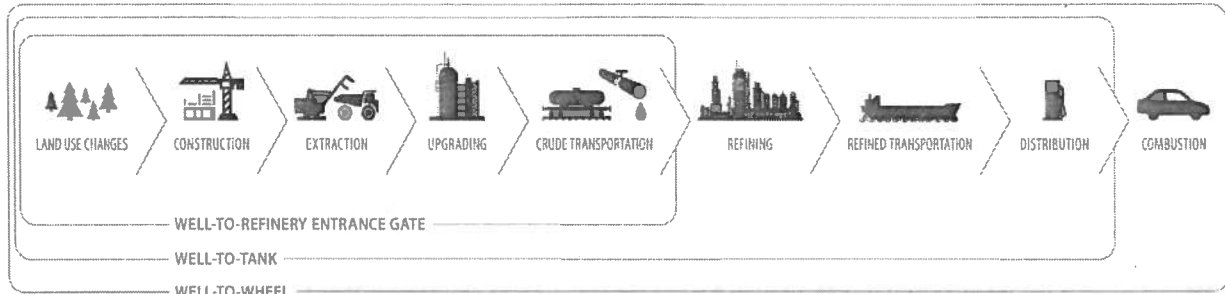
<sup>3</sup> Dinara Millington and Jon Rozhon, *Pacific Access: Part I – Linking Oil Sand Supply to New and Existing Markets*, Study No. 129 – Part I, Canadian Energy Research Institute, 2012, 11-15.

<sup>4</sup> IHS CERA, *Oil Sands, Greenhouse Gases, and U.S. Oil Supply: Getting the Numbers Right - 2012 Update*, Special Report, 2012.

<sup>5</sup> Alberta oil sands production in 2012 was approximately 1.9 million barrels per day according to the Energy Resources Conservation Board, *ST98-2013: Alberta's Energy Reserves 2012 and Supply/Demand Outlook 2013–2022*, 2013.



**Figure 1. Boundaries of full-cycle GHG assessments<sup>6</sup>**



Given the complexity of so many stages, the task of estimating GHG emissions can seem daunting. But emissions from most of the stages are relatively small, enabling us to focus on production, processing (including upgrading and refining), transport and consumption, this latter being the most important.<sup>7</sup> While emissions caused during transport – truck, rail, ship, pipeline – constitute a smaller percentage, they can be important, depending on the focus of analysis.

For the TMEP, we focus on emissions caused by the conversion of oil sands to bitumen and their transport to points of export. These “upstream emissions” will occur in Canada and are therefore directly relevant to our examination of the relationship between the TMEP, the Alberta oil sands and Canada’s GHG commitments.

The Canadian Association of Petroleum Producers estimates that 74% of growth in oil sands production to 2030 will be from *in situ* projects, which involve injecting steam into deep oil sands deposits in order to release the oil without having to mine it.<sup>8</sup> (Only about 20% of remaining oil sands reserves are likely to be recoverable by mining, which has been the dominant process thus far.) We therefore used a ratio of 74:26 to allocate the growth in bitumen production caused by the TMEP between the *in situ* and the mining production processes. Multiplying this by the average production emissions from each of these processes yields average emissions for incremental bitumen production of 52.4 kg CO<sub>2</sub>e per barrel.<sup>9</sup>

<sup>6</sup> Flanagan, E. and C. Demerse, *Climate Implications of the Proposed Energy East Pipeline: A Preliminary Assessment*. The Pembina Institute, 2014.

<sup>7</sup> Emission caused by the actual construction of facilities, such as oil sands processing plants, refineries, and pipelines like the TMEP, which are relatively small, are excluded from this analysis.

<sup>8</sup> Canadian Association of Petroleum Producers, *2013 Crude Oil Forecast, Markets & Transportation* 2013. i. <http://www.capp.ca/getdoc.aspx?DocId=227308&DT=NTV>

<sup>9</sup> Industry-average production GHG emission factor values were provided by E. Flanagan of the Pembina Institute using the GHGenius model v3.02.

When this value is multiplied by 403,560 bd, and by 365 days per year, it equates to bitumen production emissions caused by the TMEP of 7.7 MT CO<sub>2</sub>e. When these emissions are combined with the 1.1 MT CO<sub>2</sub>e annual emissions from operating the TMEP<sup>10</sup> – pump stations, tanks, and marine terminal – the total upstream emissions attributable to the TMEP are 8.8 MT CO<sub>2</sub>e per year, as shown in Table 1. This is equivalent to adding 2.2 million average emission cars to Canada’s existing vehicle stock.

**Table 1. Canadian emission impact of the TMEP proposal (Million tonnes of CO<sub>2</sub>e)**

Annual bitumen production emissions	Annual TMEP operation emissions	Total annual upstream emissions caused by TMEP	Millions of cars to produce equivalent annual emissions
7.7	1.1	8.8	2.2

Since we do not assume that the TMEP would trigger the construction of more bitumen upgrading or oil refining capacity in Alberta, we assume that these particular sources of upstream emissions will be zero in Canada. And since the objective of the TMEP is to provide access to export markets for Alberta bitumen, we assume that all of the unaccounted for emissions, whether from further processing and refining, overseas transport, or final consumption, will occur outside of Canada.

These unaccounted for emissions are, however, important in terms of estimating the global effect of expanding oil sands production. The values in Table 2 show all the unaccounted annual emissions from the production and consumption of Alberta bitumen associated with the TMEP.

**Table 2. Unaccounted annual emissions (refining, distribution, combustion) from incremental bitumen production related to the TMEP (Million tonnes of CO<sub>2</sub>e).**

Annual refining and distribution emissions <sup>11</sup>	Annual combustion emissions <sup>12</sup>	Total unaccounted emissions
17.3	53.8	71.1

<sup>10</sup> The TMEP Environmental Effects Assessment for application to the National Energy Board submitted December 2013 and available at <http://application.transmountain.com/facilities-application>.

<sup>11</sup> Industry-average refining and distribution GHG emission factor values were provided by E. Flanagan of the Pembina Institute using the GHGenius model v3.02

<sup>12</sup> Combustion emissions factor of 72.6 g CO<sub>2</sub>e/ MJ from Richard K. R.K. Lattanzio, *Canadian Oil Sands: Life-Cycle Assessments of Greenhouse Gas Emissions*. Congressional Research Office. 2013.



The argument is sometimes made that these downstream emissions would occur even in the absence of the TMP. The reason is that much of the time oil is an easily traded, mobile commodity. A reduction in supply from one source is unlikely to have implications for market prices or the level of consumption, since there are many alternative suppliers.<sup>13</sup> Indeed, Alberta bitumen is one of the highest cost sources of oil in global markets, and current levels of market demand could be met by increased output from competitive alternatives.

But there is a case in which we would avoid the emissions in Table 2 by not building the TMEP. This is the case in which countries are acting to reduce GHG emissions in line with the targets they committed to in 2009 at the Copenhagen meeting of the Conference of the Parties to the Framework Convention on Climate Change. At that meeting, Canada and other major countries reconfirmed and strengthened national targets for the years 2020 and 2050 as part of a commitment to prevent global temperatures from rising more than 2° C from pre-industrial levels by 2100.

With those commitments, global demand for oil would not be growing as it is today and this would especially reduce demand for high-cost oil from Alberta bitumen production. One of the world's leading research institutes on energy-economy modeling, the Institute for the Science and Policy of Global Change at MIT, recently modeled a global effort to reduce GHG emissions that was actually less ambitious than what Canada and other countries committed to at Copenhagen (it would allow temperatures to rise by more than 2° C by 2100, although not by as much as they would if no actions were taken).

According to their analysis, even this more modest effort at mitigating climate change would reduce the global demand for oil to the extent that oil sands expansion, and associated new pipelines like the TMEP, would not occur. Instead, there would be a gradual decline in production from the oil sands over the next decades. The authors noted in conclusion, "The niche for the oil sands industry is fairly narrow and mostly involves hoping that climate policy will fail."<sup>14</sup>

The implications are clear. The demand for the TMEP depends on global climate policy failure. And in such a case, the TMEP will contribute, along with other investments that expand carbon pollution, to the imposition of significant costs to a coastal city such as Vancouver. If, however, global climate policy succeeds in preventing a greater-than 2° C rise in temperatures by 2100, then there will be no demand for the TMEP. As a regulated energy investment, it will not be "used and useful" – a key criterion by which the NEB determines whether to approve a given investment.

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<sup>13</sup> Economists therefore refer to a product like oil as a "fungible" commodity.

<sup>14</sup> Chan, G., Reilly, J., Paltsev, S. and H. Chen, *Canada's Bitumen Industry Under CO2 Constraints*, Report No.183, Science and Policy of Global Change Institute, MIT, 2010.



## Canada's emissions targets and oil sands expansion

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Global warming and ocean acidification are caused primarily by the expansion of fossil fuel production and consumption. This occurs via investments in the extraction, processing, transport and consumption of coal, oil and natural gas. When these investments are allowed to occur, carbon pollution increases. This is why the world's leading independent experts, like the researchers at MIT, know that these investments would decline where policies are in place to cause GHG emissions to decline. And they know that this would be immediately the case for the higher emitting fossil fuels, namely coal and unconventional oil such as bitumen.

Where governments are allowing an increase in any of the stages of fossil fuel production and consumption, analysts can assess the relationship between this expansion and their GHG emission reduction promises.

### *Canada's emissions targets and its efforts to reduce GHG emissions*

In 2007, the government of Canada committed to reduce national emissions 20% from their 2006 levels by 2020 and 65% by 2050.<sup>15</sup> In 2009, the government revised its 2020 target to a 17% reduction from 2005 levels. It justified this weakening of the target by noting that this aligned Canada's target with that of the US in percentage terms.

While there are multiple ways by which humans cause CO<sub>2</sub> and other GHG emissions, the actions to reduce them can be grouped into a few major categories. This is especially the case with CO<sub>2</sub> from burning fossil fuels, an activity which is responsible for 60-70% of human-produced GHGs. To reduce CO<sub>2</sub> from burning fossil fuels, the options are: (1) reducing energy use by lifestyle changes and by adopting more efficient technologies, buildings, infrastructure and urban design, (2) switching from fossil fuels to non-emitting energy sources like biomass, solar, wind, hydropower, geothermal and nuclear, and (3) capturing and storing carbon emissions to prevent them from reaching the atmosphere.

The only policies that can cause these actions are: (1) regulations on technologies, fuels, or sectors of the economy, (2) GHG emissions pricing via a carbon tax, and (3) GHG emissions pricing via a cap-and-trade program. In 2006, the Canadian government stated it would achieve its 2020 and 2050 commitments without GHG emissions pricing, instead applying regulations to individual sectors of the economy, such as electricity generation, transport, oil and gas production, buildings, steel production, aviation, shipping,

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<sup>15</sup> Government of Canada, *Turning the Corner*, 2008, p.1. "The Government of Canada has set a national goal of reducing greenhouse gas emissions, relative to 2006 levels, by 20 per cent by 2020, and by 60 to 70 per cent by 2050."





agriculture, forestry, and municipal solid waste. To this end, in 2007, it launched its *Turning the Corner* policy initiative, focused on the 2020 timeframe.<sup>16</sup>

Also in 2007, the Canadian government directed the National Roundtable on the Environment and the Economy to provide a blueprint for achieving the government's commitment to reduce national GHG emissions 65% by 2050. In its two reports, *Getting to 2050* and *Achieving 2050*, the roundtable showed that success with the 2050 target required the immediate implementation of regulations and/or GHG emissions pricing, which would reduce emissions in all sectors, including bitumen production.<sup>17</sup>

Between 2008 and 2011, the longstanding growth trend in Canadian GHG emissions abated slightly. But this was equally the case for all industrial economies as the global community grappled with a severe economic downturn. In Canada, the decline in emissions from certain industries, like steel and cement, was coupled with a major initiative of the Ontario government to phase out coal-fired power plants and replace these with a combination of nuclear power, renewables and natural gas. Other policies, like BC's carbon tax and Quebec's introduction of cap-and-trade, have started a small downward effect on emissions in some sectors.

In its report, *Canada's Emissions Trends 2013*, Environment Canada combined these historical developments with emissions forecasts for all sectors, given projected growth rates in population and the economy, as well as the impacts of already-implemented GHG policies of Canadian federal and provincial governments.<sup>18</sup> Figure 2 shows the overwhelming role of emissions from growing bitumen production in reversing the 2008-2011 decline, and thus in preventing Canada from achieving its 2020 target. With Canada's annual GHG emissions at 702 MT CO<sub>2</sub>e in 2011, Environment Canada estimated that Canada would miss its 2020 target by 122 MT.<sup>19</sup>

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<sup>16</sup> Government of Canada, *Turning the Corner*, 2008.

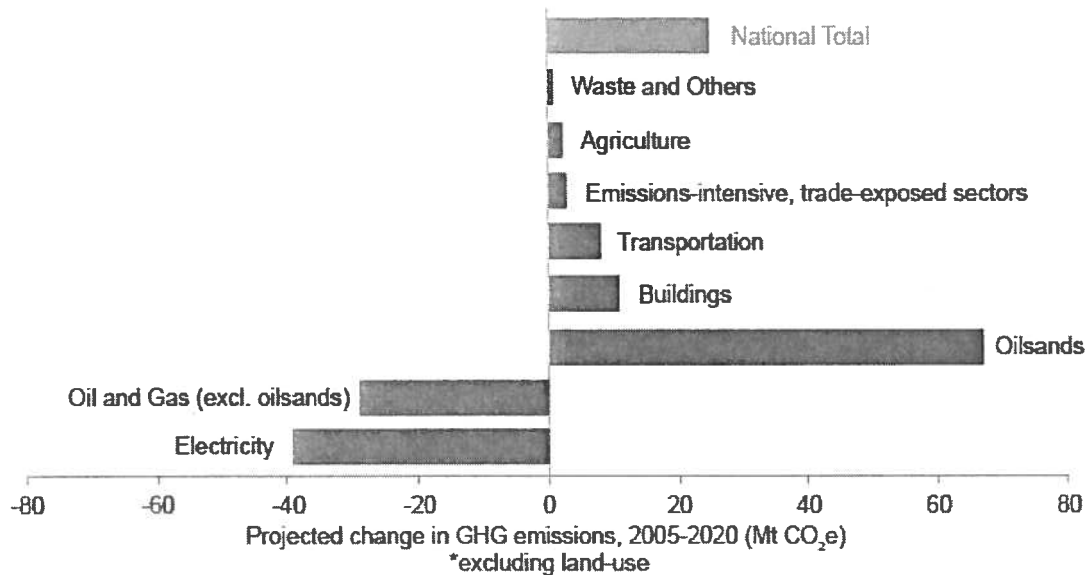
<sup>17</sup> NRTEE, *Getting to 2050*, 2007 and NRTEE, *Achieving 2050*, 2009.

<sup>18</sup> Environment Canada, *Emission Trends 2013*.

<sup>19</sup> 2011 was the latest date for which emissions data were available at the time of the Environment Canada report.



**Figure 2 Historical and forecasted change in GHG emissions by sector, 2005-2020<sup>20</sup>**



In fulfilling its mandate of reporting on the effectiveness of government's policies to meet its goals, the Auditor General of Canada's commissioner on environment and sustainability released a report in 2012 called *Meeting Canada's 2020 Climate Change Commitments*. The report noted that because the government had done little in terms of implementing its promised regulatory policies, such as regulations on oil and gas, "it is unlikely that enough time is left to develop and establish greenhouse gas regulations ... to meet the 2020 target." The report echoed Environment Canada's own analysis in concluding that Canada is on a path to be "7.4 percent above its 2005 level instead of the targeted 17 percent below."<sup>21</sup>

### *Oil sands expansion's impacts on Canada's emissions targets*

Figure 2 presents a combination of historical emissions (2005-2011) and projected emissions (2012-2020). In both periods, it is growth in emissions from bitumen production that plays the dominant role in preventing Canada from meeting its climate commitments. In the historical period, between 2005 and 2011, bitumen production

<sup>20</sup> Flanagan, E. and C. Demerse, *Climate Implications of the Proposed Energy East Pipeline: A Preliminary Assessment*. The Pembina Institute, 2014. Based on data from Environment Canada, *Canada's Emissions Trends 2013*, 2013.

<sup>21</sup> Auditor General of Canada, Commissioner on Environment and Sustainability, *Meeting Canada's 2020 Climate Change Commitments*, 2012.

increased by 64% and GHG emissions from the oil sector increased by 62%.<sup>22</sup> In the forecast period, 2012-2020, the Environment Canada analysts expect that bitumen production and its emissions will grow another 60-70%.

This Environment Canada forecast for bitumen production is consistent with the industry forecast. The Canadian Association of Petroleum Producers (CAPP) expects output to grow from 1.9 million bd in 2012 to 3.2 million bd in 2020.<sup>23</sup> CAPP notes, however, that this growth in bitumen production cannot occur without transportation infrastructure, such as the TMEP and other proposed pipelines. “Western Canadian supplies are essentially landlocked and will need additional transportation infrastructure to bring this growing oil supply to markets.”<sup>24</sup> In the same report, moreover, CAPP states, “pipelines will remain the preferred mode of transportation for crude oil.”

In other words, the projected massive expansion of bitumen production in Alberta requires a host of new pipelines to enable the land-locked oil sands to reach export markets. Current pipeline proposals include Northern Gateway, Keystone XL, Line 9B Reversal, Energy East, and the TMEP. If each of these pipelines is incrementally seen as not causing Canada to miss its climate commitments, then all will proceed – with obvious cumulative effect.

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<sup>22</sup> Flanagan, E. and C. Demerse, *Climate Implications of the Proposed Energy East Pipeline: A Preliminary Assessment*. The Pembina Institute, 2014.

<sup>23</sup> Canadian Association of Petroleum Producers, *2013 Crude Oil Forecast, Markets & Transportation* 2013. <http://www.capp.ca/getdoc.aspx?DocId=227308&DT=NTV>

<sup>24</sup> Canadian Association of Petroleum Producers, *2013 Crude Oil Forecast, Markets & Transportation* 2013. <http://www.capp.ca/getdoc.aspx?DocId=227308&DT=NTV>

## **ATTACHMENT “J”**



*Indexed as:*  
**Castonguay Blasting Ltd. v. Ontario (Environment)**

**Castonguay Blasting Ltd., Appellant;  
v.  
Her Majesty The Queen in Right of the Province of Ontario as  
represented by the Minister of the Environment, Respondent,  
and  
Canadian Environmental Law Association and Lake Ontario  
Waterkeeper, Interveners.**

[2013] 3 S.C.R. 323

[2013] 3 R.C.S. 323

[2013] S.C.J. No. 52

[2013] A.C.S. no 52

2013 SCC 52

File No.: 34816.

Supreme Court of Canada

Heard: May 17, 2013;  
Judgment: October 17, 2013.

**Present: McLachlin C.J. and LeBel, Abella, Rothstein,  
Cromwell, Karakatsanis and Wagner JJ.**

(41 paras.)

**Appeal From:**

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

*Catchwords:*

*Environmental law -- Offences -- Obligation to report to Ministry of Environment discharge of contaminant into natural environment -- Subcontractor's blasting operations propelling rock debris into air, damaging home and car -- Subcontractor failing to report to Ministry of Environment discharge of contaminant -- Whether reporting requirement triggered in this case -- Environmental Protection Act, R.S.O. 1990, c. E.19, s. 15(1).*

### Summary:

The appellant C was conducting blasting operations for a highway-widening project when the operation went awry and rock debris known as "fly-rock" was propelled into the air by an explosion. The fly-rock shot approximately 90 metres in the air and damaged a home and a car. A significant amount of rock also landed in the yard. C did not report the incident to the Ministry of the Environment ("Ministry") and was subsequently charged with failing to report to the Ministry the discharge of a contaminant into the natural environment contrary to s. 15(1) of the *Environmental Protection Act* ("EPA"). C was acquitted by the Ontario Court of Justice. The [page324] Ontario Superior Court of Justice set aside the acquittal and entered a conviction. A majority in the Court of Appeal dismissed C's appeal.

*Held:* The appeal should be dismissed.

Ontario's *EPA* requires that the Ministry of the Environment be immediately notified when a contaminant is discharged into the environment. There are two pre-conditions to this reporting requirement -- the discharge must have been out of the normal course of events and it must have had -- or was likely to have -- an adverse environmental impact. The purpose of the requirement is to let the Ministry know about potential environmental damage so that any consequential remedial steps can be taken in a timely way.

The *EPA* is Ontario's principal environmental protection statute. Its status as remedial legislation entitles it to a generous interpretation. Environmental protection is a complex subject matter -- the environment itself and the wide range of activities which might harm it are not easily conducive to precise codification. As a result, environmental legislation embraces an expansive approach to ensure that it can adequately respond to a variety of environmentally harmful scenarios, including ones which might not have been foreseen by the drafters of the legislation. Because the legislature is pursuing the objective of environmental protection, its intended reach is wide and deep.

The overall purpose of the *EPA* is set out in s. 3: "The purpose of this Act is to provide for the protection and conservation of the natural environment." The *EPA* also protects those who *use* the natural environment by protecting human health, plant and animal life, and property. The *EPA* seeks to achieve its goal of protecting the natural environment and those who use it through a series of regulations, prohibitions and reporting requirements. It also provides for a wide range of inspection, enforcement, preventative and remedial powers.

One of the means by which the *EPA* promotes its protective and preventative purposes is through the prohibition in s. 14(1) against discharging a contaminant into the natural environment where it is likely to have an [page325] "adverse effect". This purpose is reinforced by the related requirement in s. 15(1) that any such discharge which is out of the normal course of events be reported to the Ministry of the Environment.

When a contaminant is discharged, the discharger may not know the full extent of the damage caused or likely to be caused. The purpose of the reporting requirement in s. 15(1) is to ensure that it is the Ministry, and not the discharger, who decides what, if any, further steps are required. Moreover, many potential harms may be difficult to detect without the expertise and resources of the Ministry. As a result, the statute places both the obligation to investigate and the decision about what further steps are necessary with the Ministry and not the discharger. Notification provides the Ministry with the opportunity to conduct an inspection as quickly as possible and to obtain information in order to take any necessary remedial action and to fulfill its statutory mandate. This enables the Ministry to respond in a timely way to the discharge of a contaminant into the natural environment and to be involved in determining what, if any, preventative or remedial measures are appropriate.

"Adverse effect" is defined in s. 1(1) of the *EPA*. It has eight definitional components. These eight branches of the definition reflect a statutory recognition that protecting the natural environment requires, among other strategies, maximizing the circumstances in which the Ministry of the Environment may investigate and remedy environmental harms. Each of the eight branches provides an independent trigger for the duty to report.

Section 15(1) of the *EPA* was clearly engaged in the circumstances of this case and C was required to report the discharge of fly-rock forthwith to the Ministry of the Environment. C "discharged" fly-rock into the "natural environment", and there is no doubt that fly-rock meets the definition of "contaminant". The discharge was "out of the normal course of events", and it caused an "adverse effect" under the definition of that term in s. 1(1), namely, it caused injury or damage to property and loss of enjoyment of the normal use of property. The adverse effects were not trivial. The force of the blast, and the rocks it produced, were so powerful they caused extensive [page326] and significant property damage, penetrating the roof of a residence and landing in the kitchen. A vehicle was also seriously damaged. The fly-rock could easily have seriously injured or killed someone. Accordingly, C was required to report the discharge of fly-rock forthwith to the Ministry of Environment under s. 15(1) of the *EPA*.

### Cases Cited

**Referred to:** *Ontario v. Canadian Pacific Ltd.*, [1995] 2 S.C.R. 1031; *R. v. Dow Chemical Canada Inc.* (2000), 47 O.R. (3d) 577; *114957 Canada Ltée (Spraytech, Société d'arrosage) v. Hudson (Town)*, 2001 SCC 40, [2001] 2 S.C.R. 241.

### Statutes and Regulations Cited

*Environmental Protection Act*, R.S.O. 1980, c. 141, s. 13(1).

*Environmental Protection Act*, R.S.O. 1990, c. E.19, ss. 1(1) "adverse effect", "contaminant", "discharge", "natural environment", 3, 6, 7, 8, 14, 15(1), 17, 18, 91.1, 92, 93, 94, 97, 132, 156, 157, 157.1, 188.1.

*Legislation Act, 2006*, S.O. 2006, c. 21, Sch. F, s. 64.

*Occupational Health and Safety Act*, R.S.O. 1990, c. O.1, s. 53.

### Authors Cited

McIntyre, Owen, and Thomas Mosedale. "The Precautionary Principle as a Norm of Customary International Law" (1997), 9 *J. Envtl. L.* 221.

### History and Disposition:

APPEAL from a judgment of the Ontario Court of Appeal (MacPherson, Simmons and Blair JJ.A.), 2012 ONCA 165, 109 O.R. (3d) 401, 289 O.A.C. 146, 65 C.E.L.R. (3d) 1, 10 C.L.R. (4th) 165, [2012] O.J. No. 1161 (QL), 2012 CarswellOnt 2199, affirming a decision of Ray J., 2011 ONSC 767, 57 C.E.L.R. (3d) 142, 226 C.R.R. (2d) 180, [2011] O.J. No. 364 (QL), 2011 CarswellOnt 467, which set aside a decision of Hunter J., 53 C.E.L.R. (3d) 140, [2010] O.J. No. 5713 (QL), 2010 CarswellOnt 6245. Appeal dismissed.

[page327]

### Counsel:

*J. Bruce McMeekin, Andrea Farkouh and Marie-France Major*, for the appellant.

*Sara Blake, Paul McCulloch and Danielle Meuleman*, for the respondent.

*Joseph F. Castrilli and Ramani Nadarajah*, for the interveners.

The judgment of the Court was delivered by

**1 ABELLA J.**:- Ontario's *Environmental Protection Act*, R.S.O. 1990, c. E.19 ("*EPA*"), requires that the Ministry of the Environment be immediately notified when a contaminant is discharged into the environment. There are two pre-conditions to this reporting requirement - the discharge must have been out of the normal course of events and it must have had - or was likely to have - an adverse environmental impact. The purpose of the requirement is to let the Ministry know about potential environmental damage so that any consequential remedial steps can be taken in a timely way.

**2** The interpretive exercise engaged in this appeal is to determine when the reporting requirement is triggered. In my view, there is clarity both of legislative purpose and language: the Ministry of the Environment must be notified when there has been a discharge of a contaminant out of the normal course of events without waiting for proof that the natural environment has, in fact, been impaired. In other words: when in doubt, report.

### Background

**3** In 2007, Castonguay Blasting Ltd. was hired as a subcontractor to conduct blasting operations for a highway-widening project commissioned by the Ontario Ministry of Transportation.

**4** On November 26, 2007, Castonguay was blasting rock when the operation went awry and rock debris known as "fly-rock" was propelled into [page328] the air by an explosion. Had the blast been carried out according to plan, the force of the blast would have been contained and concentrated inwards, reducing the risk of shattered rock becoming airborne. In this case, however, the fly-rock shot approximately 90 metres in the air and crashed through the roof of a home, damaging the

kitchen ceiling, the siding and the eavestroughs. Some of the fly-rock hit a car, breaking the windshield and damaging the hood. There was also a significant amount of rock in the yard.

5 Castonguay immediately reported the incident to the contract administrator, who in turn reported it to the Ministry of Transportation (which had commissioned the project) and the provincial Ministry of Labour in accordance with the requirements in s. 53 of the *Occupational Health and Safety Act*, R.S.O. 1990, c. O.1. Further blasting on the project stopped until the site was inspected and remedial steps were agreed to with the Ministry of Labour.

6 Castonguay did not report the incident to the Ministry of the Environment. That Ministry was not notified until May 2008, when it was told about the incident by the Ministry of Transportation.

7 In September 2009, Castonguay was charged with failing to report the "discharge of a contaminant into the natural environment" to the Ministry of the Environment contrary to s. 15(1) of the *EPA*. Castonguay was acquitted by the Ontario Court of Justice. The Ontario Superior Court of Justice set aside the acquittal and entered a conviction (2011 ONSC 767, 57 C.E.L.R. (3d) 142). Castonguay appealed on the basis that s. 15(1) was not triggered in these circumstances.

8 In the Court of Appeal (2012 ONCA 165, 109 O.R. (3d) 401), MacPherson J.A., writing for the majority, concluded that the plain meaning of the relevant provisions of the *EPA*, the relevant case law, and a proper understanding of the broad purposes of the *EPA* confirmed that the discharge of the [page329] fly-rock in this case was covered by s. 15(1) of the *EPA* and that Castonguay was therefore required to report the incident to the Ministry of the Environment. In dissent, Blair J.A. found no breach of s. 15(1) in these circumstances. I agree with the majority that Castonguay was required to report the incident.

### Analysis

9 The *EPA* is Ontario's principal environmental protection statute. Its status as remedial legislation entitles it to a generous interpretation (*Legislation Act, 2006*, S.O. 2006, c. 21, Sch. F, s. 64; *Ontario v. Canadian Pacific Ltd.*, [1995] 2 S.C.R. 1031, at para. 84). Moreover, as this Court recognized in *Canadian Pacific*, environmental protection is a complex subject matter - the environment itself and the wide range of activities which might harm it are not easily conducive to precise codification (para. 43). As a result, environmental legislation embraces an expansive approach to ensure that it can adequately respond "to a wide variety of environmentally harmful scenarios, including ones which might not have been foreseen by the drafters of the legislation" (para. 43). Because the legislature is pursuing the objective of environmental protection, its intended reach is wide and deep (para. 84).

10 The overall purpose of the *EPA* is set out in s. 3: "The purpose of this Act is to provide for the protection and conservation of the natural environment." "[N]atural environment" is defined in s. 1(1) as the "air, land and water, or any combination or part thereof, of the Province of Ontario". The *EPA* also protects those who *use* the natural environment by protecting human health, plant and animal life, and property. This purpose was aptly summarized by MacPherson J.A. in *R. v. Dow Chemical Canada Inc.* (2000), 47 O.R. (3d) 577 (C.A.), as being "to protect the natural environment and the people who live, work and play in it" (para. 49).

**11** The *EPA* seeks to achieve its goal of protecting the natural environment and those who use it through a series of regulations, prohibitions and reporting requirements. It also provides for a wide range of inspection, enforcement, preventative and remedial powers, such as the authority to issue control orders (s. 7), stop orders (s. 8), orders requiring the repair of damage (s. 17), preventative measure orders requiring steps to ensure that a discharge does not occur or recur (s. 18), or contravention orders requiring a discharger to take compliance steps (s. 157).

**12** One of the means by which the *EPA* promotes its protective and preventative purposes is through the prohibition in s. 14(1) against discharging a contaminant into the natural environment where it is likely to have an adverse effect, and the related requirement in s. 15(1) that any such discharge which is out of the normal course of events be reported to the Ministry of the Environment.

**13** The issue in this appeal is the proper interpretation of the reporting requirement in s. 15(1). This provision states:

**15.-(1)** Every person who discharges a contaminant or causes or permits the discharge of a contaminant into the natural environment shall forthwith notify the Ministry if the discharge is out of the normal course of events, the discharge causes or is likely to cause an adverse effect and the person is not otherwise required to notify the Ministry under section 92.

**14** The terms "discharge", "contaminant", "natural environment" and "adverse effect" are defined in s. 1(1) of the *EPA*, as follows:

**"natural environment"** means the air, land and water, or any combination or part thereof, of the Province of Ontario;

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**"discharge"**, when used as a verb, includes add, deposit, leak or emit and, when used as a noun, includes addition, deposit, emission or leak;

**"contaminant"** means any solid, liquid, gas, odour, heat, sound, vibration, radiation or combination of any of them resulting directly or indirectly from human activities that causes or may cause an adverse effect;

**"adverse effect"** means one or more of,

- (a) impairment of the quality of the natural environment for any use that can be made of it,
- (b) injury or damage to property or to plant or animal life,
- (c) harm or material discomfort to any person,



- (d) an adverse effect on the health of any person,
- (e) impairment of the safety of any person,
- (f) rendering any property or plant or animal life unfit for human use,
- (g) loss of enjoyment of normal use of property, and
- (h) interference with the normal conduct of business;

**15** Castonguay conceded that the discharge of fly-rock caused property damage, but argued that injury or damage to private property alone is insufficient to engage the reporting requirement. Since the discharge did not impair the natural environment - the air, land or water - Castonguay was not required to report the incident to the Ministry.

**16** Castonguay's argument is, in essence, an argument that while the definition of "adverse effect" has eight components - paras. (a) to (h) - para. (a) is an umbrella clause. In other words, there *must* be, in the language of para. (a), "impairment of the quality of the natural environment for any use that can be made of it" before [page332] any of the other seven elements come into play. They are not stand-alone elements and only constitute an "adverse effect" if they are accompanied by the impairment to the quality of the natural environment set out in para. (a). An adverse effect as defined in paras. (b) through (h) *without* any accompanying impairment to the quality of the natural environment under para. (a) will not be sufficient to trigger s. 15(1).

**17** The Minister of the Environment, on the other hand, argued that if the discharge caused or was likely to cause *one or more of* the adverse effects listed in paras. (a) to (h) of the statutory definition, the obligation to report the discharge of a contaminant under s. 15(1) materializes. Each of the eight listed components is a separate impact that can trigger the requirement to report.

**18** The Minister's position is demonstrably supported by the language of s. 15(1) and the relevant definitions in the *EPA*. The purpose of the reporting requirement in s. 15(1) is to ensure that it is the Ministry of the Environment, and not the discharger, who decides what, if any, further steps are required. When a contaminant is discharged, the discharger may not know the full extent of the damage caused or, in the words of s. 15(1), likely to be caused. Moreover, many potential harms such as harm to human health, or injury to plants and animals, and even impairment of the natural environment, may be difficult to detect without the expertise and resources of the Ministry. As a result, the statute places both the obligation to investigate and the decision about what further steps are necessary with the Ministry and not the discharger.

**19** Notification provides the Ministry with the opportunity to conduct an inspection as quickly [page333] as possible and to obtain information in order to take any necessary remedial action and to fulfil its statutory mandate. This enables the Ministry to respond in a timely way to the discharge of a contaminant into the natural environment and to be involved in determining what, if any, preventative or remedial measures are appropriate.

**20** As the interveners Canadian Environmental Law Association and Lake Ontario Waterkeeper pointed out in their joint factum, s. 15(1) is also consistent with the precautionary principle. This emerging international law principle recognizes that since there are inherent limits in being able to determine and predict environmental impacts with scientific certainty, environmental policies must anticipate and prevent environmental degradation (O. McIntyre and T. Mosedale, "The Precautionary Principle as a Norm of Customary International Law" (1997), 9 *J. Envtl. L.* 221, at pp. 221-22; *114957 Canada Ltée (Spraytech, Société d'arrosage) v. Hudson (Town)*, 2001 SCC 40, [2001] 2 S.C.R. 241, at paras. 30-32). Section 15(1) gives effect to the concerns underlying the precautionary

principle by ensuring that the Ministry of the Environment is notified and has the ability to respond once there has been a discharge of a contaminant out of the normal course of events, without waiting for proof that the natural environment has, in fact, been impaired.

**21** Parsing the language of s. 15(1) illuminates its clear preventative and protective purposes. First, a person must discharge a *contaminant*. Second, the contaminant must be discharged *into the natural environment*. Third, the discharge must be *out of the normal course of events*. Fourth, the discharge must be one that *causes or is likely to cause an adverse effect*. Finally, the person must not be otherwise required to notify the Ministry under s. 92, which refers to the spill of pollutants from a structure, vehicle or container and is therefore not applicable to the circumstances of this case.

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**22** Taking each phrase in turn, the full scope of the reporting requirement is revealed. Section 15(1) applies to the discharge of "contaminant[s]" as defined by the *EPA*. The definition of contaminant in s. 1(1) of the *EPA* includes "any solid liquid, gas, odour, heat, sound, vibration, radiation or combination of any of them resulting directly or indirectly from human activities that causes or may cause an adverse effect". The reference to human activities in the definition of contaminant, when read in the context of s. 15 and the *EPA* as a whole, recognizes that the *EPA* applies only to those activities which engage the natural environment - the air, land or water in the province. This ensures that the definition of contaminant and s. 15 of the *EPA* maintain a nexus to the statutory objective of environmental protection.

**23** The discharge must be *into the natural environment*, defined as the air, land and water of Ontario. Section 15(1) does not impose any restrictions on the length of time the contaminant remains in the natural environment, nor does it require that the contaminant become part of the natural environment.

**24** Only discharges that are *out of the normal course of events* are required to be reported to the Ministry. This restricts the application of s. 15(1) by excluding many everyday, routine activities. Although driving a car, for example, discharges fumes into the natural environment, the discharge is not out of the normal course of events and no report to the Ministry is required.

**25** The key, in my view, to understanding s. 15(1) is that the discharge of the contaminant caused or was likely to cause an "adverse effect". As previously noted, adverse effect is defined as:

[page335]

"adverse effect" means one or more of,

- (a) impairment of the quality of the natural environment for any use that can be made of it,

- (b) injury or damage to property or to plant or animal life,
- (c) harm or material discomfort to any person,
- (d) an adverse effect on the health of any person,
- (e) impairment of the safety of any person,
- (f) rendering any property or plant or animal life unfit for human use,
- (g) loss of enjoyment of normal use of property, and
- (h) interference with the normal conduct of business;

**26** There is already a jurisprudential trail from this Court and the Ontario Court of Appeal to guide our interpretation. In *Canadian Pacific*, this Court considered an earlier version of the *EPA*, which did not specifically mention the term "adverse effect". The appeal focused on what was then s. 13(1) of the *EPA*, R.S.O. 1980, c. 141, which stated:

**13.-** (1) Notwithstanding any other provision of this Act or the regulations, no person shall deposit, add, emit or discharge a contaminant or cause or permit the deposit, addition, emission or discharge of a contaminant into the natural environment that,

- (a) causes or is likely to cause impairment of the quality of the natural environment for any use that can be made of it;
- (b) causes or is likely to cause injury or damage to property or to plant or animal life;
- (c) causes or is likely to cause harm or material discomfort to any person;

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- (d) adversely affects or is likely to adversely affect the health of any person;
- (e) impairs or is likely to impair the safety of any person;
- (f) renders or is likely to render any property or plant or animal life unfit for use by man;
- (g) causes or is likely to cause loss of enjoyment of normal use of property; or
- (h) interferes or is likely to interfere with the normal conduct of business.

**27** The first part of s. 13(1) is now s. 14(1).<sup>1</sup> Paragraphs (a) to (h) now form part of the definition of "adverse effect" found in s. 1(1) of the *EPA*.

**28** The issue in *Canadian Pacific* was whether the words "for any use that can be made of it" in para. (a) of s. 13(1) were unconstitutionally vague or overbroad. Although the Court's reasoning was focused on the constitutional issues raised in that case, the Court made several statements about the interpretation of s. 13(1)(a) of the *EPA* which are helpful in resolving the interpretive issue in this appeal. Notably, in finding that the provision was neither vague nor overbroad, Gonthier J.,

writing for the majority, held that the application of s. 13(1)(a) was confined to the discharge of contaminants that cause, or are likely to cause, *non-trivial* impairment of the quality of the natural environment for any use that could be made of it.

**29** Lamer C.J., in concurring reasons which were not endorsed by the majority, was of the view [page337] that para. (a) should be interpreted as an umbrella clause so that harm to the quality of the natural environment was independently required before the rest of the provisions in paras. (b) to (h) of s. 13(1) were engaged.

**30** Castonguay advocates that we adopt the minority approach of Lamer C.J. in *Canadian Pacific*. This, with respect, is an argument that cannot survive the amended language in the *EPA* after *Canadian Pacific* was decided. The most significant change to the *EPA* was the creation of a separate statutory definition of "adverse effect". The definition included the words "*means one or more of*" the eight components set out in paras. (a) through (h). None of these components is said to be an overriding requirement, and each is stated to be an adverse effect. As a result, all eight branches of "adverse effect" provide independent triggers for liability. Castonguay's interpretation reads out these crucial legislative directives that *each* effect is deemed to be adverse.

**31** To interpret "adverse effect" restrictively not only reads out the plain and obvious meaning of the definition, it narrows the scope of the reporting requirement, thereby restricting its remedial capacity and the Ministry's ability to fulfill its statutory mandate.

**32** *Canadian Pacific* was interpreted and applied by the Ontario Court of Appeal in *Dow Chemical*. In that case, Dow Chemical, like Castonguay, argued that, in order to establish an adverse effect under the *EPA*, "impairment of the quality of the natural environment" under para. (a) *must* be made out *in addition* to any of the other effects set out [page338] in paras. (b) through (h). MacPherson J.A. rejected this approach, concluding instead that

[paragraph] (a) is just one of eight defined adverse effects. It relates to the natural environment, which is defined in the Act as "the air, land and water" (s. 1(1)). The other seven [paragraphs] set out other forms of adverse effect. Some relate to plants and animals ([paras.] (b) and (f)); some relate to people ([paras.] (c), (d) and (f)) and their property ([para.] (g)) and business ([para.] (h)). [para. 29]

**33** Applying Gonthier J.'s language in *Canadian Pacific*, MacPherson J.A. accepted that each of the eight enumerated adverse effects must be more than trivial but that any of them was sufficient to satisfy the definition (para. 30).

**34** The effects set out in paras. (a) to (h) are designed to capture a broad range of impacts. Some are limited to impacts on animals, people or property and do not require any impairment of the air, land or water in Ontario. Since the *EPA* protects the natural environment *and those who use it*, this is consistent with the broader protections the *EPA* was intended to provide. Paragraphs (a) through (h) also reflect a statutory recognition that protecting the natural environment requires, among other strategies, maximizing the circumstances in which the Ministry of the Environment may investigate and remedy environmental harms, including those identified in paras. (a) to (h).

**35** Moreover, it is important to note that the words "adverse effect" appear in many provisions of the *EPA*. Sections 6, 14, 18, 91.1, 93, 94, 97, 132, 156, 157.1, and 188.1 deal with a range of envi-

ronmental concerns such as when an order to take preventative measures may be issued or the development of spill prevention and contingency plans. Restricting the definitional scope of "adverse effect" would therefore also limit the scope of the *EPA*'s protective and preventative capacities and, [page339] consequently, the Ministry's ability to respond to the broad purposes of the statute.

**36** In summary, the requirement to report "forthwith" in s. 15(1) of the *EPA* is engaged where the following elements are established:

- i. a "contaminant" is discharged;
- ii. the contaminant is discharged into the natural environment (the air, land and water or any combination or part thereof, of the Province of Ontario);
- iii. the discharge is out of the normal course of events;
- iv. the discharge causes, *or is likely to cause*, an adverse effect, namely one or more of the effects listed in paras. (a) to (h) of the definition;
- v. the adverse effect or effects are not trivial or minimal; and
- vi. the person is not otherwise required to notify the Ministry under s. 92, which addresses the spill of pollutants.

**37** Applying these elements to this case, s. 15(1) was clearly engaged. Castonguay "discharged" fly-rock, large pieces of rock created by the force of a blast, into the "natural environment". There is also no doubt that fly-rock meets the definition of "contaminant". The discharge in this case was "out of the normal course of events" - it was an accidental consequence of Castonguay's blasting operation. Had the blast been conducted routinely, the fly-rock would not have been thrust into the air.

[page340]

**38** Finally, the discharge of fly-rock caused an "adverse effect" under paras. (b) and (g) of the definition, namely, it caused injury or damage to property and loss of enjoyment of the normal use of the property. Because the reporting requirement is also engaged when the discharge is "likely to cause an adverse effect", para. (e) is also applicable since the potential existed for "impairment of the safety of any person".

**39** The adverse effects were not trivial. The force of the blast, and the rocks it produced, were so powerful they caused extensive and significant property damage, penetrating the roof of a residence and landing in the kitchen. A vehicle was also seriously damaged. The fly-rock could easily have seriously injured or killed someone.

**40** Accordingly, s. 15(1) of the *EPA* applied and Castonguay was required to report the discharge of fly-rock forthwith to the Ministry of the Environment.

**41** I would therefore dismiss the appeal. In accordance with the Minister of the Environment's request, there will be no order as to co

*Appeal dismissed.*

**Solicitors:**

*Solicitors for the appellant: Miller Thomson, Markham; Supreme Advocacy, Ottawa.*

*Solicitor for the respondent: Attorney General of Ontario, Toronto.*

*Solicitor for the interveners: Canadian Environmental Law Association, Toronto.*

1 Section 14(1) of the *EPA* states:

**14.** (1) Subject to subsection (2) but despite any other provision of this Act or the regulations, a person shall not discharge a contaminant or cause or permit the discharge of a contaminant into the natural environment, if the discharge causes or may cause an adverse effect.

## **ATTACHMENT “K”**



*Case Name:*

**114957 Canada Ltée (Spraytech, Société d'arrosage) v.  
Hudson (Town)**

**114957 Canada Ltée (Spraytech, Société d'arrosage)  
and Services des espaces verts Ltée/Chemlawn,  
appellants;**

**v.**

**Town of Hudson, respondent, and  
Federation of Canadian Municipalities, Nature-Action  
Québec Inc. and World Wildlife Fund Canada, Toronto  
Environmental Alliance, Sierra Club of Canada, Canadian  
Environmental Law Association, Parents' Environmental  
Network, Healthy Lawns -- Healthy People, Pesticide  
Action Group Kitchener, Working Group on the Health  
Dangers of the Urban Use of Pesticides, Environmental  
Action Barrie, Breast Cancer Prevention Coalition,  
Vaughan Environmental Action Committee and Dr. Merryl  
Hammond, and Fédération interdisciplinaire de  
l'horticulture ornementale du Québec, interveners.**

[2001] S.C.J. No. 42

[2001] A.C.S. no 42

2001 SCC 40

2001 CSC 40

[2001] 2 S.C.R. 241

[2001] 2 R.C.S. 241

200 D.L.R. (4th) 419

271 N.R. 201

J.E. 2001-1306

40 C.E.L.R. (N.S.) 1

19 M.P.L.R. (3d) 1

106 A.C.W.S. (3d) 270

REJB 2001-24833

File No.: 26937.

Supreme Court of Canada

2000: December 7 / 2001: June 28.

**Present: L'Heureux-Dubé, Gonthier, Iacobucci, Major,  
Bastarache, Arbour and LeBel JJ.**

ON APPEAL FROM THE COURT OF APPEAL FOR QUEBEC (56 paras.)

*Municipal law -- By-laws -- Regulation and restriction of pesticide use -- Town adopting by-law restricting use of pesticides within its perimeter to specified locations and enumerated activities -- Whether Town had statutory authority to enact by-law -- Whether by-law rendered inoperative because of conflict with federal or provincial legislation -- Town of Hudson By-law 270 -- Cities and Towns Act, R.S.Q., c. C-19, s. 410(1).*

The appellants are landscaping and lawn care companies operating mostly in the greater Montreal area, with both commercial and residential clients. They make regular use of pesticides approved by the federal Pest Control Products Act in the course of their business activities and hold the requisite licences under Quebec's Pesticides Act. In 1991 the respondent Town, located west of Montreal, adopted By-law 270, which restricted the use of pesticides within its perimeter to specified locations and for enumerated activities. The definition of pesticides in By-law 270 replicates that in the Pesticides Act. Under s. 410(1) of the Quebec Cities and Towns Act ("C.T.A."), the council may make by-laws to "secure peace, order, good government, health and general welfare in the territory of the municipality", while under s. 412(32) C.T.A. it may make by-laws to "regulate or prohibit the ... use of ... combustible, explosive, corrosive, toxic, radioactive or other materials that are harmful to public health or safety, in the territory of the municipality or within 1 km therefrom". In 1992 the appellants were charged with having used pesticides in violation of By-law 270. They brought a motion for declaratory judgment asking the Superior Court to declare By-law 270 to be inoperative and ultra vires the Town's authority. The Superior Court denied the motion, and the Court of Appeal affirmed that decision.

Held: The appeal should be dismissed.

Per L'Heureux-Dubé, Gonthier, Bastarache and Arbour JJ.: As statutory bodies, municipalities may exercise only those powers expressly conferred by statute, those powers necessarily or fairly implied by the expressed power in the statute, and those indispensable powers essential and not merely convenient to the effectuation of the purposes of the corporation. Included in this authority are

"general welfare" powers, conferred by provisions in provincial enabling legislation, on which municipalities can draw. Section 410 C.T.A. is an example of such a general welfare provision and supplements the specific grants of power in s. 412. While enabling provisions that allow municipalities to regulate for the "general welfare" within their territory authorize the enactment of by-laws genuinely aimed at furthering goals such as public health and safety, courts faced with an impugned by-law enacted under an "omnibus" provision such as s. 410 C.T.A. must be vigilant in scrutinizing the true purpose of the by-law.

By-law 270 does not fall within the ambit of s. 412(32) C.T.A. There is no equation of pesticides and "toxic ... materials" either in the terms of the by-law or in any evidence presented during this litigation. Since there is no specific provision in the provincial enabling legislation referring to pesticides, the by-law must fall within the purview of s. 410(1) C.T.A. By-law 270 read as a whole does not impose a total prohibition, but rather permits the use of pesticides in certain situations where that use is not purely an aesthetic pursuit. Based on the distinction between essential and non-essential uses of pesticides, it is reasonable to conclude that the Town by-law's purpose is to minimize the use of allegedly harmful pesticides in order to promote the health of its inhabitants. This purpose falls squarely within the "health" component of s. 410(1) C.T.A. The distinctions impugned by the appellants as restricting their businesses are necessary incidents to the power delegated by the province under s. 410(1) C.T.A. Moreover, reading s. 410(1) to permit the Town to regulate pesticide use is consistent with principles of international law and policy. The interpretation of By-law 270 set out here respects international law's "precautionary principle". In the context of the precautionary principle's tenets, the Town's concerns about pesticides fit well under their rubric of preventive action.

By-law 270 was not rendered inoperative because of a conflict with federal or provincial legislation. As a product of provincial enabling legislation, By-law 270 is subject to the "impossibility of dual compliance" test for conflict between federal and provincial legislation set out in *Multiple Access*. The federal Pest Control Products Act regulates which pesticides can be registered for manufacture and/or use in Canada. This legislation is permissive, rather than exhaustive, and there is no operational conflict with By-law 270. The *Multiple Access* test also applies to the inquiry into whether there is a conflict between the by-law and provincial legislation. In this case, there is no barrier to dual compliance with By-law 270 and the Quebec Pesticides Act, nor any plausible evidence that the legislature intended to preclude municipal regulation of pesticide use. The Pesticides Act establishes a permit and licensing system for vendors and commercial applicators of pesticides and thus complements the federal legislation's focus on the products themselves. Along with By-law 270, these laws establish a tri-level regulatory regime.

Per Iacobucci, Major and LeBel JJ.: The basic test to determine whether there is an operational conflict remains the impossibility of dual compliance. From this perspective, the alleged conflict with federal legislation simply does not exist. Nor does a conflict exist with the Quebec Pesticides Act, for the reasons given by the majority.

The issues in this case remain strictly first whether the C.T.A. authorizes municipalities to regulate the use of pesticides within their territorial limits, and second whether the particular regulation conforms with the general principles applicable to delegated legislation. The Town concedes that the only provision under which its by-law can be upheld is the general clause of s. 410(1) C.T.A. While it appears to be sound legislative and administrative policy, under general welfare provisions, to grant local governments a residual authority to address emerging or changing issues concerning the

welfare of the local community living within their territory, it is not enough that a particular issue has become a pressing concern in the opinion of a local community. This concern must be closely related to the immediate interests of the community within the territorial limits defined by the legislature in a matter where local governments may usefully intervene. In this case, the by-law targets problems of use of land and property, and addresses neighborhood concerns that have always been within the realm of local government activity. The by-law was thus properly authorized by s. 410(1).

Two basic and longstanding principles of delegated legislation state that a by-law may not be prohibitory and may not discriminate unless the enabling legislation so authorizes. While on its face, By-law 270 involves a general prohibition and then authorizes some specific uses, when it is read as a whole its overall effect is to prohibit purely aesthetic use of pesticides while allowing other uses, mainly for business or agricultural purposes. Moreover, although the by-law discriminates, there can be no regulation on such a topic without some form of discrimination in the sense that the by-law must determine where, when and how a particular product may be used. An implied authority to discriminate was thus unavoidably part of the delegated regulatory power.

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By L'Heureux-Dubé J.

Distinguished: *R. v. Greenbaum*, [1993] 1 S.C.R. 674; *Shell Canada Products Ltd. v. Vancouver (City)*, [1994] 1 S.C.R. 231; applied: *Multiple Access Ltd. v. McCutcheon*, [1982] 2 S.C.R. 161; referred to: *Ontario v. Canadian Pacific Ltd.*, [1995] 2 S.C.R. 1031; *Friends of the Oldman River Society v. Canada (Minister of Transport)*, [1992] 1 S.C.R. 3; *R. v. Hydro-Québec*, [1997] 3 S.C.R. 213; *R. v. Sharma*, [1993] 1 S.C.R. 650; *Re Weir and The Queen* (1979), 26 O.R. (2d) 326; *Kuchma v. Rural Municipality of Tache*, [1945] S.C.R. 234; *Montréal (City of) v. Arcade Amusements Inc.*, [1985] 1 S.C.R. 368; *Nanaimo (City) v. Rascal Trucking Ltd.*, [2000] 1 S.C.R. 342, 2000 SCC 13; *Scarborough v. R.E.F. Homes Ltd.* (1979), 9 M.P.L.R. 255; *Allard Contractors Ltd. v. Coquitlam (District)*, [1993] 4 S.C.R. 371; *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817; *A.P. Pollution Control Board v. Nayudu*, 1999 S.O.L. Case No. 53; *Vellore Citizens Welfare Forum v. Union of India*, [1996] Supp. 5 S.C.R. 241; *M & D Farm Ltd. v. Manitoba Agricultural Credit Corp.*, [1999] 2 S.C.R. 961; *Bank of Montreal v. Hall*, [1990] 1 S.C.R. 121; *Attorney General for Ontario v. City of Mississauga* (1981), 15 M.P.L.R. 212; *Township of Uxbridge v. Timber Bros. Sand & Gravel Ltd.* (1975), 7 O.R. (2d) 484; *British Columbia Lottery Corp. v. Vancouver (City)* (1999), 169 D.L.R. (4th) 141; *Law Society of Upper Canada v. Barrie (City)* (2000), 46 O.R. (3d) 620; *Huot v. St-Jérôme (Ville de)*, J.E. 93-1052; *St-Michel-Archange (Municipalité de) v. 2419-6388 Québec Inc.*, [1992] R.J.Q. 875.

By LeBel J.

Applied: *Multiple Access Ltd. v. McCutcheon*, [1982] 2 S.C.R. 161; referred to: *M & D Farm Ltd. v. Manitoba Agricultural Credit Corp.*, [1999] 2 S.C.R. 961; *Public School Boards' Assn. of Alberta v. Alberta (Attorney General)*, [2000] 2 S.C.R. 409, 2000 SCC 45; *Ontario English Catholic Teachers' Assn. v. Ontario (Attorney General)*, [2001] 1 S.C.R. 470, 2001 SCC 15; *Montréal (City of) v. Arcade Amusements Inc.*, [1985] 1 S.C.R. 368; *R. v. Sharma*, [1993] 1 S.C.R. 650; *Nanaimo (City) v. Rascal Trucking Ltd.*, [2000] 1 S.C.R. 342, 2000 SCC 13; *R. v. Greenbaum*, [1993] 1 S.C.R. 674; *Shell Canada Products Ltd. v. Vancouver (City)*, [1994] 1 S.C.R. 231.

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 Cities, Towns and Villages Act, R.S.N.W.T. 1988, c. C-8, ss. 54, 102.  
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 Pesticides Act, R.S.Q., c. P-9.3, ss. 102 [am. 1987, c. 29, s. 102; am. 1990, c. 85, s. 122; repl. 1993, c. 77, s. 9], 105 [am. 1987, c. 29, s. 105], 105.1 [ad. 1993, c. 77, s. 11], 106 [am. 1987, c. 29, s. 106], 107 [am. 1987, c. 29, s. 107].  
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United Nations. General Assembly. Preparatory Committee for the United Nations Conference on Environment and Development. Report of the Economic Commission for Europe on the Bergen Conference, Annex I, Bergen Ministerial Declaration on Sustainable Developments, A/CONF.151/PC/10, August 6, 1990, para. 7.

APPEAL from a judgment of the Quebec Court of Appeal, [1998] Q.J. No. 2546 (QL), J.E. 98-1855, affirming a decision of the Superior Court (1993), 19 M.P.L.R. (2d) 224, dismissing the appellants' motion for declaratory judgment. Appeal dismissed.

G rard Dugr  and Denis Manzo, for the appellants.

St phane Bri re and Pierre Lepage, for the respondent.

Stewart A. G. Elgie and Jerry V. DeMarco, for the interveners Federation of Canadian Municipalities, Nature-Action Qu bec Inc. and World Wildlife Fund Canada.

Written submissions only by Theresa A. McClenaghan and Paul Muldoon, for the interveners Toronto Environmental Alliance, Sierra Club of Canada, Canadian Environmental Law Association, Parents' Environmental Network, Healthy Lawns -- Healthy People, Pesticide Action Group Kitchener, Working Group on the Health Dangers of the Urban Use of Pesticides, Environmental Action Barrie, Breast Cancer Prevention Coalition, Vaughan Environmental Action Committee and Dr. Merryl Hammond.

Jean Piette, for the intervener F d ration interdisciplinaire de l'horticulture ornementale du Qu bec.

Solicitors for the appellants: Fraser Milner Casgrain, Montr al.

Solicitors for the respondent: B langer Sauv , Montr al.

Solicitors for the interveners Federation of Canadian Municipalities, Nature-Action Qu bec Inc. and World Wildlife Fund Canada: Sierra Legal Defence Fund, Toronto.

Solicitors for the interveners Toronto Environmental Alliance, Sierra Club of Canada, Canadian Environmental Law Association, Parents' Environmental Network, Healthy Lawns -- Healthy People, Pesticide Action Group Kitchener, Working Group on the Health Dangers of the Urban Use of Pesticides, Environmental Action Barrie, Breast Cancer Prevention Coalition, Vaughan Environmental Action Committee and Dr. Merryl Hammond: Canadian Environmental Law Association, Toronto.

Solicitors for the intervener F d ration interdisciplinaire de l'horticulture ornementale du Qu bec: Ogilvy Renault, Qu bec.

The judgment of L'Heureux-Dubé, Gonthier, Bastarache and Arbour JJ. was delivered by

**1 L'HEUREUX-DUBÉ J.:**-- The context of this appeal includes the realization that our common future, that of every Canadian community, depends on a healthy environment. In the words of the Superior Court judge: "Twenty years ago, there was very little concern over the effect of chemicals such as pesticides on the population. Today, we are more conscious of what type of an environment we wish to live in, and what quality of life we wish to expose our children [to]" ( (1993), 19 M.P.L.R. (2d) 224, at p. 230). This Court has recognized that "[e]veryone is aware that individually and collectively, we are responsible for preserving the natural environment ... environmental protection [has] emerged as a fundamental value in Canadian society": *Ontario v. Canadian Pacific Ltd.*, [1995] 2 S.C.R. 1031, at para. 55. See also *Friends of the Oldman River Society v. Canada (Minister of Transport)*, [1992] 1 S.C.R. 3, at pp. 16-17.

**2** Regardless of whether pesticides are in fact an environmental threat, the Court is asked to decide the legal question of whether the Town of Hudson, Quebec, acted within its authority in enacting a by-law regulating and restricting pesticide use.

**3** The case arises in an era in which matters of governance are often examined through the lens of the principle of subsidiarity. This is the proposition that law-making and implementation are often best achieved at a level of government that is not only effective, but also closest to the citizens affected and thus most responsive to their needs, to local distinctiveness, and to population diversity. La Forest J. wrote for the majority in *R. v. Hydro-Québec*, [1997] 3 S.C.R. 213, at para. 127, that "the protection of the environment is a major challenge of our time. It is an international problem, one that requires action by governments at all levels" (emphasis added). His reasons in that case also quoted with approval a passage from *Our Common Future*, the report produced in 1987 by the United Nations' World Commission on the Environment and Development. The so-called "Brundtland Commission" recommended that "local governments [should be] empowered to exceed, but not to lower, national norms" (p. 220).

**4** There are now at least 37 Quebec municipalities with by-laws restricting pesticides: J. Swaigen, "The Hudson Case: Municipal Powers to Regulate Pesticides Confirmed by Quebec Courts" (2000), 34 C.E.L.R. (N.S.) 162, at p. 174. Nevertheless, each level of government must be respectful of the division of powers that is the hallmark of our federal system; there is a fine line between laws that legitimately complement each other and those that invade another government's protected legislative sphere. Ours is a legal inquiry informed by the environmental policy context, not the reverse.

## I. Facts

**5** The appellants are landscaping and lawn care companies operating mostly in the region of greater Montreal, with both commercial and residential clients. They make regular use of pesticides approved by the federal Pest Control Products Act, R.S.C. 1985, c. P-9, in the course of their business activities and hold the requisite licences under Quebec's Pesticides Act, R.S.Q., c. P-9.3.

**6** The respondent, the Town of Hudson ("the Town"), is a municipal corporation governed by the Cities and Towns Act, R.S.Q., c. C-19 ("C.T.A."). It is located about 40 kilometres west of Montreal and has a population of approximately 5,400 people, some of whom are clients of the appellants. In 1991, the Town adopted By-law 270, restricting the use of pesticides within its perimeter to specified locations and for enumerated activities. The by-law responded to residents' concerns, re-



peatedly expressed since 1985. The residents submitted numerous letters and comments to the Town's Council. The definition of pesticides in By-law 270 replicates that of the Pesticides Act.

7 In November 1992, the appellants were served with a summons by the Town to appear before the Municipal Court and respond to charges of having used pesticides in violation of By-law 270. The appellants pled not guilty and obtained a suspension of proceedings in order to bring a motion for declaratory judgment before the Superior Court (under art. 453 of Quebec's Code of Civil Procedure, R.S.Q., c. C-25). They asked that the court declare By-law 270 (as well as By-law 248, which is not part of this appeal) to be inoperative and ultra vires the Town's authority.

8 The Superior Court denied the motion for declaratory judgment, finding that the by-laws fell within the scope of the Town's powers under the C.T.A. This ruling was affirmed by a unanimous Quebec Court of Appeal.

## II. Relevant Statutory Provisions

### 9 Town of Hudson By-law 270

1. The following words and expressions, whenever the same occur in this By-Law, shall have the following meaning:

- a) "PESTICIDES": means any substance, matter or micro-organism intended to control, destroy, reduce, attract or repel, directly or indirectly, an organism which is noxious, harmful or annoying for a human being, fauna, vegetation, crops or other goods or intended to regulate the growth of vegetation, excluding medicine or vaccine;
- b) "FARMER": means a farm producer within the meaning of the Farm Producers Act (R.S.Q., chap., P-28);

...

- 2. The spreading and use of a pesticide is prohibited throughout the territory of the Town.
- 3. Notwithstanding article 2, it is permitted to use a pesticide in the following cases:
  - a) in a public or private swimming-pool;
  - b) to purify water intended for the use of human beings or animals;
  - c) inside of a building;
  - d) to control or destroy animals which constitute a danger for human beings;
  - e) to control or destroy plants which constitute a danger for human beings who are allergic thereto.
- 4. Notwithstanding article 2, a farmer using a pesticide on an immovable which is exploited for purposes of agriculture or horticulture, in a hot house or in the open, is requested to

- a) register, by written declaration, with the Town, in the month of march of each year, the products which he stores and which he will be using during that year.
  - b) also provide, in the written declaration at article 4 a), the schedule of application of said products and the area(s) of his property where the products will be applied.
5. Notwithstanding article 2, it is permitted to use a pesticide on a golf course, for a period not exceeding five (5) years from the date this by-law comes into force:
- ...
6. Notwithstanding article 2, it is permitted to use a biological pesticide to control or destroy insects which constitute a danger or an inconvenience for human beings.
- ...
10. For the purpose of article 8 of the Agricultural Abuses Act (R.S.Q. chap. A-2) an inspector designated by the Town may use a pesticide, notwithstanding article 2 of the By-Law, if there is no other efficient way of destroying noxious plants determined as such by the Provincial Government and the presence of which is harmful to a real and continuous agricultural exploitation.

Cities and Towns Act, R.S.Q., c. C-19

410. The council may make by-laws:

(1) To secure peace, order, good government, health and general welfare in the territory of the municipality, provided such by-laws are not contrary to the laws of Canada, or of Québec, nor inconsistent with any special provision of this Act or of the charter;

...

In no case may the council make by-laws on the matters contemplated in the Agricultural Products, Marine Products and Food Act (chapter P-29) or in the Dairy Products and Dairy Products Substitutes Act (chapter P-30). This paragraph applies notwithstanding any provision of a special Act granting powers on those matters to any municipality other than Ville de Trois-Rivières and Ville de Sherbrooke.

...

412. The council may make by-laws:

...

(32) To regulate or prohibit the storage and use of gun-powder, dry pitch, resin, coal oil, benzine, naphtha, gasoline, turpentine, gun-cotton, nitro-glycerine, and other combustible, explosive, corrosive, toxic or radioactive or other materials that are harmful to public health or safety, in the territory of the municipality or within 1 km therefrom;

By-laws passed under the first paragraph in respect of corrosive, toxic or radioactive materials require the approval of the Minister of the Environment;

...

463.1 Subject to the Pesticides Act (chapter P-9.3) and the Environment Quality Act (chapter Q-2), the municipality may, with the consent of the owner of an immovable, carry out pesticide application works on the immovable.

Pesticides Act, R.S.Q., c. P-9.3

102. The provisions of the Pesticide Management Code and of the other regulations of this Act prevail over any inconsistent provision of any by-law passed by a municipality or an urban community.

102. [As revised in 1993; not yet in force] The Pesticide Management Code and any other regulation enacted pursuant to this Act shall render inoperative any regulatory provision concerning the same matter enacted by a municipality or an urban community, except where the provision

-- concerns landscaping or extermination activities, such as fumigation, as defined by government regulation, and

-- prevents or further mitigates harmful effects on the health of humans or of other living species or damage to the environment or to property.

...

105. [Not yet in force] The Government shall enact by regulation a Pesticide Management Code which may prescribe rules, restrictions or prohibitions respecting activities related to the distribution, storage, transportation, sale or use of any pesticide, pesticide container or any equipment used for any of those activities.

105.1. [Not yet in force] The Pesticide Management Code may require a person who stores pesticides of a determined category or in a determined quantity to subscribe civil liability insurance, the kind, extent, duration, amount and other applicable conditions of which are determined in the said Code, and to furnish proof thereof to the Minister.

106. [Not yet in force] The Pesticide Management Code may cause any rule elaborated by another government or by a body to be mandatory.

In addition, the code may cause any instructions of the manufacturer of a pesticide or of equipment used for any activity referred to in the code to be mandatory.

107. [Not yet in force] The Government may prescribe that the contravention of the provisions of this code which it determines constitutes an offence.

Pest Control Products Act, R.S.C. 1985, c. P-9

4. (1) No person shall manufacture, store, display, distribute or use any control product under unsafe conditions.

...

(3) A control product that is not manufactured, stored, displayed, distributed or used as prescribed or that is manufactured, stored, displayed, distributed or used contrary to the regulations shall be deemed to be manufactured, stored, displayed, distributed or used contrary to subsection (1).

...

6. (1) The Governor in Council may make regulations

...

- (j) respecting the manufacture, storage, distribution, display and use of any control product;

Pest Control Products Regulations, C.R.C. 1978, c. 1253

45. (1) No person shall use a control product in a manner that is inconsistent with the directions or limitations respecting its use shown on the label.

(2) No person shall use a control product imported for the importer's own use in a manner that is inconsistent with the conditions set forth on the importer's declaration respecting the control product.

(3) No person shall use a control product that is exempt from registration under paragraph 5(a) for any purpose other than the manufacture of a registered control product.

### III. Judgments

A. Superior Court (1993), 19 M.P.L.R. (2d) 224

**10** Kennedy J. held that by-laws are presumed valid and legal. He found that By-laws 248 and 270 were adopted under s. 410 C.T.A. and, thus, did not require ministerial approval to enter into effect. Both by-laws deal with pesticides and not toxic substances and since "pesticides" are not included in s. 412(32), ministerial approval is not required. According to Kennedy J., the Town, faced with a situation involving health and the environment, acted in the public interest by enacting the by-laws in question. Consequently, the Town could rely on s. 410(1) C.T.A. as the legislative provision that enabled it to adopt these by-laws.

**11** Kennedy J. then considered the provisions of the Pesticides Act to determine whether the by-laws conflicted with provincial legislation. He found it clear that the Pesticides Act was enacted with the intention to allow municipalities to adopt by-laws of this nature. In this regard, Kennedy J. cited ss. 102 and 105 to 107 of the Pesticides Act, which envision the creation of a Pesticide Management Code allowing the provincial government to restrict or prohibit pesticides. Section 102 of that Act states that the provisions of the Code are to take precedence over inconsistent by-laws. Yet, given that the Code had yet to come into force, nothing prohibited municipalities from regulating pesticide use in the interim. Kennedy J. thus concluded that there was no conflict between the by-laws and provincial or federal legislation.

**B. Court of Appeal, [1998] Q.J. No. 2546 (QL)**

**12** Before the Court of Appeal, the Town conceded that By-law 248 was inoperative. Thus, only By-law 270 was at issue. The appellants challenged Kennedy J.'s ruling on two grounds. First, they argued that By-law 270 was inoperative given that it was incompatible with the Pesticides Act. Second, the appellants contended that since the regulation of toxic substances was covered by s. 412(32) C.T.A., Kennedy J. erred in finding that the by-law was enacted under s. 410(1) C.T.A. While the latter provision allows a municipality to enact by-laws considered necessary for public health and welfare, s. 412(32) C.T.A. is concerned with "toxic" materials, and states that by-laws addressing this subject matter require approval from the Minister of the Environment. Given that the Town did not obtain such approval when it enacted By-law 270, the appellants argued that the by-law was invalid.

**13** The Court of Appeal, per Delisle J.A., accepted the Town's position that By-law 270 was enacted under s. 410(1) C.T.A. In reaching this conclusion, the court noted that By-law 270 repeated the definition of "pesticide" that is found in the Pesticides Act. This definition makes no reference to terms used in s. 412(32) or to toxicity. Moreover, the C.T.A. itself does not discuss whether pesticides are "toxic ... materials", nor does it require ministerial approval for regulations relating to pesticides. No evidence was submitted concerning the toxic character of pesticides. The Court of Appeal also held that By-law 270 furthered the objectives set out in s. 410(1) C.T.A. It reiterated the statements of Kennedy J. that by-laws are presumed to be valid and legal and that there is a presumption that legislators act in good faith and in the public interest. It found that s. 410(1) is a very general enabling clause and must receive a liberal interpretation.

**14** The court agreed with Kennedy J.'s finding that the by-law was enacted by the Town in the public interest and in response to health concerns expressed by residents. The court noted that these concerns were recorded in the Town Council's meeting minutes and manifested themselves in letters to Council, as well as a petition with more than 300 signatures. Moreover, the Court of Appeal recognized that s. 410 C.T.A. describes when a municipality may not act under its general governance powers. By-laws on subjects contemplated in the Pesticides Act were not included in this list of unauthorized areas of regulation. The appellants argued that s. 410(1) does not permit the Town to ban

pesticides. The Court of Appeal held that an absolute ban would be forbidden, but that the by-law does not impose an absolute ban.

**15** The Court of Appeal then examined whether By-law 270 was in conflict with the Pesticides Act and thus inoperative. It found that s. 102 of the Pesticides Act -- which states that the Pesticide Management Code and all regulations of the Pesticides Act take precedence over any incompatible municipal by-law -- contemplated municipal regulation of pesticide use. The court also commented that the revised version of s. 102, as well as ss. 105 to 107 regarding the Pesticide Management Code, had yet to be enacted. As a result, it held that, as opposed to a real conflict, a potential future incompatibility between the by-law and the Code did not suffice to render the by-law inoperative.

**16** Finally, the Court of Appeal noted that, although not yet in force, the revised version of s. 102 of the Pesticides Act allows municipalities to adopt by-laws concerning pesticides, so long as these are not incompatible with the Pesticide Management Code. At the same time, even if such incompatibility arises, the by-laws can continue to be operative if they relate to landscaping activities, or if they aim to prevent or reduce injury or damage to people, animals, the environment or property. As such, this new regime would enable municipalities to enact by-laws that are more restrictive than the provisions set out in the provincial Pesticide Management Code. Based on these reasons, the Court of Appeal dismissed the appeal, holding that By-law 270 was validly enacted and operative.

#### IV. Issues

**17** There are two issues raised by this appeal:

- (1) Did the Town have the statutory authority to enact By-law 270?
- (2) Even if the Town had authority to enact it, was By-law 270 rendered inoperative because of a conflict with federal or provincial legislation?

#### V. Analysis

##### A. Did the Town Have the Statutory Authority to Enact By-law 270?

**18** In *R. v. Sharma*, [1993] 1 S.C.R. 650, at p. 668, this Court recognized "the principle that, as statutory bodies, municipalities 'may exercise only those powers expressly conferred by statute, those powers necessarily or fairly implied by the expressed power in the statute, and those indispensable powers essential and not merely convenient to the effectuation of the purposes of the corporation' (Makuch, *Canadian Municipal and Planning Law* (1983), at p. 115)". Included in this authority are "general welfare" powers, conferred by provisions in provincial enabling legislation, on which municipalities can draw. As I. M. Rogers points out, "the legislature cannot possibly foresee all the powers that are necessary to the statutory equipment of its creatures... . Undoubtedly the inclusion of 'general welfare' provisions was intended to circumvent, to some extent, the effect of the doctrine of ultra vires which puts the municipalities in the position of having to point to an express grant of authority to justify each corporate act" (*The Law of Canadian Municipal Corporations* (2nd ed. (loose-leaf)), Cum. Supp. to vol. 1, at p. 367).

**19** Section 410 C.T.A. is an example of such a general welfare provision and supplements the specific grants of power in s. 412. More open-ended or "omnibus" provisions such as s. 410 allow municipalities to respond expeditiously to new challenges facing local communities, without requiring amendment of the provincial enabling legislation. There are analogous provisions in other provinces' and territories' municipal enabling legislation: see *Municipal Government Act*, S.A. 1994, c.

M-26.1, ss. 3(c) and 7; Local Government Act, R.S.B.C. 1996, c. 323, s. 249; Municipal Act, S.M. 1996, c. 58, C.C.S.M. c. M225, ss. 232 and 233; Municipalities Act, R.S.N.B. 1973, c. M-22, s. 190(2), First Schedule; Municipal Government Act, S.N.S. 1998, c. 18, s. 172; Cities, Towns and Villages Act, R.S.N.W.T. 1988, c. C-8, ss. 54 and 102; Municipal Act, R.S.O. 1990, c. M.45, s. 102; Municipal Act, R.S.Y. 1986, c. 119, s. 271.

**20** While enabling provisions that allow municipalities to regulate for the "general welfare" within their territory authorize the enactment of by-laws genuinely aimed at furthering goals such as public health and safety, it is important to keep in mind that such open-ended provisions do not confer an unlimited power. Rather, courts faced with an impugned by-law enacted under an "omnibus" provision such as s. 410 C.T.A. must be vigilant in scrutinizing the true purpose of the by-law. In this way, a municipality will not be permitted to invoke the implicit power granted under a "general welfare" provision as a basis for enacting by-laws that are in fact related to ulterior objectives, whether mischievous or not. As a Justice of the Ontario Divisional Court, Cory J. commented instructively on this subject in *Re Weir and The Queen* (1979), 26 O.R. (2d) 326 (Div. Ct.), at p. 334. Although he found that the City of Toronto's power to regulate matters pertaining to health, safety and general welfare (conferred by the Municipal Act, R.S.O. 1970, c. 284, s. 242) empowered it to pass a by-law regulating smoking in public retail shops, Cory J. also made the following remark about the enabling provision: "There is no doubt that a by-law passed pursuant to the provisions of s. 242 must be approached with caution. If such were not the case, the municipality could be deemed to be empowered to legislate in a most sweeping manner."

**21** Within this framework, I turn now to the specifics of the appeal. As a preliminary matter, I agree with the courts below that By-law 270 was not enacted under s. 412(32) C.T.A. This provision authorizes councils to "make by-laws: To regulate or prohibit the storage and use of gun-powder, dry pitch, resin, coal oil, benzine, naphtha, gasoline, turpentine, gun-cotton, nitro-glycerine, and other combustible, explosive, corrosive, toxic or radioactive or other materials that are harmful to public health or safety, in the territory of the municipality or within 1 km therefrom" (emphasis added). In replicating the definition of "pesticides" found in the provincial Pesticides Act, By-law 270 avoids falling under the ambit of s. 412(32). There is no equation of pesticides and "toxic ... materials" either in the terms of the by-law or in any evidence presented during this litigation. The provincial government did not consider By-law 270 to fall under s. 412(32): see letter of July 5, 1991 from the Deputy Minister of the Environment. As Y. Duplessis and J. Héту state in *Les pouvoirs des municipalités en matière de protection de l'environnement* (2nd ed. 1994), at p. 110,

[TRANSLATION] ... these subsections concerning "corrosive, toxic or radioactive materials" in no way limit the other more general powers granted to municipalities that could justify municipal intervention in relation to pesticides.

As a result, since there is no specific provision in the provincial enabling legislation referring to pesticides, the by-law must fall within the purview of s. 410(1) C.T.A. The party challenging a by-law's validity bears the burden of proving that it is ultra vires: see *Kuchma v. Rural Municipality of Tache*, [1945] S.C.R. 234, at p. 239, and *Montréal (City of) v. Arcade Amusements Inc.*, [1985] 1 S.C.R. 368, at p. 395.

**22** The conclusion that By-law 270 does not fall within the purview of s. 412(32) C.T.A. distinguishes this appeal from *R. v. Greenbaum*, [1993] 1 S.C.R. 674. In that case, various express provisions of the provincial enabling legislation at issue covered the regulation of Toronto sidewalks.



The appellant was therefore trying to expand the ambit of these specific authorizations by recourse to the "omnibus" provision in Ontario's Municipal Act. Moreover, that provision, s. 102, stated that "[e]very council may pass such by-laws and make such regulations for the health, safety, morality and welfare of the inhabitants of the municipality in matters not specifically provided for by this Act as may be deemed expedient and are not contrary to law ... ." (emphasis added). The Court thus held in *Greenbaum*, at p. 693, that "[t]hese express powers are ... taken out of any power included in the general grant of power". Since the C.T.A. contains no such specific provisions concerning pesticides (nor a clause limiting its purview to matters not specifically provided for in the Act) the "general welfare" provision of the C.T.A., s. 410(1), is not limited in this fashion.

**23** Section 410(1) C.T.A. provides that councils may make by-laws:

- (1) To secure peace, order, good government, health and general welfare in the territory of the municipality, provided such by-laws are not contrary to the laws of Canada, or of Québec, nor inconsistent with any special provision of this Act or of the charter.

In *Nanaimo (City) v. Rascal Trucking Ltd.*, [2000] 1 S.C.R. 342, 2000 SCC 13, at para. 36, this Court quoted with approval the following statement by McLachlin J. (as she then was) in *Shell Canada Products Ltd. v. Vancouver (City)*, [1994] 1 S.C.R. 231, at p. 244:

Recent commentary suggests an emerging consensus that courts must respect the responsibility of elected municipal bodies to serve the people who elected them and exercise caution to avoid substituting their views of what is best for the citizens for those of municipal councils. Barring clear demonstration that a municipal decision was beyond its powers, courts should not so hold. In cases where powers are not expressly conferred but may be implied, courts must be prepared to adopt the "benevolent construction" which this Court referred to in *Greenbaum*, and confer the powers by reasonable implication. Whatever rules of construction are applied, they must not be used to usurp the legitimate role of municipal bodies as community representatives. [Emphasis added.]

**24** The appellants argue that By-law 270 imposes an impermissible absolute ban on pesticide use. They focus on s. 2 of the by-law, which states that: "The spreading and use of a pesticide is prohibited throughout the territory of the Town." In my view, the by-law read as a whole does not impose such a prohibition. By-law 270's ss. 3 to 6 state locations and situations for pesticide use. As one commentary notes, "by-laws like Hudson's typically target non-essential uses of pesticides. That is, it is not a total prohibition, but rather permits the use of pesticides in certain situations where the use of pesticides is not purely an aesthetic pursuit (e.g. for the production of crops)": Swaigen, *supra*, at p. 178.

**25** The appellants further submit that the province's adoption in 1997 of s. 463.1 C.T.A., which states that a municipality may get permission to introduce pesticides onto private property, indicates, by virtue of the principle of *expressio unius est exclusio alterius* (express mention of one is the exclusion of the other), that the province did not intend to allow municipal regulation of pesticides. I find this argument to be without merit, since, even if this subsequent enactment were considered to instantiate prior legislative intent, there is absolutely no implication in s. 463.1 C.T.A., a

permissive provision, that it is meant to exhaust municipalities' freedom of action concerning pesticides.

**26** In *Shell*, supra, at pp. 276-77, Sopinka J. for the majority quoted the following with approval from Rogers, supra, s. 64.1:

In approaching a problem of construing a municipal enactment a court should endeavour firstly to interpret it so that the powers sought to be exercised are in consonance with the purposes of the corporation. The provision at hand should be construed with reference to the object of the municipality: to render services to a group of persons in a locality with a view to advancing their health, welfare, safety and good government.

In that case, Sopinka J. enunciated the test of whether the municipal enactment was "passed for a municipal purpose". Provisions such as s. 410(1) C.T.A., while benefiting from the generosity of interpretation discussed in *Nanaimo*, supra, must have a reasonable connection to the municipality's permissible objectives. As stated in *Greenbaum*, supra, at p. 689: "municipal by-laws are to be read to fit within the parameters of the empowering provincial statute where the by-laws are susceptible to more than one interpretation. However, courts must be vigilant in ensuring that municipalities do not impinge upon the civil or common law rights of citizens in passing ultra vires by-laws".

**27** Whereas in *Shell*, the enactments' purpose was found to be "to affect matters beyond the boundaries of the City without any identifiable benefit to its inhabitants" (p. 280), that is not the case here. The Town's By-law 270 responded to concerns of its residents about alleged health risks caused by non-essential uses of pesticides within Town limits. Unlike *Shell*, in which the Court felt bound by the municipal enactments' "detailed recital of ... purposes" (p. 277), the by-law at issue requires what Sopinka J. called the reading in of an implicit purpose. Based on the distinction between essential and non-essential uses of pesticides, it is reasonable to conclude that the Town by-law's purpose is to minimize the use of allegedly harmful pesticides in order to promote the health of its inhabitants. This purpose falls squarely within the "health" component of s. 410(1). As R. Sullivan appositely explains in a hypothetical example illustrating the purposive approach to statutory interpretation:

Suppose, for example, that a municipality passed a by-law prohibiting the use of chemical pesticides on residential lawns. With no additional information, one might well conclude that the purpose of this by-law was to protect persons from health hazards contained in the chemical spray. This inference would be based on empirical beliefs about the harms chemical pesticides can cause and the risks of exposure created by their use on residential lawns. It would also be based on assumptions about the relative value of grass, insects and persons in society and the desirability of possible consequences of the by-law, such as putting people out of work, restricting the free use of property, interfering with the conduct of businesses and the like. These assumptions make it implausible to suppose that the municipal council was trying to promote the spread of plant-destroying insects or to put chemical workers out of work, but plausible to suppose that it was trying to suppress a health hazard.

(Driedger on the Construction of Statutes (3rd ed. 1994), at p. 53)

Kennedy J. correctly found (at pp. 230-31) that the Town Council, "faced with a situation involving health and the environment", "was addressing a need of their community." In this manner, the municipality is attempting to fulfill its role as what the Ontario Court of Appeal has called a "trustee of the environment" (*Scarborough v. R.E.F. Homes Ltd.* (1979), 9 M.P.L.R. 255, at p. 257).

**28** The appellants claim that By-law 270 is discriminatory and therefore *ultravires* because of what they identify as impermissible distinctions that affect their commercial activities. There is no specific authority in the C.T.A. for these distinctions. Writing for the Court in *Sharma*, *supra*, at p. 668, Iacobucci J. stated the principle that:

... in *Montréal (City of) v. Arcade Amusements Inc.*, *supra*, this Court recognized that discrimination in the municipal law sense was no more permissible between than within classes (at pp. 405-6). Further, the general reasonableness or rationality of the distinction is not at issue: discrimination can only occur where the enabling legislation specifically so provides or where the discrimination is a necessary incident to exercising the power delegated by the province (*Montréal (City of) v. Arcade Amusements Inc.*, *supra*, at pp. 404-6). [Emphasis added.]

See also *Shell*, *supra*, at p. 282; *Allard Contractors Ltd. v. Coquitlam (District)*, [1993] 4 S.C.R. 371, at p. 413.

**29** Without drawing distinctions, By-law 270 could not achieve its permissible goal of aiming to improve the health of the Town's inhabitants by banning non-essential pesticide use. If all pesticide uses and users were treated alike, the protection of health and welfare would be sub-optimal. For example, withdrawing the special status given to farmers under the by-law's s. 4 would work at cross-purposes with its salubrious intent. Section 4 thus justifiably furthers the objective of By-law 270. Having held that the Town can regulate the use of pesticides, I conclude that the distinctions impugned by the appellants for restricting their businesses are necessary incidents to the power delegated by the province under s. 410(1) C.T.A. They are "so absolutely necessary to the exercise of those powers that [authorization has] to be found in the enabling provisions, by necessary inference or implicit delegation"; *Arcade Amusements*, *supra*, at p. 414, quoted in *Greenbaum*, *supra*, at p. 695.

**30** To conclude this section on statutory authority, I note that reading s. 410(1) to permit the Town to regulate pesticide use is consistent with principles of international law and policy. My reasons for the Court in *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, at para. 70, observed that "the values reflected in international human rights law may help inform the contextual approach to statutory interpretation and judicial review". As stated in *Driedger on the Construction of Statutes*, *supra*, at p. 330:

[T]he legislature is presumed to respect the values and principles enshrined in international law, both customary and conventional. These constitute a part of the legal context in which legislation is enacted and read. In so far as possible, therefore, interpretations that reflect these values and principles are preferred. [Emphasis added.]

**31** The interpretation of By-law 270 contained in these reasons respects international law's "precautionary principle", which is defined as follows at para. 7 of the Bergen Ministerial Declaration on Sustainable Development (1990):

In order to achieve sustainable development, policies must be based on the precautionary principle. Environmental measures must anticipate, prevent and attack the causes of environmental degradation. Where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

Canada "advocated inclusion of the precautionary principle" during the Bergen Conference negotiations (D. VanderZwaag, CEPA Issue Elaboration Paper No. 18, CEPA and the Precautionary Principle/Approach (1995), at p. 8). The principle is codified in several items of domestic legislation: see for example the Oceans Act, S.C. 1996, c. 31, Preamble (para. 6); Canadian Environmental Protection Act, 1999, S.C. 1999, c. 33, s. 2(1)(a); Endangered Species Act, S.N.S. 1998, c. 11, ss. 2(1)(h) and 11(1).

**32** Scholars have documented the precautionary principle's inclusion "in virtually every recently adopted treaty and policy document related to the protection and preservation of the environment" (D. Freestone and E. Hey, "Origins and Development of the Precautionary Principle", in D. Freestone and E. Hey, eds., *The Precautionary Principle and International Law* (1996), at p. 41. As a result, there may be "currently sufficient state practice to allow a good argument that the precautionary principle is a principle of customary international law" (J. Cameron and J. Abouchar, "The Status of the Precautionary Principle in International Law", in *ibid.*, at p. 52). See also O. McIntyre and T. Mosedale, "The Precautionary Principle as a Norm of Customary International Law" (1997), 9 J. Env. L. 221, at p. 241 ("the precautionary principle has indeed crystallised into a norm of customary international law"). The Supreme Court of India considers the precautionary principle to be "part of the Customary International Law" (*A.P. Pollution Control Board v. Nayudu*, 1999 S.O.L. Case No. 53, at para. 27). See also *Vellore Citizens Welfare Forum v. Union of India*, [1996] Supp. 5 S.C.R. 241. In the context of the precautionary principle's tenets, the Town's concerns about pesticides fit well under their rubric of preventive action.

**B. Even if the Town Had Authority to Enact it, Was By-law 270 Rendered Inoperative Because of a Conflict with Federal or Provincial Legislation?**

**33** This Court stated in *Hydro-Québec*, supra, at para. 112, that *Oldman River*, supra, "made it clear that the environment is not, as such, a subject matter of legislation under the Constitution Act, 1867. As it was put there, 'the Constitution Act, 1867 has not assigned the matter of "environment" sui generis to either the provinces or Parliament' (p. 63). Rather, it is a diffuse subject that cuts across many different areas of constitutional responsibility, some federal, some provincial (pp. 63-64)." As there is bijurisdictional responsibility for pesticide regulation, the appellants allege conflicts between By-law 270 and both federal and provincial legislation. These contentions will be examined in turn.

#### 1. Federal Legislation

**34** The appellants argue that ss. 4(1), 4(3) and 6(1)(j) of the Pest Control Products Act ("PCPA"), and s. 45 of the Pest Control Products Regulations allowed them to make use of the particular pesticide products they employed in their business practices. They allege a conflict between these legis-

lative provisions and By-law 270. In *Multiple Access Ltd. v. McCutcheon*, [1982] 2 S.C.R. 161, at p. 187, Dickson J. (as he then was) for the majority of the Court reviewed the "express contradiction test" of conflict between federal and provincial legislation. At p. 191, he explained that "there would seem to be no good reasons to speak of paramountcy and preclusion except where there is actual conflict in operation as where one enactment says 'yes' and the other says 'no'; 'the same citizens are being told to do inconsistent things'; compliance with one is defiance of the other". See also *M & D Farm Ltd. v. Manitoba Agricultural Credit Corp.*, [1999] 2 S.C.R. 961, at paras. 17 and 40; *Bank of Montreal v. Hall*, [1990] 1 S.C.R. 121, at p. 151. By-law 270, as a product of provincial enabling legislation, is subject to this test.

**35** Federal legislation relating to pesticides extends to the regulation and authorization of their import, export, sale, manufacture, registration, packaging and labelling. The PCPA regulates which pesticides can be registered for manufacture and/or use in Canada. This legislation is permissive, rather than exhaustive, and there is no operational conflict with By-law 270. No one is placed in an impossible situation by the legal imperative of complying with both regulatory regimes. Analogies to motor vehicles or cigarettes that have been approved federally, but the use of which can nevertheless be restricted municipally, well illustrate this conclusion. There is, moreover, no concern in this case that application of By-law 270 displaces or frustrates "the legislative purpose of Parliament". See *Multiple Access*, supra, at p. 190; *Bank of Montreal*, supra, at pp. 151 and 154.

## 2. Provincial Legislation

**36** *Multiple Access* also applies to the inquiry into whether there is a conflict between the by-law and provincial legislation, except for cases (unlike this one) in which the relevant provincial legislation specifies a different test. The *Multiple Access* test, namely "impossibility of dual compliance", see P. W. Hogg, *Constitutional Law of Canada* (loose-leaf ed.), vol. 1, at p. 16-13, was foreshadowed for provincial-municipal conflicts in dicta contained in this Court's decision in *Arcade Amusements*, supra, at p. 404. There, Beetz J. wrote that "otherwise valid provincial statutes which are directly contrary to federal statutes are rendered inoperative by that conflict. Only the same type of conflict with provincial statutes can make by-laws inoperative: I. . Rogers, *The Law of Canadian Municipal Corporations*, vol. 1, 2nd ed., 1971, No. 63.16" (emphasis added).

**37** One of the competing tests to *Multiple Access* suggested in this litigation is based on *Attorney General for Ontario v. City of Mississauga* (1981), 15 M.P.L.R. 212 (Ont. C.A.). In that case, decided before *Multiple Access*, Morden J.A. saw "no objection to borrowing, in this field, relevant principles of accommodation which have been developed in cases involving alleged federal-provincial areas of conflict. In both fields great care is, and should be, taken before it is held that an otherwise properly enacted law is inoperative" (p. 232). He added, at p. 233, the important point that "a by-law is not void or ineffective merely because it 'enhances' the statutory scheme of regulation by imposing higher standards of control than those in the related statute. This is not conflict or incompatibility per se" (quoting *Township of Uxbridge v. Timber Bros. Sand & Gravel Ltd.* (1975), 7 O.R. (2d) 484 (C.A.)). See also P.-A. Côté, *The Interpretation of Legislation in Canada* (3rd ed. 2000), at p. 353 ("In some cases, the courts have held that the provincial statute does not imply full repeal of the municipal power. The municipality retains its authority as long as there is no conflict with provincial legislation. It may be more demanding than the province, but not less so").

**38** Some courts have already made use of the *Multiple Access* test to examine alleged provincial-municipal conflicts. For example, in *British Columbia Lottery Corp. v. Vancouver (City)* (1999),

169 D.L.R. (4th) 141, at pp. 147-48, the British Columbia Court of Appeal stated that cases pre-dating Multiple Access, including the Ontario Court of Appeal decision in Mississauga, supra, "must be read in the light of [that] decision".

It is no longer the key to this kind of problem to look at one comprehensive scheme, and then to look at the other comprehensive scheme, and to decide which scheme entirely occupies the field to the exclusion of the other. Instead, the correct course is to look at the precise provisions and the way they operate in the precise case, and ask: Can they coexist in this particular case in their operation? If so, they should be allowed to co-exist, and each should do its own parallel regulation of one aspect of the same activity, or two different aspects of the same activity. [Emphasis added.]

The court summarized the applicable standard as follows: "A true and outright conflict can only be said to arise when one enactment compels what the other forbids." See also *Law Society of Upper Canada v. Barrie (City)* (2000), 46 O.R. (3d) 620 (S.C.J.), at pp. 629-30: "Compliance with the provincial Act does not necessitate defiance of the municipal By-law; dual compliance is certainly possible"; *Huot v. St-Jérôme (Ville de)*, J.E. 93-1052 (Sup. Ct.), at p. 19: [TRANSLATION] "A finding that a municipal by-law is inconsistent with a provincial statute (or a provincial statute with a federal statute) requires, first, that they both deal with similar subject matters and, second, that obeying one necessarily means disobeying the other."

**39** As a general principle, the mere existence of provincial (or federal) legislation in a given field does not oust municipal prerogatives to regulate the subject matter. As stated by the Quebec Court of Appeal in an informative environmental decision, *St-Michel-Archange (Municipalité de) v. 2419-6388 Québec Inc.*, [1992] R.J.Q. 875 (C.A.), at pp. 888-91:

[TRANSLATION] According to proponents of the unitary theory, although the provincial legislature has not said so clearly, it has nonetheless established a provincial scheme for managing waste disposal sites. It has therefore reserved exclusive jurisdiction in this matter for itself, and taken the right to pass by-laws concerning local waste management away from municipalities. The Environment Quality Act therefore operated to remove those powers from municipal authorities.

According to proponents of the pluralist theory, the provincial legislature very definitely did not intend to abolish the municipality's power to regulate; rather, it intended merely to better circumscribe that power, to ensure complementarity with the municipal management scheme... .

...

The pluralist theory accordingly concedes that the intention is to give priority to provincial statutory and regulatory provisions. However, it does not believe that it can be deduced from this that any complementary municipal provision in relation to planning and development that affects the quality of the environment is automatically invalid.

...

A thorough analysis of the provisions cited supra and a review of the environmental policy as a whole as it was apparently intended by the legislature leads to the conclusion that it is indeed the pluralist theory, or at least a pluralist theory, that the legislature seems to have taken as the basis for the statutory scheme.

In this case, there is no barrier to dual compliance with By-law 270 and the Pesticides Act, nor any plausible evidence that the legislature intended to preclude municipal regulation of pesticide use. The Pesticides Act establishes a permit and licensing system for vendors and commercial applicators of pesticides and thus complements the federal legislation's focus on the products themselves. Along with By-law 270, these laws establish a tri-level regulatory regime.

**40** According to s. 102 of the Pesticides Act, as it was at the time By-law 270 was passed: "The provisions of the Pesticide Management Code and of the other regulations of this Act prevail over any inconsistent provision of any by-law passed by a municipality or an urban community." Evidently, the Pesticides Act envisions the existence of complementary municipal by-laws. As Duplessis and Héту, supra, at p. 109, put it, [TRANSLATION] "the Quebec legislature gave the municipalities the right to regulate pesticides, provided that the by-law was not incompatible with the regulations and the Management Code enacted under the Pesticides Act". Since no Pesticide Management Code has been enacted by the province under s. 105, the lower courts in this case correctly found that the by-law and the Pesticides Act could co-exist. In the words of the Court of Appeal, at p. 16: [TRANSLATION] "The Pesticides Act thus itself contemplated the existence of municipal regulation of pesticides, since it took the trouble to impose restrictions."

**41** I also agree with the Court of Appeal at p. 16, that: [TRANSLATION] "A potential inconsistency is not sufficient to invalidate a by-law; there must be a real conflict". In this regard, the Court of Appeal quoted, at p. 17, St-Michel-Archange, supra, at p. 891, to the effect that: [TRANSLATION] "However, to the extent that and for as long as the provincial regulation is not in force, the municipal by-law continues to regulate the activity, provided, of course, that it complies with all the rules established by the law and the courts concerning its validity."

**42** I note in conclusion that the 1993 revision to the Pesticide Act added a new s. 102 stating:

The Pesticide Management Code and any other regulation enacted pursuant to this Act shall render inoperative any regulatory provision concerning the same matter enacted by a municipality or an urban community, except where the provision

-- concerns landscaping or extermination activities, such as fumigation, as defined by government regulation, and

-- prevents or further mitigates harmful effects on the health of humans or of other living species or damage to the environment or to property.

This revised language indicates more explicitly that the Pesticides Act is meant to co-exist with stricter municipal by-laws of the type at issue in this case. Indeed, the new s. 102, by including the word "health", echoes the enabling legislation that underpins By-law-270, namely s. 410(1) C.T.A.

Once a Pesticide Management Code is enacted, municipalities will be able to draw on s. 102 in order to continue their independent regulation of pesticides. As Duplessis and Hétu, *supra*, explain at p. 111: [TRANSLATION] "the Quebec legislature has again recognized that municipalities have a role to play in pesticide control while at the same time indicating that it intends to make the municipal power subordinate to its own regulatory activity".

## VI. Disposition

**43** I have found that By-law 270 was validly enacted under s. 410(1) C.T.A. Moreover, the by-law does not render dual compliance with its dictates and either federal or provincial legislation impossible. For these reasons, I would dismiss the appeal with costs.

The reasons of Iacobucci, Major and LeBel JJ. were delivered by

LeBEL J.:--

### Introduction

**44** I agree with Justice L'Heureux-Dubé that the impugned by-law on pesticide use adopted by the respondent, the Town of Hudson, is valid. It does not conflict with relevant federal and provincial legislation on the use and control of pesticides and is a valid exercise of municipal regulatory power under s. 410(1) of the Cities and Towns Act, R.S.Q., c. C-19 ("C.T.A.").

**45** I view this case as an administrative and local government law issue. Although I agree with L'Heureux-Dubé J. on the disposition of the appeal, I wish to add some comments on some of the problems raised by the appellants. First, I will discuss the alleged operational conflict with the regulatory and legislative systems put in place by other levels of government. I will then turn to the difficulties created by the use of broad provisions like s. 410 and the application of the general principles of administrative law governing delegated legislation.

### The Operational Conflict

**46** As its first line of attack against By-law 270 of the Town of Hudson, the appellants raise the issue of an operational conflict with the federal Pest Control Products Act, R.S.C. 1985, c. P-9, and the Pest Control Products Regulations, C.R.C. 1978, c. 1253. The appellants also assert that the by-law conflicts with the Quebec Pesticides Act, R.S.Q., c. P-9.3. As L'Heureux-Dubé J. points out, the applicable test to determine whether an operational conflict arises is set out in *Multiple Access Ltd. v. McCutcheon*, [1982] 2 S.C.R. 161, at pp. 187 and 189. There must be an actual conflict, in the sense that compliance with one set of rules would require a breach of the other. This principle was recently reexamined and restated by Binnie J. in *M & D Farm Ltd. v. Manitoba Agricultural Credit Corp.*, [1999] 2 S.C.R. 961, at paras. 39-42. The basic test remains the impossibility of dual compliance. From this perspective, the alleged conflict with federal legislation simply does not exist. The federal Act and its regulations merely authorize the importation, manufacturing, sale and distribution of the products in Canada. They do not purport to state where, when and how pesticides could or should be used. They do not grant a blanket authority to pesticides' manufacturers or distributors to spread them on every spot of greenery within Canada. This matter is left to other legislative and regulatory schemes. Nor does a conflict exist with the provincial Pesticides Act, and I agree with L'Heureux-Dubé J.'s analysis on this particular point. The operational conflict argument thus fails.

### The Administrative Law Issues



**47** The most serious problems raised by the appeal involve pure administrative law issues. The appellants' arguments raise some basic issues of administrative law as applied in the field of municipal governance.

**48** The appellants assert that no provision of the C.T.A. authorizes By-law 270. If such legislative authority exists, the by-law is nevertheless void because of its discriminatory and prohibitory nature. A solution is to be found in the principles governing the interpretation and application of the laws governing cities and towns like the respondent in the Province of Quebec. Interesting as they may be, references to international sources have little relevance. They confirm the general importance placed in modern society and shared by most citizens of this country on the environment and the need to protect it. Nevertheless, no matter how laudable the purpose of the by-law may be, and although it may express the will of the members of the community to protect their local environment, the means to do it must be found somewhere in the law. The issues in this case remain strictly, first, whether the C.T.A. authorizes municipalities to regulate the use of pesticides within their territorial limits and, second, whether the particular regulation conforms with the general principles applicable to delegated legislation.

**49** A tradition of strong local government has become an important part of the Canadian democratic experience. This level of government usually appears more attuned to the immediate needs and concerns of the citizens. Nevertheless, in the Canadian legal order, as stated on a number of occasions, municipalities remain creatures of provincial legislatures (see *Public School Boards' Assn. of Alberta v. Alberta (Attorney General)*, [2000] 2 S.C.R. 409, 2000 SCC 45, at paras. 33-34; *Ontario English Catholic Teachers' Assn. v. Ontario (Attorney General)*, [2001] 1 S.C.R. 470, 2001 SCC 15, at paras. 29 and 58-59). Municipalities exercise such powers as are granted to them by legislatures. This principle is illustrated by numerous decisions of our Court (see, for example, *Montréal (City of) v. Arcade Amusements Inc.*, [1985] 1 S.C.R. 368; *R. v. Sharma*, [1993] 1 S.C.R. 650). They are not endowed with residuary general powers, which would allow them to exercise dormant provincial powers (see I. M. Rogers, *The Law of Canadian Municipal Corporations* (2nd ed. (loose-leaf)), Cum. Supp. to vol. 1, at pp. 358 and 364; J. Héту, Y. Duplessis and D. Pakenham, *Droit Municipal: Principes généraux et contentieux* (1998), at p. 651). If a local government body exercises a power, a grant of authority must be found somewhere in the provincial laws. Although such a grant of power must be construed reasonably and generously (*Nanaimo (City) v. Rascal Trucking Ltd.*, [2000] 1 S.C.R. 342, 2000 SCC 13), it cannot receive such an interpretation unless it already exists. Interpretation may not supplement the absence of power.

**50** The appellants argue that no power to regulate the use of pesticides was delegated to municipalities in Quebec, either under a specific grant of power or under the more general provisions of s. 410(1) C.T.A. The respondent concedes that the only provision under which its by-law can be upheld is the general clause of s. 410(1). It no longer asserts that it could be supported under s. 412(32) concerning toxic materials.

**51** As the appellants interpret a general clause like s. 410 C.T.A., it would amount to an empty shell. Any exercise of municipal regulatory authority would require a specific and express grant of power. The history of the C.T.A. confirms that the Quebec legislature has generally favoured a drafting technique of delegating regulatory or administrative powers to municipalities through a myriad of specific provisions, which are amended frequently. The reader is then faced with layers of complex and sometimes inconsistent legislation.

**52** In the case of a specific grant of power, its limits must be found in the provision itself. Non-included powers may not be supplemented through the use of the general residuary clauses often found in municipal laws (*R. v. Greenbaum*, [1993] 1 S.C.R. 674).

**53** The case at bar raises a different issue: absent a specific grant of power, does a general welfare provision like s. 410(1) authorize By-law 270? A provision like s. 410(1) must be given some meaning. It reflects the reality that the legislature and its drafters cannot foresee every particular situation. It appears to be sound legislative and administrative policy, under such provisions, to grant local governments a residual authority to deal with the unforeseen or changing circumstances, and to address emerging or changing issues concerning the welfare of the local community living within their territory. Nevertheless, such a provision cannot be construed as an open and unlimited grant of provincial powers. It is not enough that a particular issue has become a pressing concern in the opinion of a local community. This concern must relate to problems that engage the community as a local entity, not a member of the broader polity. It must be closely related to the immediate interests of the community within the territorial limits defined by the legislature in a matter where local governments may usefully intervene. In *Shell Canada Products Ltd. v. Vancouver (City)*, [1994] 1 S.C.R. 231, the Court emphasized the local ambit of such power. It does not allow local governments and communities to exercise powers in questions that lie outside the traditional area of municipal interests, even if municipal powers should be interpreted broadly and generously (see F. Hoehn, *Municipalities and Canadian Law: Defining the Authority of Local Governments* (1996), at pp. 17-24).

**54** In the present case, the subject matter of the by-law lies within the ambit of normal local government activities. It concerns the use and protection of the local environment within the community. The regulation targets problems of use of land and property, and addresses neighbourhood concerns that have always been within the realm of local government activity. Thus, the by-law was properly authorized by s. 410(1). I must then turn briefly to the second part of the administrative law argument raised by the appellants, that the particular exercise of the existing municipal power breached principles of delegated legislation against prohibitory and discriminatory regulations.

**55** Two basic and longstanding principles of delegated legislation state that a by-law may not be prohibitory and may not discriminate unless the enabling legislation so authorizes. (See P. Garant, *Droit administratif* (4th ed. 1996), vol. 1, at pp. 407 et seq.; R. Dussault and L. Borgeat, *Administrative Law: A Treatise* (2nd ed. 1985), vol. 1, at pp. 435 et seq.; Hétu, Duplessis and Pakenham, *supra*, at pp. 677-82 and 691-96.) The drafting technique used in the present case creates an apparent problem. On its face, the by-law involves a general prohibition and then authorizes some specific uses. This obstacle may be overcome through global interpretation of the by-law. When it is read as a whole, its overall effect is to prohibit purely aesthetic use of pesticides while allowing other uses, mainly for business or agricultural purposes. It does not appear as a purely prohibitory legal instrument. As such, it conforms with this first basic principle of municipal law. There remains the problem of the discriminatory aspect of the by-law. Although the by-law discriminates, I agree with L'Heureux-Dubé J. that this kind of regulation implies a necessary component of discrimination. There can be no regulation on such a topic without some form of discrimination in the sense that the by-law must determine where, when and how a particular product may be used. The regulation needed to identify the various distinctions between different situations. Otherwise, no regulation would have been possible. An implied authority to discriminate was then unavoidably part of the delegated regulatory power.

**56** For these reasons, the appeal is dismissed, with costs to the respondent the Town of Hudson.

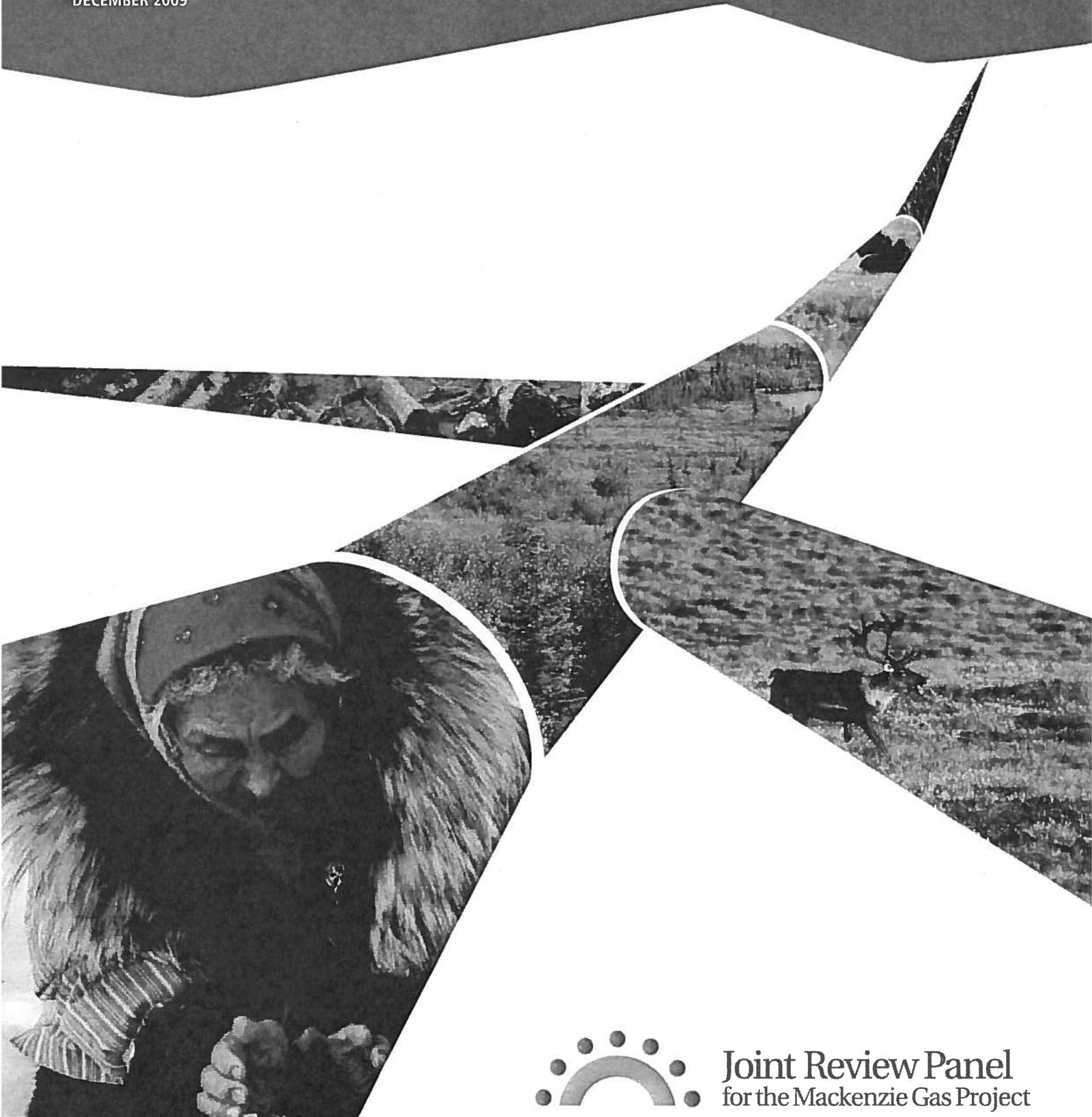
## **ATTACHMENT “L”**

# Foundation for a Sustainable Northern Future

REPORT OF THE JOINT REVIEW PANEL FOR THE MACKENZIE GAS PROJECT

VOLUME II — CHAPTERS 11 TO 19

DECEMBER 2009



Joint Review Panel  
for the Mackenzie Gas Project

# Foundation for a Sustainable Northern Future

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for the Mackenzie Gas Project

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**Mackenzie Valley Environmental Impact Review Board**

200 Scotia Centre, Box 938, 5102-50th Ave, Yellowknife, NT X1A 2N7 Canada

Telephone: (867) 766-7050

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# CHAPTER 19

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# CHAPTER 19

## SUSTAINABILITY AND NET CONTRIBUTION

### 19.1 INTRODUCTION

The Panel has concluded that, assuming full implementation of the Panel's recommendations, the Mackenzie Gas Project (MGP) and the Northwest Alberta Facilities are likely to make a positive contribution to sustainability. The Project is likely to:

- make a positive contribution to the human environment, with implementation of measures to support effective capture of benefits, equitable distribution of risks and adverse impacts, and equitable opportunities for participation;
- lead to improved protection of the biophysical environment through strengthened conservation measures, with adverse Project impacts mitigated to an acceptable degree; and
- provide an opportunity to invest in building a positive Project legacy through Project enhancements, and through transition planning and funding.

Achieving a net positive contribution would depend on the preparedness of governments and other institutions to undertake the monitoring, anticipatory planning, adaptive management and enforcement needed to ensure that the cumulative impacts of the Project and future developments are positive. The Panel's findings are contingent upon the timely adoption and successful implementation of its recommendations. In the absence of Panel recommended actions and commitments of the Proponents and governments, supported by the necessary resources and funding, the Project's impact on the environment would likely be significant and adverse.

This chapter presents the Panel's overall conclusions about the Project, including the nature and significance of its impacts on the environment and its net contribution to the existing and future social, cultural and economic well-being of residents and communities.

## 19.2 APPROACH

The Panel developed a sustainability-based framework (the Framework) for reviewing the Project proposal. This Framework has four key components:

1. A **core question** based on principles and objectives to achieve sustainable development as set out in the *Canadian Environmental Assessment Act* (CEA Act) and in the land claim agreements that gave rise to the *Mackenzie Valley Resource Management Act* (MVRMA), which are incorporated into the *Joint Review Panel Agreement* (JRPA) and reflected in the Terms of Reference for the Environmental Impact Statement (EIS).
2. A **defined scope of developments to be assessed**. In this case, the appropriate scope included the Project as Filed and reasonably foreseeable expansions given the design capacity of the proposed pipeline and other infrastructure, along with its cumulative impacts and reasonably anticipated future development.
3. **Five key sustainability issue categories**, to be assessed that cover the main general sustainability criteria and more particular requirements for measuring progress towards sustainability. The five categories identified by the Panel that incorporate the major issues raised with respect to the MGP are:
  - Cumulative impacts on the biophysical environment;
  - Cumulative impacts on the human environment;
  - Equity impacts;
  - Legacy and bridging; and
  - Cumulative impacts management and preparedness.
4. **Explicit treatment of the interaction among impacts and of trade-offs**. The consideration of interactions among individual Project impacts provides a more comprehensive understanding of areas of mutually reinforcing gains and losses and likely overall impacts. By ensuring that trade-offs are recognized and evaluated, the foundation for weighing options can be enhanced.

The Framework was applied by reviewing the cumulative impacts of the Project on each of the five sustainability issue categories and across a range of possible developments, including the null (no project) alternative. As areas with inadequately mitigated adverse impacts or the potential for greater positive contributions were identified, the Panel developed recommendations. The Panel then conducted a final analysis, assuming the full implementation of the Panel's recommendations and the Proponents' proposed mitigations and commitments. The Panel reached its overall conclusion and answer to the core question after review of these impacts and their interactions and with an understanding of the trade-offs demanded.

## 19.3 THE CORE QUESTION

The Panel considered that key sustainability objectives are to ensure net gains without significant adverse impacts during the life of the Project and effective use of the Project and associated opportunities as a bridge to a desirable and durable future, especially in the Project Review Area. In light of these objectives, the core question asked by the Panel was:

**Can we be reasonably confident that the Project as Filed, if built and operated with full implementation of the Panel's recommendations, would deliver valuable and lasting overall benefits, and avoid significant adverse environmental impacts?**

As discussed in more detail in Chapter 5, "Approach and Methods," the JRPA and the Terms of Reference for the EIS reflect the desires of the responsible parties to promote contributions to sustainable development and identify sustainability objectives as key to the evaluation of the proposed Project. The Terms of Reference for the EIS set as a fundamental test for the environmental impact review process "the extent to which a project makes a positive overall contribution towards environmental, social, cultural and economic sustainability." (EIS TOR, p. 8)

Accordingly, the Panel stated early in its review that it would evaluate "the specific and overall sustainability impacts of the proposed project and whether the proposed project would bring lasting net gains and whether the trade-offs made to ensure these gains are acceptable in the circumstances." (J-JRP-00162, p. 5) The Panel retained this focus throughout the hearings and in its subsequent review and analysis of the cumulative impacts of the Project as Filed and of a range of possible developments (characterized in Chapter 3, "Potential Future Developments," as the Expansion Capacity Scenario induced by the Project and Other Future Scenarios which may combine with the Project).

## 19.4 THE SCOPE OF DEVELOPMENTS TO BE ASSESSED

The Project as Filed implies a range of possible developments and associated cumulative impacts.

The Project centres on a gas pipeline from Inuvik to northwest Alberta, a natural gas liquids pipeline from Inuvik to an existing oil pipeline at Norman Wells, and development and production from three Anchor Fields. These components are the focus of assessment in the Proponents' EIS. However, while the three Anchor Fields and associated gathering facilities are capable of delivering 0.83 Bcf/d, the gas pipeline in the Project as Filed has three compressor stations and a heater station to provide an initial capacity of 1.2 Bcf/d. It also includes participation of

the Aboriginal Pipeline Group (APG) under an agreement with the Proponents that provides for significant APG ownership and revenue only after the throughput surpasses 0.83 Bcf/d. Production for that higher throughput would entail development of one or more additional, but so far unspecified, fields and gathering facilities. APG ownership and revenue would increase significantly as throughput increases up to 1.2 Bcf/d (with revenues continuing to increase as throughput increases from additional developments under the Expansion Capacity Scenario).

The Project as Filed is designed (with a 30-inch diameter pipe and block valves at the anticipated locations of 11 additional compressor stations) to enable expansion above a capacity of 1.2 Bcf/d to a capacity of 1.8 Bcf/d. The Panel has not reviewed the activities required for either these additional compressor stations or the development of gas fields that would be required for that purpose.

Many submissions at the Panel hearings reflected expectations that the Project would be "basin opening" — that the Project and associated infrastructure and services would directly facilitate and indirectly induce considerable further development of resources in the Northwest Territories (NWT) and possibly in the north Yukon (not necessarily limited to one basin) beyond the maximum throughput of 1.8 Bcf/d in the Mackenzie Valley Pipeline (MVP), resulting in further pipeline construction and associated initiatives.

The Panel has considered the potential cumulative impacts that could be induced by the full range of these possible

developments. The Panel has done so because of the nature of the Project as Filed, in which possible future developments in the throughput range from 0.83 to 1.2 Bcf/d are likely and in the throughput range from 1.2 to 1.8 Bcf/d are reasonably foreseeable. Such future developments are implicit in the proposal and the Project design. Pace and scale issues were widely recognized throughout the hearings as key to concerns and conclusions about what would and would not be desirable. The Panel's Mandate requires it to assess the Project's anticipated cumulative impacts on the environment, including the full range of environmental impacts from the Project as Filed through the range of possible future developments implicit in the proposal and the Project design.

In its assessment of these possibilities, the Panel has consistently focused its attention on cumulative impacts. As explained in Chapter 5, "Approach and Methods," the Panel has approached cumulative impacts as the impacts of the proposed undertaking in combination with the impacts of other existing and reasonably foreseeable activities. In the case of the MGP, that approach applies to the cumulative impacts that are likely to increase through the range of the Project as Filed at 0.83 Bcf/d and, inclusive of other development possibilities, up to 1.8 Bcf/d (the Expansion Capacity Scenario).

The range of possible developments and associated cumulative impacts reviewed by the Panel in considering the Project's contribution to sustainability includes the null alternative (the Project not proceeding in the foreseeable future), and is summarized in Table 19-1.

**Table 19-1 The range of development and cumulative impacts reviewed by the Panel**

1. *The null alternative* is the option where the Project does not proceed in the foreseeable future either because the proposal is rejected or the Proponents choose not to proceed.
2. *The base Project as Filed with a throughput of 0.83 Bcf/d* assumes production only from the three Anchor Fields identified and assessed in the EIS and subsequent Project updates. This possibility includes, in addition to all Project components at this level, the cumulative impacts of the Project at that scale with related infrastructure and any other reasonably anticipated induced or other activities, over its lifetime and beyond, including its legacy. It also includes implementation of all mitigation and enhancement measures to which the Proponents are formally committed, government commitments and full implementation of the Panel's recommendations. Assessment information provided to the Panel on this possibility was considerably more detailed than information provided on the other development possibilities.
3. *The Project as Filed with an initial capacity of 1.2 Bcf/d plus additional supply for expected throughput in the range of 0.83 to 1.2 Bcf/d* assumes development of one or more additional source fields and related additional facilities and activities, the specifics and impacts of which are not known and which were not assessed in the EIS and could not be reviewed in detail or with certainty by the Panel. The Panel expects that the additional source fields would be in the vicinity of the Mackenzie Delta. This range of possible development covers in addition to the considerations in the base Project case above:
  - various possibilities for the additional field or fields to be developed;
  - various means for assessment, selection, regulatory review and approval of the additional field or fields to be developed, considering also the additional cumulative impacts that may be involved;
  - various possibilities for timing, including approval and commitment of production from additional fields in time for an increase in throughput from 0.83 to 1.2 Bcf/d at or soon after pipeline start-up, or a more gradual expansion (with different implications for boom and bust impacts); and
  - various sizes of the income stream for the APG in the increments between 0.83 and 1.2 Bcf/d.

In addition to all Project components, Proponent commitments, government measures and implementation of the Panel's recommendations, this scenario includes the cumulative impacts of the Project in the 0.83 to 1.2 Bcf/d throughput range, with related infrastructure and any other reasonably anticipated induced or other activities, over the Project's lifetime and beyond, including its legacy.
4. *The Project expanded in the range from 1.2 Bcf/d to its potential design capacity of 1.8 Bcf/d* would be achieved chiefly through addition of up to 11 more compressor stations, more source fields and related facilities, plus other Project components, related infrastructure and other activities and reasonably anticipated induced and other impacts of the Project at that scale over its lifetime, and including its legacy. The additional source fields could include ones in the Mackenzie Delta, the Beaufort offshore and the Colville Hills. This range in the Expansion Capacity Scenario covers in addition to the considerations in the initial expansion case above:
  - different expansion possibilities between 1.2 and 1.8 Bcf/d;
  - different possibilities for the additional fields to be developed;
  - different means for assessment, selection, regulatory review and approval of the additional fields to be developed, considering also the additional cumulative impacts that may be involved; and
  - different possibilities for timing of approval and commitment of production from additional fields including more and less gradual expansion of production approvals and commitments.
5. *Other Future Scenarios* would include additional pipelines and other reasonably anticipated additional associated, induced and concurrent activities. The scenarios centre on activities beyond those addressed in relation to the cumulative impacts of the Project expanded to its potential design capacity of 1.8 Bcf/d. Relevant activities include hydrocarbon exploration, development, production and transportation undertakings, and other activities in the region that may be reasonably anticipated in plausible future scenarios given the Project's scale and its role in facilitating the opening of production in the region. The scenarios cover a range of activities and intensities as well as a range of affected areas, the specifics of which are speculative but the overall character and broad implications for major issues (e.g. stresses on ecosystems, speed of resource depletion, demands on governance capacity and nature of legacy impacts) may be anticipated. Information submitted to the Panel on further developments under the Other Future Scenarios was largely speculative mostly in the form of broad depictions and widely held expectations.

## 19.5 KEY SUSTAINABILITY ISSUES

The Panel began by developing a sustainability-based listing of key issues that recognizes the general requirements for progress towards sustainability based on the Gibson Report. The final classification was updated throughout the hearings, and reorganized into five categories in the Panel's review and analysis. The five key sustainability issues categories and questions were used throughout the Panel's review and deliberations and underlie the major impact assessment concerns reported in Chapter 6, "Project Design, Construction and

Operations," through Chapter 18, "Monitoring, Follow-up and Management Plans."

The five categories, and the sets of particular questions in each issue category, are summarized in Table 19-2, with the specific key issues listed in Table 19-3.

**Table 19-2 The Five Key Sustainability Issues Categories**

1. **Cumulative Impacts on the Biophysical Environment:** Impacts on the longer-term resilience of ecosystems and what they provide (as recognized in special conservation areas, protected areas and land use plans) and on the wildlife harvesting and other traditional land-based cultural and livelihood activities that they support during Project life and beyond.
2. **Cumulative Impacts on the Human Environment:** Impacts on community economic and socio-cultural well-being during the stages of the Project life and beyond, including vulnerability to cumulative impacts on community economic and socio-cultural well-being, and vulnerability to boom and bust impacts.
3. **Equity Impacts:** The distribution of positive and negative impacts (especially concerning access to opportunities and resources, revenue flows, and exposure to burdens and risks) within and among communities, and between men and women, youth and Elders, and present and future generations, including the impacts of the anticipated use of hydrocarbon resources (upstream and downstream impacts of product life cycle from gas exploration to end use of gas and greenhouse gas (GHG) loadings).
4. **Legacy and Bridging:** Impacts from use of the Project and associated revenues and other impacts as a bridge to more sustainable livelihoods and generally more sustainable futures for the Beaufort Delta and Mackenzie Valley regions. They also include use of the Project and associated activities for building capacities of individuals, communities, agencies and other organizations to manage impacts, and to obtain and retain benefits from Project-related opportunities.
5. **Cumulative Impacts Management and Preparedness:** The preparedness of government agencies and other responsible authorities to manage the cumulative impacts of the Project and associated activities in a way that ensures lasting, multiple, mutually reinforcing gains, including their capacity and preparedness to apply, monitor, enforce and adjust necessary terms and conditions. They also include carrying out the design and delivery of impact mitigation or enhancement programs, planning and management for acceptable development scale and pacing, and dealing with uncertainties and surprises, positive and negative.

Table 19-3 Key Issues by Category	
Cumulative Impacts on the Biophysical Environment	Equity Impacts
<ul style="list-style-type: none"> <li>• Migratory Bird Habitat in the Mackenzie Delta</li> <li>• Conservation and Land Use Plans and Protected Areas</li> <li>• Important Wildlife Habitat in the Mackenzie Delta and Adjacent Areas</li> <li>• Fish Habitat and Watercourse Crossings</li> <li>• Woodland Caribou</li> <li>• Polar Bear</li> <li>• Marine Mammals</li> <li>• Air Quality</li> <li>• Invasive Species from Ballast Water</li> </ul>	<ul style="list-style-type: none"> <li>• Federal, Territorial, Aboriginal Equity</li> <li>• Regional Equity</li> <li>• Regional Centres and Smaller Communities</li> <li>• Gender Equity</li> <li>• Intergenerational Equity</li> </ul>
Cumulative Impacts on the Human Environment	Legacy and Bridging
<ul style="list-style-type: none"> <li>• Boom and Bust</li> <li>• NWT Employment and Income</li> <li>• Revenues net of costs to the Government of the Northwest Territories (GNWT)</li> <li>• Revenues to the APG (net after loan payments)</li> <li>• Aboriginal Benefits Agreements</li> <li>• NWT Business Procurement</li> <li>• NWT Labour Force Development</li> <li>• Harvesting and Traditional Knowledge</li> <li>• Social Well-Being</li> <li>• Community Infrastructure and Services</li> <li>• Housing</li> <li>• Granular Resources Supply</li> <li>• Local Access to Gas Supply</li> </ul>	<ul style="list-style-type: none"> <li>• Regional Labour Force Development</li> <li>• Regional Transition Planning and Funding</li> <li>• Gas as Transition Fuel</li> <li>• Conservation Legacy</li> <li>• Decommissioning and Abandonment</li> </ul>
	Cumulative Impacts Management and Preparedness
	<ul style="list-style-type: none"> <li>• Pace and Scale/Boom-Bust Mitigation planning</li> <li>• Regional Cumulative Impacts Monitoring and Management</li> <li>• Project Follow-up, Compliance and Impacts Monitoring and Response</li> <li>• Climate Change Mitigation</li> </ul>

The results are presented in the tables that follow, organized to cover the major issues in each of the five categories identified in Table 19-3. The summary tables for each category are reproduced and discussed below. The tables summarize the more detailed evaluations reported in other chapters.

cumulative impacts of the Project. This analysis required consideration of the null alternative, and the possible future development implicit in the Project represented as a continuum of throughput possibilities from 0.83 to 1.8 Bcf/d and beyond. Across the range, the Panel distinguished between the impacts with and without the additional requirements or government measures recommended by the Panel.

In order to present the findings in a concise summary format, each table contains a three-colour bar chart.

## 19.6 SUMMARY OF PANEL ANALYSIS OF THE FIVE KEY SUSTAINABILITY ISSUES CATEGORIES

The Panel has applied its Framework to the major issues it identified as organized under five key sustainability categories. These categories have been used for assessment of the



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## Reasons for Decision

**Emera Brunswick Pipeline  
Company Ltd.**

**GH-1-2006**

**May 2007**

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**Facilities and Tolls and Tariffs**

**Canada**



# National Energy Board

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## Reasons for Decision

In the Matter of

### **Emera Brunswick Pipeline Company Ltd.**

Application dated 23 May 2006 for a Certificate of Public Convenience and Necessity under section 52 of the *National Energy Board Act* authorizing Emera Brunswick Pipeline Company Ltd. (EBPC) to construct and operate the Brunswick Pipeline, an Order under Part IV of the NEB Act approving the tolls for the Brunswick Pipeline and an Order designating EBPC a Group 2 company.

**GH-1-2006**

**May 2007**

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### **Approximate Conversions**

1 metre (m)	=	3.28 feet
1 kilometre (km)	=	0.62 miles
1 cubic metre (m <sup>3</sup> )	=	35.3 cubic feet
1 gigajoule (GJ)	=	0.95 million Btu (MMBtu)
1 decatherm (Dth)	=	1.0 MMBtu
1 hectare (ha)	=	2.47 acres
1 000 kilopascal (kPa)	=	145 psi
1 000 cubic metres (m <sup>3</sup> )	=	38.86 gigajoules

## Abbreviations

AFUDC	allowance for funds used during construction
Anadarko	Bear Head LNG Corporation, Anadarko Canada LNG Marketing, Corp. and Anadarko LNG Marketing, LLC
Bercha QRA Report	“Quantitative Risk Analysis of the Proposed Brunswick Natural Gas Pipeline” prepared by Bercha International Inc.
Bercha	Bercha Engineering Limited
CE Advisors	Concentric Energy Advisors
CEA Act	<i>Canadian Environmental Assessment Act</i>
CEA Agency	Canadian Environmental Assessment Agency
CMA	Census Metropolitan Area
Crossing Regulations	<i>National Energy Board Pipeline Crossing Regulations</i>
CSA	Canadian Standards Association
CSA Z662-03	CSA standard Z662-03, <i>Oil and Gas Pipeline Systems</i>
Dth/d	decatherm per day
DEGT	Duke Energy Gas Transmission
de Stecher Study	“Impact of Natural Gas Pipelines on the Value of Residential Real Estate” prepared by de Stecher Appraisals Ltd.
EA	environmental assessment
EBPC or the Applicant	Emera Brunswick Pipeline Company Ltd.
EGNB	Enbridge Gas New Brunswick
EMO	emergency management organization
EPM	emergency procedures manual
EPP	environmental protection plan
EPRP	emergency preparedness and response program
EPZ	emergency planning zone
ERP	emergency response plan



FA	federal authority
FORP	The Friends of Rockwood Park
FSA	firm service agreement
FTE	full-time equivalent
GDP	gross domestic product
Government Response	Response of the Government of Canada to the EA Report
HDD	horizontal directional drilling
Imperial	Imperial Oil Resources and ExxonMobil Canada Ltd.
IPL	international power line
Irving Oil	Irving Oil Limited
J.D. Irving	J. D. Irving, Limited
km	kilometre
KP	kilometre post
kPa	kilopascal
LDC	local distribution company
LNG	liquefied natural gas
LOC	letter of commitments
m	metre
MJ/m <sup>3</sup>	megajoules per cubic metre
M&NP US	Maritimes & Northeast Pipeline, L.L.C.
M&NP	Maritimes & Northeast Pipeline Management Ltd.
MDTQ	maximum daily transportation quantity
mm	millimetre
MPa	megapascal
NB	New Brunswick
NB ESA	<i>New Brunswick Endangered Species Act</i>
NB Power	New Brunswick Power Transmission Corporation

NEB Act	<i>National Energy Board Act</i>
NEB EA Report	National Energy Board Environmental Assessment Report
NEB or Board	National Energy Board
NSDOE	Nova Scotia Department of Energy
OD	outside diameter
OPR-99	<i>Onshore Pipeline Regulations, 1999</i>
Pembina Infrastructure Report	“Impacts of the Proposed Brunswick Pipeline on Municipal Infrastructure Maintenance Costs in Saint John” prepared by Pembina Institute
PPV	peak particle velocity
(the) Project	the proposed Brunswick Pipeline Project
RA	responsible authority
Repsol	Repsol Energy Canada Ltd.
RoW	right of way
SARA	<i>Species at Risk Act</i>
SCADA	supervisory control and data acquisition
SJFD	Saint John Fire Department
SJFD Risk Analysis Report	Risk Analysis report prepared by the Saint John Fire Department
SJL	Saint John Lateral
SOEP	Sable Offshore Energy Project
St. Clair	St. Clair Pipelines (1996) Ltd.
TEK	Traditional Ecological Knowledge
TransCanada	TransCanada PipeLines Limited
TWR	temporary working room
UNBI	Union of New Brunswick Indians
US	United States

## Glossary of Terms

alternative means	the various ways that are technically and economically feasible that the project can be implemented or carried out
alternatives to	functionally different ways to meet the project need and achieve the project purpose
assignment of unused capacity	the transfer of the rights and obligations of a transportation contract held by one party - the <b>assignor</b> - to another party - the <b>assignee</b>
backhaul	either the “physical” transportation of natural gas in the reverse direction of a given pipeline, or a “paper transport” of natural gas by displacement against the flow on a single pipeline so that the natural gas is notionally delivered upstream of the point at which it enters the system
construction	construction includes all activities required to construct the Project, including all clearing activities
cumulative environmental effects	environmental effects that are likely to result from the Project in combination with projects or activities that have been or will be carried out (as defined in the CEA Act)
custody transfer station	a location where the quantity of gas is determined and the amount allocated to each shipper is established
demand charges	a monthly charge that normally covers the fixed costs of a pipeline; the demand charge is based on the daily contracted quantity and is payable regardless of quantities transported
environmental effect	in respect to a project, (a) any change that the project may cause in the environment, including any change it may cause to a listed wildlife species, its critical habitat or the residences of individuals of that species as those terms are defined in section 2(1) of the <i>Species at Risk Act</i> , (b) any effect of any change referred to in paragraph (a) on health and socioeconomic conditions, on physical and cultural heritage, the current use of lands and resources for traditional purposes by Aboriginal persons, or any structure, site or thing that is of historical, archaeological, paleontological or architectural significance, or (c) any change to the project that may be caused by the environment (as defined in the CEA Act)

exchange	transportation of natural gas by displacement over two separate pipelines, each of which takes and retains gas contractually allocated to the other
federal authority (FA)	(a) a Minister of the Crown in right of Canada, (b) an agency of the Government or other body established by or pursuant to an Act of Parliament that is ultimately accountable through a Minister of the Crown in right of Canada to Parliament for the conduct of its affairs, (c) any department or departmental corporation set out in Schedule I or II to the <i>Financial Administration Act</i> , and (d) any other body that is prescribed pursuant to regulations made under paragraph 59(e) of the CEA Act (as defined in the CEA Act)
firm transportation	a non-interruptible gas transportation service which provides for the delivery of gas up to a specific maximum daily quantity; the shipper must pay a monthly demand charge regardless of the quantities transported and a commodity charge for the quantities actually transported
Group 2 Company	compared to Group 1 companies, Group 2 companies tend to be smaller and have very few shippers and are therefore subject to a lighter degree of financial regulatory oversight; they are regulated on a complaints basis
horizontal directional drill (HDD)	a river, railroad, highway, shoreline and marsh crossing technique used in pipeline construction in which the pipe is installed under specified no-dig areas at depths usually greater than conventional crossings. An inverted arc-shaped hole with two sag bends is drilled beneath the no-dig area and the preassembled pipeline is pulled through it
interruptible transportation	a gas transportation service provided as capacity is available; the shipper only pays a toll for the quantities actually transported
launcher/receiver site	facilities used to launch and receive pipeline internal inspection and cleaning equipment
load factor	generally, the ratio of the average contract quantity to the maximum quantity available to be contracted for the same period, usually expressed over a year and as a percentage
meter station	a facility to monitor natural gas flow in pipeline systems (i.e., gas entering and leaving the pipeline system); meter stations may also allow for monitoring of natural gas quality

negotiated settlement	an agreement between a pipeline company and interested parties concerning issues related to the company's revenue requirement, tolls, tariffs, and operational matters
open access pipeline	a pipeline that offers non-discriminatory, fully equal access to its transportation services
open season	a process in which a pipeline company offers either existing or new capacity to the market and receives bids for that capacity from market participants
postage stamp toll	for pipelines, a toll that is charged per unit transported regardless of the distance traveled and the points of origin and destination
responsible authority (RA)	in relation to a project, a federal authority that is required pursuant to subsection 11(1) of the CEA Act to ensure that an environmental assessment of the project is conducted (as defined in the CEA Act)
right of way (RoW)	the area which must be cleared (vegetation), crossed (watercourse), or developed (land) for the purpose of installing a pipeline
rolled-in toll	Tolls resulting from a toll design methodology in which the capital and operating costs of new facilities are added to those of the existing facilities; i.e., there is one cost pool for all facilities. Tolls are designed to recover the annual cost of providing service. All shippers who receive the same service pay the same toll. Tolls only vary according to such factors as volume and distance.
shipper	one who contracts with a pipeline for transportation of natural gas
Species at Risk	all species listed in Schedule 1 of the <i>Species at Risk Act</i> (SARA) as "extirpated", "endangered", or "threatened", or listed by the <i>New Brunswick Endangered Species Act</i> (NB ESA) as "endangered" or "regionally endangered"
Species of Conservation Concern	species not under the protection of the SARA or the NB ESA; that is, listed in the SARA but not as "extirpated", "endangered", or "threatened" in Schedule 1; listed as "species of special concern" within Schedule 1 of the SARA; or ranked as "S1", "S2", or "S3" by the Atlantic Canada Conservation Data Centre and also ranked as "at risk", "may be at risk", or "sensitive" by New Brunswick Department of Natural Resources

swaps	see “exchange” - in the context of this document and application, the term swap is defined synonymously with an exchange transaction
tariff	the terms and conditions under which the services of a pipeline are offered or provided, including the tolls, the rules and regulations, and the practices relating to specific services
throughput	in general, the amount of gas being transported through a pipeline or being processed through a facility over a given period of time
toll	the price charged by a pipeline company for transportation and other services
turn back capacity	a reduction in a shipper’s firm capacity commitments on a pipeline

## **Recital and Appearances**

**IN THE MATTER OF** the *National Energy Board Act* and the Regulations made thereunder;  
and

**IN THE MATTER OF** an application by Emera Brunswick Pipeline Company Ltd. (EBPC) dated 23 May 2006 for a Certificate of Public Convenience and Necessity under section 52 of the *National Energy Board Act* authorizing EBPC to construct and operate the Brunswick Pipeline, an Order under Part IV of the NEB Act approving the tolls for the Brunswick Pipeline and an Order designating EBPC a Group 2 company, filed with the National Energy Board under File No. OF-Fac-G-E236-2006-01 01 (3200-E236-1); and

**IN THE MATTER OF** National Energy Board Hearing Order GH-1-2006 dated 9 June 2006;

**HEARD** in Saint John, New Brunswick on 6 - 11, 13 - 18 and 20 November 2006;

### **BEFORE:**

S. Leggett	Presiding Member
K. Bateman	Member
S. Crowfoot	Member

### **APPEARANCES:**

#### **Applicant:**

Mr. Laurie Smith, Q.C.	Emera Brunswick Pipeline Company Ltd.
Mr. Nick Gretener	
Mr. Peter Doig	

#### **Companies:**

Mr. Bernard Roth	Bear Head LNG Corporation, Anadarko Canada LNG Marketing, Corp. and Anadarko LNG Marketing, LLC (collectively "Anadarko")
Mr. David S. MacDougall	Enbridge Gas New Brunswick
Mr. Ron Moore	Imperial Oil Resources and ExxonMobil Canada Ltd.
Mr. David A. Holgate	(collectively "Imperial")
Mr. James H. Smellie	Irving Oil Limited
Mr. Peter C.P. Thompson, Q.C.	Repsol Energy Canada Ltd.

Mr. Robert Gall                      Shell Canada Limited

Dr. Darrell Gallant                504-474 N.B. LTD.

**Groups:**

Ms. Teresa Debly                      Concerned Citizens, Friends of Saint John Community, Teresa  
Debly and the Estate of A.J. Debly (collectively “Teresa  
Debly”)

Mr. Alan Ruffman                      Friends of Rockwood Park

Mr. David Thompson

Mr. Eugene Gould

Ms. Anne-Marie Mullin              South Central Citizens Council / House of Tara

**Individuals:**

Ms. Teresa M. (Terry) Albright      (represented by Mr. Ivan Court)

Ms. Carol Armstrong

Mrs. Dawn Baldwin

Mr. Bernard Ball

Mr. Philip Blaney

Mr. Michael Burgess

Mr. Ivan Court

Mr. Patrick B. Court

Mr. Charles L. Debly

Ms. Janet Dingwell

Ms. Janice Eldridge-Thomas

Ms. Deborah Fuller

Mr. Glenn Patrick Griffin

Mr. Edward Harned

Ms. Patricia Higgins



Ms. Frauke Humphrey

Dr. Tom Inkpen

Mr. James L. Laracey

Ms. Betty Lizotte

Dr. Robert Moir

Ms. Frances Oliver

Ms. Joan Pearce

Ms. Yvonne Perry

Mr. Jack Quinlan

Ms. Darlene Richard

Ms. Ernestine Rooney

Mr. Horst Sauerteig

Ms. Linda Stoddard

Dr. Leland T. Thomas

Ms. E. Jean Thompson

**Governments:**

Mr. Jake Harms

Environment Canada

Mr. Paul Vanderlaan

New Brunswick Department of Environment

Mr. Dan Robichaud

NDP and Dan Robichaud

Mr. Stephen McGrath

Nova Scotia Department of Energy

Ms. Jody Saunders

National Energy Board

Ms. Marian Yuzda

## Chapter 1

# Introduction

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### 1.1 Project Overview

On 23 May 2006, Emera Brunswick Pipeline Company Ltd. (EBPC or the Applicant) applied to the National Energy Board (NEB or Board) for a Certificate of Public Convenience and Necessity under section 52 of the *National Energy Board Act* (NEB Act) authorizing EBPC to construct and operate the Brunswick Pipeline, an Order under Part IV of the NEB Act approving the tolls for the Brunswick Pipeline and an Order designating EBPC a Group 2 company.

The Brunswick Pipeline Project was referred to a review panel pursuant to section 25 of the *Canadian Environmental Assessment Act* (CEA Act). The NEB process was used as a substitute for an environmental assessment by a review panel as provided for under section 43 of the CEA Act. The substitution was approved by the Minister of the Environment and Minister responsible for the Canadian Environmental Assessment Agency (CEA Agency).

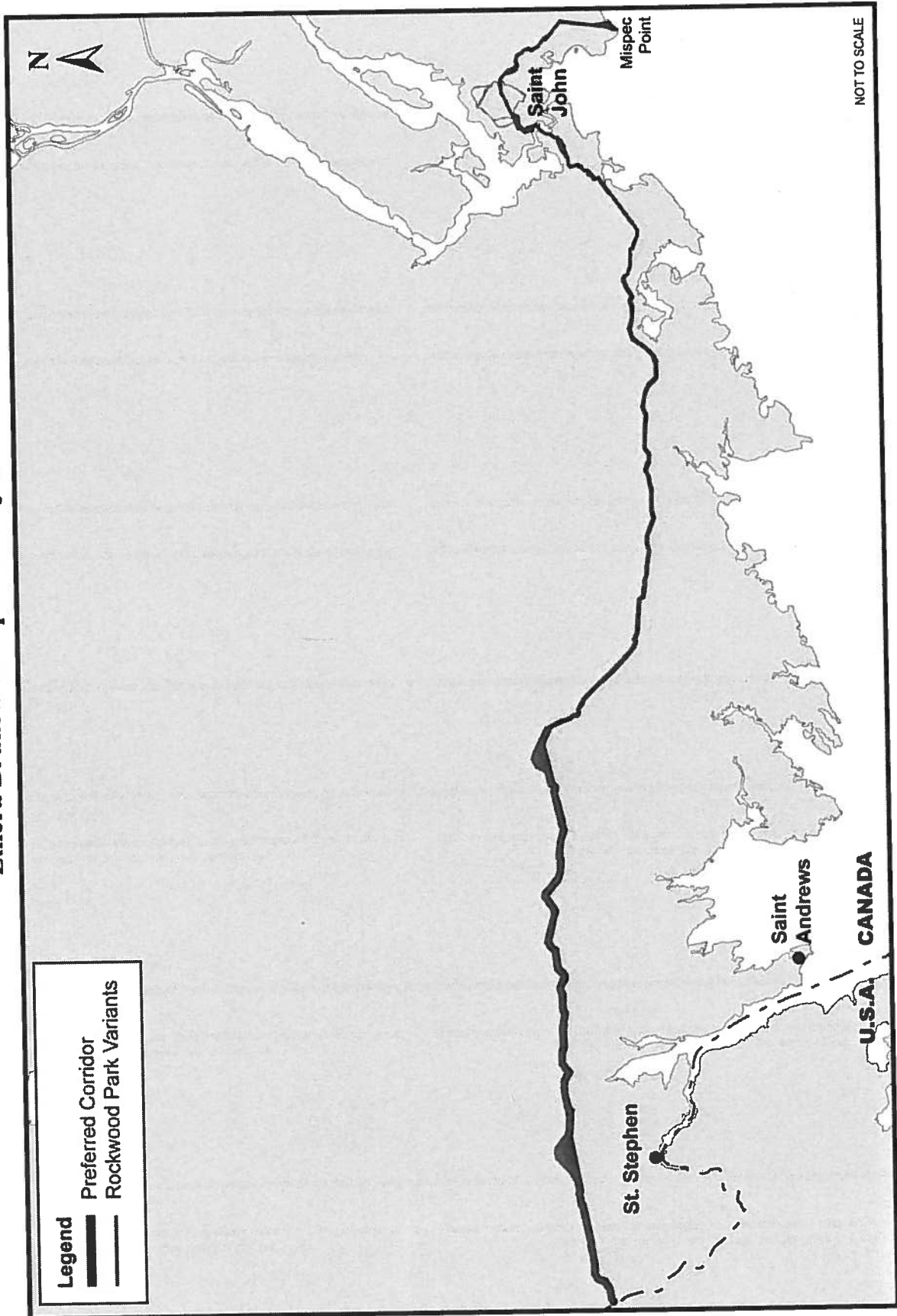
The proposed facilities would consist of approximately 145 km of 762 mm outside diameter (OD) pipeline extending from the Canaport™ Liquefied Natural Gas (LNG) Terminal at Mispec Point, New Brunswick (NB) to a point on the international border near St. Stephen, NB where it would interconnect with Maritimes & Northeast Pipeline, L.L.C. (M&NP US) (see Figure 1-1). The total capacity of the Brunswick Pipeline would be approximately 900 000 gigajoules per day (GJ/d) with a receipt pressure of 9 930 kPa at the interconnection with the Canaport™ LNG Terminal and a delivery pressure of 6 909 kPa at the interconnection with M&NP US. EBPC expects that the sales gas would have a heat content of 38.86 MJ/m<sup>3</sup>.

EBPC proposes to begin construction clearing in late 2007, followed by pipeline construction to meet a target in-service date of 1 November 2008.

The Applicant estimates the total capital cost of the applied-for facilities to be approximately \$350 million (see Appendix III for details).

EBPC and Repsol Energy Canada Ltd. (Repsol) have signed a Firm Service Agreement (FSA) for the firm transportation of 791 292 GJ/d on the Brunswick Pipeline for a term of 25 years. In addition to the FSA, the parties have executed a 25-year toll agreement obligating Repsol to pay all fixed charges applicable to the Brunswick Pipeline over the first 25 years of operation, including an investment return.

**Figure 1-1**  
**Emera Brunswick Pipeline Project**



## **1.2 Environmental Assessment Process**

The substitution provisions in section 43 of the CEA Act allow a federal authority (FA), with the approval of the Minister of the Environment, to use its own process for assessing the environmental effects of a project as a substitute for an environmental assessment (EA) by a review panel under the CEA Act. In the case of the Brunswick Pipeline Project, the Minister's approval allowed the NEB's public hearing process to substitute for an EA by a review panel under the CEA Act. The requirements for the substituted process were set out in correspondence among the CEA Agency, the NEB, and the Minister of the Environment. This correspondence and the scope of the EA are included in the NEB's EA Report, attached in full as Appendix VII to these Reasons.

Under the CEA Act, the Board conducted a review of the environmental effects of the Project and the appropriate mitigation measures. The Board's conclusions and recommendations, including mitigation measures, follow-up programs and its rationale, are set out in the NEB's EA Report. The EA Report also provides a summary of comments received from the public. The EA Report was released on 11 April 2007 and forwarded to federal responsible authorities (RAs). The response of the Government of Canada to the EA Report (government response) was coordinated by Natural Resources Canada and was approved by the Governor in Council pursuant to subsection 37(1.1) of the CEA Act on 17 May 2007.

A discussion of the government response is provided in Chapter 6 of these Reasons, and a copy of the government response is provided in Appendix VIII.

The Board took into consideration the EA Report and the government response before making its decision under the NEB Act. The Board's overall conclusion and disposition are provided in Chapter 9 of these Reasons. The conditions for inclusion in the Certificate are listed in Appendix V.

## Chapter 2

# Role of the Board

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### 2.1 Public Participation

The Board is committed to ensuring that stakeholders are engaged effectively in the Board's public processes.<sup>1</sup> EBPC's application attracted a large public response with more than 70 parties registered as intervenors in the GH-1-2006 hearing, over 180 Letters of Comment received by the Board, and oral statements made by 19 people during the oral portion of the hearing.

As a result of the high level of public interest and the general lack of familiarity with the Board's processes, Board staff held a number of public information sessions and pre-hearing planning sessions to discuss Board processes, but not the merits of the application. In addition, the Board provided a Hearing Order setting out the procedure to be followed in this hearing, and written procedural updates, including one entitled "What Can I Expect at the Hearing" just prior to the oral portion of the hearing, to address common requests for information on the Board's processes or to further explain the oral portion of the hearing process. Throughout the written and oral portions of the hearing, Board staff responded to numerous procedural inquiries by telephone, email and in person. The Board also provided additional guidance to parties on its mandate and its process by way of its frequent rulings on motions made by parties throughout the course of the hearing; a number of these rulings are included in Appendix VI.

To further enable the participation of the public, the Board posted all documents received, to the extent it was technically feasible, on its electronic repository, accessible through the Board's Internet site. During the oral portion of the hearing, the Board viewed all documents being referenced electronically, on screens provided on the sides of the room, to enable the participants to follow the proceedings. The Board provided one hard copy of all exhibits, a computer and a printer in the hearing room for reference and use by participants to the hearing. The Board also broadcast its proceedings live, in both English and French, through its webcast of the proceedings, also accessible through the Board's Internet site. Additional technical or procedural assistance for parties, such as photocopying and blank affidavit forms, was provided by Board staff when requested, to the extent it was possible to do so. The Board also undertook service of intervenors' final arguments on other parties, if requested to do so.

In addition to the Board's activities aimed at ensuring effective public participation, the Board notes that there is also a responsibility upon the participants in an NEB public hearing. That responsibility is to attempt to participate in an effective manner, by following the procedures of

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<sup>1</sup> The Board has developed five corporate goals to help it meet the challenges it faces in a dynamic energy market and ever-changing regulatory landscape. The NEB's Goal 4 states as follows: "The NEB fulfills its mandate with the benefit of effective public engagement." Effective public engagement is a key component in making certain that the rights of persons affected by the Board's decisions are protected, as it ensures that the Board has all of the relevant evidence it requires prior to making a decision and, consequently, that the principles of natural justice and fairness are met. As a result, effective public engagement also allows the Board to meet another of its Goals, "NEB-regulated facilities are built and operated in a manner that protects the environment and respects the rights of those affected."

the Board, being knowledgeable about the application and issues in the proceeding, providing relevant evidence for the Board's consideration, and, even in the face of disagreement with the position that another party advocates, showing courtesy and respect to all parties involved in the process, as well as to the Board and its staff.

In this proceeding, there was a high level of participation by intervenors, many of whom, though unpaid and unrepresented by counsel, were well-prepared and knowledgeable about the issues to be considered at the hearing.

## **2.2 Mandate of the National Energy Board**

In addition to the activities undertaken by the Board during the hearing, the Board will, in these Reasons for Decision, provide guidance with respect to the role of the Board and its legal obligation to proceed in accordance with the principles of natural justice in considering EBPC's application. In the Board's view, it is especially important in the context of this particular hearing, in which the Board's public hearing process has been authorized to substitute for a review panel hearing under the CEA Act, that all parties clearly understand the responsibility of the Board, as mandated by Parliament and supervised by the courts.

The NEB is an independent federal agency that regulates several aspects of Canada's energy industry. It is a creature of statute, established in 1959 by Parliament by virtue of the proclamation of the NEB Act. The Act transferred to the Board the federal government's responsibilities<sup>2</sup> for pipelines from the Board of Transport Commissioners, and for oil, gas and electricity exports from the Minister of Trade and Commerce. In addition, it granted the Board responsibility for regulating tolls and tariffs, and defined its jurisdiction and status as an independent court of record.

The NEB's purpose is to promote safety, environmental protection and economic efficiency in the Canadian public interest in its regulation of pipelines, international power lines and energy development, within the mandate set by Parliament. As part of its mandate, the Board, as a quasi-judicial tribunal, may hold public hearings in order to hear all sides and points of view prior to making decisions on applications for new facilities that fall within its jurisdiction.

In carrying out its quasi-judicial duties, the Board is bound by its mandate under the NEB Act. In certain instances, such as this one, the Board also has responsibilities under the CEA Act. Under the NEB Act, there is no provision for participant funding. Under the CEA Act, participant funding is authorized, and in this case, a number of intervenors received such funding. As further discussed in the EA Report, attached as Appendix VII, the funding was administered by the CEA Agency, independent of the Board.

As a consequence of it being a creature of statute, the Board can only act within the mandates set out by the Acts pursuant to which it has responsibilities. The Board has no authority to intervene in matters which fall within the responsibility of the provinces, or of the municipalities. Throughout the hearing, the Board was provided with information concerning matters falling

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2 As defined in the division of powers between the provinces and the Federal government under sections 91 and 92 of the *Constitution Act, 1867*.

within provincial or municipal responsibility, and was made aware of the level of concern and frustration a number of members of the public had with these matters. Although the Board acknowledges that parties have these concerns, such matters are outside the Board's authority as set out in the NEB Act, or under the CEA Act.

The Board is bound as well by the principles of natural justice, under the supervision of the courts of law. These principles have been developed by the courts over centuries, and apply to any public body making a decision that affects the rights, privileges or interests of any person, other than a purely legislative decision.<sup>3</sup> Accordingly, the Board is legally required to adhere to these principles in carrying out its decision-making responsibilities.

Decisions by regulatory tribunals, such as the NEB, are not made by conducting a plebiscite or merely on the basis of a demonstration of public opposition or support. Rather, such decisions are made within a legal framework enacted by the legislature and applied by the courts. This is, of course, the essence of the rule of law.

In this case, part of the applicable legal framework is found in Part III of the NEB Act, section 52 of which requires the Board to make a determination with respect to "the present and future public convenience and necessity", in the Canadian public interest. Part IV of the NEB Act also requires that the Board make certain determinations with respect to tolls and tariffs. The requirement imposed by the courts is that, in making its determinations, the Board must rely only on the facts that are established to its satisfaction through the hearing process, and must otherwise proceed in compliance with the principles of natural justice. The Board must perform its duty on the basis of principle within a structured framework, while following a process that meets the requirements imposed by the courts. The principles of natural justice are further expanded upon in Subsection 2.3, below.

As previously mentioned, in this application, EBPC has applied under two parts of the NEB Act- Part III, Construction and Operation of Pipelines; and Part IV, Traffic, Tolls and Tariffs. The different Parts of the NEB Act require different determinations to be made by the Board. In Part III, under section 52 of that Part, the Board has to make a determination whether the Project is in the present and future public convenience and necessity. Under Part IV, the Board must determine whether the tolls to be charged are just and reasonable, and ensure that there is no unjust discrimination with respect in tolls, service or facilities. Much of the general public's interest in this hearing stemmed from EBPC's Part III application to construct and operate the Brunswick Pipeline. Accordingly, further explanation of how Part III applications are assessed may be informative. This is found in subsection 2.4, below.

The Board is only charged under Part III with determining whether the Project applied-for, involving the preferred corridor, is in the present and future public convenience and necessity. The Board is not able to approve a different corridor, such as one that includes a proposed marine portion of the corridor. However, in determining whether the Project is or is not in the present and future public convenience and necessity, the Board will consider, among other

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3 Macaulay and Sprague, *Practice and Procedure before Administrative Tribunals*, (Toronto: Carswell, 2001) [hereinafter "Macaulay"], at p. 9-20.1. Essentially, a purely legislative decision would be one which establishes a standard, norm or rule of conduct binding upon an undetermined number of persons, and which may be driven by policy considerations, Macaulay at p. 9-20.4.

factors, the appropriateness of the general route and general land requirements (Issue 7 of the List of Issues), as well as any public interest that in its opinion may be affected by the granting or refusing of the application (Subsection 52(e) of the NEB Act). Accordingly, further discussion of the marine corridor is contained within Chapter 6 herein, as well as being discussed under the Board's CEA Act mandate in the Board's EA Report, attached as Appendix VII hereto.

## 2.3 Principles of Natural Justice

Natural justice has been explained in the jurisprudence as follows:<sup>4</sup>

The concept of natural justice is an elastic one, that can and should defy precise definition. The application of the principle must vary with the circumstances. How much or how little is encompassed by the term will depend on many factors; to name a few, the nature of the hearing, the nature of the tribunal presiding, the scope and effect of the ruling made.

As a result, the content of the principles of natural justice will vary from case to case. Essentially, what is "fair" requires a balance between what is necessary for the effective and efficient performance of public duties, as mandated under an empowering statute, and what is necessary for the protection of the interests of the parties affected.<sup>5</sup>

Generally, there are two components to the principles of natural justice. First, a party must have an adequate opportunity to be heard before a decision is made affecting that party's interest. The second component is that the decision must be made by an independent and unbiased decision-maker.<sup>6</sup>

Allowing a party an adequate opportunity to be heard before a decision is made affecting that party's interest requires that all parties know the case that is to be met and be provided with the opportunity to respond fully and defend their own position. It also requires that the decision be made on the basis of evidence presented, and not on the basis of perception, impression, anecdote or merely the number of people in opposition to, or in support of, an application. Further, such a decision must be made by an independent decision-maker who is objective and impartial.

Consequently, anyone submitting to the Board an application for a facility with the requisite information has a legal right to a full and fair hearing before the Board. An applicant is then legally entitled to a decision by the Board based on the facts and evidence presented at such a hearing, in accordance with the statutory requirement on the Board under Part III to determine whether an applied-for facility is and will be required by the present and future public convenience and necessity.<sup>7</sup>

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4 *Tandy Electronics Ltd. v. United Steel Workers of America* (1979), 102 D.L.R. (3d) 126 (Ontario High Court of Justice), per Cory J., at 132.

5 Macaulay at p. 9-20.9 to 9-20.10.

6 *Ibid.*, at p. 9-20.8(4).

7 The "public convenience and necessity" test will be discussed further below.



Natural justice also requires, among other things, that notice be given to other parties whose interests may be affected by an application, so that those parties who wish to participate in a hearing to test the applicant's evidence, provide their own evidence, and provide final argument, have the opportunity to do so. The Board's hearing process is designed to meet its legal obligation to comply with the principles of natural justice.

The Board notes that there is a responsibility on parties who wish to participate in a hearing, to do so in a timely manner, and in accordance with the rules established for the hearing. Late attempts to participate or to provide evidence past the deadlines established could not only be disruptive to the process, but, if permitted, could impact the procedural rights of the existing parties. Therefore, the Board was very cautious in determining, on the facts of each request, whether that request for late participation or to file late evidence, in that particular circumstance, may be beneficial to the Board in making its decision, and was not in contravention of the principles of natural justice or unduly prejudicial the rights of other parties.<sup>8</sup>

## **2.4 Assessing a Facilities Application under Part III, section 52 of the NEB Act**

When the Board receives an application to construct and operate a facility, it must initially evaluate whether the application is ready to proceed to a public hearing. The Board does this by assessing the information provided in the application against the information required by the Board's Filing Manual (2004). If the Board is satisfied that the application meets these threshold requirements for the purposes of a hearing, it issues a hearing order. It is not expected that all of the evidence that the Board will require to make its decision will be provided in the initial application to the Board. Instead, one or more rounds of information requests are undertaken. In addition, there are further written filings both by the applicant and by other parties, the eliciting of oral evidence through questioning on the pre-filed written evidence at the oral portion of the hearing, and potentially oral statements made at the oral portion of the hearing, to ensure that the Board has as complete a record as possible upon which to base its decision.

At the end of the evidentiary portion of a hearing, all parties have the opportunity to present final argument based upon the evidence before the Board. Final argument provides parties the opportunity to persuade the Board of their position, based on the evidence that has been previously adduced. It is not the time for providing new evidence, as this would be contrary to the principles of natural justice previously discussed. Sometimes final argument contains statements or comments that are not supported by the evidence on the record. The Board's role in reviewing the evidence and arguments is to ensure that statements and comments made in argument are supported by the evidence on the record, to disregard any statements that are not so supported, and to make its determination based solely on the record. To do otherwise would breach the principles of natural justice.

The Board notes that this level of information is required for the Certificate of Public Convenience and Necessity stage of a project, during which the applicant is seeking approval only for a broad

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<sup>8</sup> For example, in a ruling dated 23 October 2006, the Board set out criteria that it may consider in determining whether to grant requests to file late evidence, late Letters of Comment or late requests to participate [Ruling #10, A-36]. This ruling is included in Appendix VI.

corridor, within which corridor the final, smaller right of way (RoW) and pipeline would be located if the project obtains all of its approvals. It is not necessary that every detail related to a project be put before the Board for the purpose of the Board's determination whether to grant or deny the application for a Certificate. The nature of applications presented to the Board is such that not every detail of a project must be ascertained before a Certificate may be issued; indeed it would be impractical, if not impossible, for all details to be provided in advance.

At this Certificate stage of a project, an applicant has the onus of persuading the Board that a Certificate should be issued on the basis of all of the evidence presented during the course of both the written and oral portions of the hearing. While it is up to the applicant to provide evidence in support of its application, intervenors opposing the application are expected to provide some form of evidentiary support for their position. Intervenor evidence may then be subject to the same testing as the applicant's evidence, for example, by cross-examination at the oral portion of the hearing.

The Board notes that prior to a pipeline project being put into operation, there are a number of additional approvals that must be issued and detailed filings required, which involve, for example, the filing of the plans, profiles and books of reference setting out the detailed route of the pipeline, the filing of various detailed construction, operational, and environmental manuals, other filings required as part of condition compliance or to comply with applicable regulations, and approval of a leave to open application. Further information and approvals may also be required by other federal, provincial or municipal regulatory agencies.

In addition, should a project be approved, the Board has the authority and responsibility to monitor the company's activities during the construction and operation phases of that project to ensure pipeline safety, and also to ensure that a company is abiding by all of the terms and conditions of its Certificate and the applicable regulations under the NEB Act. For example, during construction, the Board inspects the project, ensuring condition compliance and responding to landowner complaints. To address any noncompliance matters, the Board has various levels of enforcement tools available, up to and including stop work orders and revocation or suspension of the Certificate.

After construction, the Board retains jurisdiction over an approved project, assuming a supervisory and regulatory role for the life of the project. In this role, the Board ensures ongoing compliance with both Certificate conditions and applicable legislation under which the Board has a legislated mandate. As well, the Board deals with any complaints that arise during the life of the project and fall within the Board's jurisdiction.

The GH-1-2006 hearing provided an opportunity for the Board to hear the views of people who may be affected by the Brunswick Pipeline Project. In addition, those people who were granted intervenor status had an opportunity to ask written questions about the evidence on the record, ask questions directly of EBPC's witnesses, file evidence of their own and respond to questions on that evidence. Intervenors also had the opportunity to present arguments to the Board and respond to the arguments of the Applicant. In the Board's view, the combined written and oral portions of the GH-1-2006 hearing provided a complete record upon which the Board has based its final decision, under Part III of the NEB Act, whether the Brunswick Pipeline Project is and

will be in the present and future public convenience and necessity, as well as under Part IV, with respect to traffic, tolls and tariffs on the Brunswick Pipeline.

## **2.5 Public Interest and the Public Convenience and Necessity Test under Part III of the NEB Act**

The Board has described the public interest in these terms:<sup>9</sup>

The public interest is inclusive of all Canadians and refers to a balance of economic, environmental, and social interests that change as society's values and preferences evolve over time. As a regulator, the Board must estimate the overall public good a project may create and its potential negative aspects, weigh its various impacts, and make a decision.

As a federal tribunal, the Board must focus on the overall Canadian, or national, public interest. Various decisions of the courts have established that a specific individual's or locale's interest is to be weighed against the greater public interest, and if something is in the greater public interest, the specific interests must give way.<sup>10</sup>

Throughout the jurisprudence and commentary on "public convenience and necessity" and "public interest", the phrase "public convenience and necessity" has generally been treated as being synonymous with "public interest".<sup>11</sup> The public convenience and necessity test is predominantly the formulation of an opinion by the tribunal. This opinion must be based on the record before it; that is to say, the decision must be based not only on facts but with the exercise of considerable administrative discretion.<sup>12</sup> Similarly, there are no firm criteria for determining the public interest that will be appropriate to every situation. Like "just and reasonable" and "public convenience and necessity", the criteria of public interest in any given situation are understood rather than defined and it may well not serve any purpose to attempt to define these terms too precisely. Instead, it must be left to the Board to weigh the benefits and burdens of the case in front of it.

The Board has often incorporated these concepts into its own decision-making process; for example, it has stated that the test of public convenience and necessity is primarily a matter of reasoned opinion, based upon an appropriate factual basis that is within the discretion of the regulatory body.<sup>13</sup>

With respect to how these concepts apply to the Board in fulfilling its mandate under the NEB Act, it is noteworthy that Parliament did not find it necessary to specify how the factors set out in section 52, including how paragraph 52(e) [public interest], or any other factors that the Board

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9 See the Board's Internet site at [http://www.neb-one.gc.ca/PublicInterestFootnote\\_e.htm](http://www.neb-one.gc.ca/PublicInterestFootnote_e.htm)

10 See for example, *Re Actus Management Ltd. and City of Calgary* (1975), 62 DLR (3d) 421 (AB Sup. Ct. (A.D.)), at QL p.4.

11 Macaulay, *supra* note 3, at p. 8-6.

12 *Memorial Gardens Assn. (Can.) Ltd. v. Colwood Cemetery Co.*, [1958] SCR 353 at 357 (SCC).

13 *Joint Public Review Panel Report, Sable Gas Projects*, dated October 1997, pp. 129-130, citing *Memorial Gardens*. The Joint Panel Report was considered in the *National Energy Board GH-6-96 Reasons for Decision, Sable Offshore Energy Project and Maritime and Northeast Pipeline Project*, dated December 1997.

might consider relevant, are to be examined and applied. The Board has the discretion to decide what factors are relevant in determining the public interest under the NEB Act. For example, the CEA Act requires a consideration of socio-economic effects only if they result from an environmental effect of a project. The Board usually considers a broader range of socio-economic effects when considering an application under the NEB Act.<sup>14</sup> Under paragraph 52(e) [public interest] of the NEB Act, the Board has, in the past, also taken into account other considerations related to the project, such as potential for commercial impacts, environmental protection and public safety.<sup>15</sup> In certain cases, the Board has also considered whether the addition of pipeline facilities to the existing Canadian pipeline infrastructure was in the public interest.<sup>16</sup>

Since the public interest is dynamic, varying from one situation to another (if only because the values ascribed to the conflicting interests alter), it follows that the criteria by which the public interest is served may also change according to the circumstances.<sup>17</sup> In addition, it is worthwhile to note that while the Board may be guided by past decisions, it need not be bound by them; indeed, it may be imprudent to be so bound given the dynamic nature of the public interest, and the inherent exercise of administrative discretion in the Board's decision-making process.

While in certain cases the unequivocal failure of an applicant to satisfy the Board on a single critical component may be enough for the Board to conclude that, on that fact alone, the project cannot be found to be in the public convenience and necessity, such failure on a single factor is unlikely. More common is the situation where the evidence in one or more of the areas of examination is stronger than that presented with respect to other relevant matters.<sup>18</sup> In such cases, the Board will, on the basis of the evidence before it and within the specific circumstances of each application, apply administrative discretion and expertise in its overall determination of whether the applied-for pipeline is required by the present and future public convenience and necessity. In doing so, the Board must also, after carefully weighing all of the evidence in the proceedings, exercise its discretion in balancing the interests of a diverse public.

Accordingly, under the NEB Act, the factors to be considered and the criteria to be applied in coming to a decision on public interest or the present and future public convenience and necessity may vary as a result of many things, including the application, the location, the commodity involved, the various segments of the public affected by the decision, societal values at the time, and the purpose of the applicable section of the NEB Act. The following subsections and chapters discuss, among other things, the Board's identification, consideration, weighing and balancing of those factors the Board has determined are relevant to its assessment of this particular Project under section 52 of the NEB Act.

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14 *National Energy Board GH-3-97 Alliance Comprehensive Study Report*, Alliance Pipeline Ltd. on behalf of the Alliance Pipeline Limited Partnership, dated September 1998, at p. 9.

15 *National Energy Board GH-3-97 Reasons for Decision*, Alliance Pipeline Ltd. on behalf of the Alliance Pipeline Limited Partnership, dated November 1998, at p. 8.

16 *National Energy Board GH-1-98 Reasons for Decision*, Northstar Energy Corporation, dated May 1998, at p. 27.

17 *National Energy Board EH-1-2000 Reasons for Decision*, Sumas Energy 2, Inc., March 2004, at p. 10, citing with approval comments made by the Ontario Energy Board.

18 *National Energy Board GH-2-2000 Reasons for Decision*, AEC Suffield Gas Pipeline Inc., dated August 2000, at p. 22-23.

## 2.6 Applying the Test in the GH-1-2006 Hearing to EBPC's Part III Application

During the course of this hearing, several parties raised the public convenience and necessity test, and the criteria that the Board should consider in making its decision in the public interest.

Section 52 states as follows:

52. The Board may, subject to the approval of the Governor in Council, issue a certificate in respect of a pipeline if the Board is satisfied that the pipeline is and will be required by the present and future public convenience and necessity and, in considering an application for a certificate, the Board shall have regard to all considerations that appear to it to be relevant, and may have regard to the following:
- (a) the availability of oil, gas or any other commodity to the pipeline;
  - (b) the existence of markets, actual or potential;
  - (c) the economic feasibility of the pipeline;
  - (d) the financial responsibility and financial structure of the applicant, the methods of financing the pipeline and the extent to which Canadians will have an opportunity of participating in the financing, engineering and construction of the pipeline; and
  - (e) any public interest that in the Board's opinion may be affected by the granting or the refusing of the application.

The effect of the language in section 52 is that the Board has broad discretion. Based on the decision of the Federal Court of Canada in *Union Gas v. TransCanada PipeLines Ltd.*<sup>19</sup>, the only apparent limit on the exercise of that discretion is good faith, although the Board must, of course, exercise its discretion on the basis of relevant considerations and not arbitrarily or discriminatorily.<sup>20</sup>

In *Canadian National Railways v. Canada Steamship Lines Limited*,<sup>21</sup> the Privy Council, in construing the words "all considerations which appear to it to be relevant", which are the same words as used in section 52 of the NEB Act, held:

It would be difficult to conceive a wider discretion than is conferred on the Board as to the considerations to which it is to have regard in disposing of an application for the approval of an agreed charge. It is to have regard to "all considerations which appear to it to be relevant". Not only is it not precluded negatively from having regard to any considerations, but it is enjoined positively to have regard to every consideration which in its opinion is relevant.

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19 [1974] 2 F.C. 313.

20 *Sumas Energy 2, Inc. v. Canada (National Energy Board)*, [2005] F.C.J. No. 1895 (FCA), at QL para 35.

21 [1945] 3 D.L.R. 417 at 420.

While the factors that the Board will consider may vary in the circumstances of the case before it, there are certain factors that are typically addressed in pipeline applications. For example, public safety, environmental, and socio-economic concerns are usually raised in the context of public interest considerations, and were examined in this hearing as well.

## **2.7 Conclusion**

In this proceeding, the Board heard evidence on engineering design and safety issues; economic considerations, such as supply and markets; public engagement and Aboriginal consultation; socio-economic and environmental effects of the Project; and land and routing matters. These issues are addressed in more detail in the following chapters. The Board has determined that all of these factors are relevant to its decision under Part III of the NEB Act, whether the Project is in the present and future public convenience and necessity. Accordingly, the benefits and burdens that would result from the Brunswick Pipeline Project in all of these areas must be identified prior to the Board's final determination of whether the Project is and will be required by the present and future public convenience and necessity. Chapters 3, 4, 5 and 6 discuss these issues and the associated benefits and burdens of these issues.

Chapter 7 addresses issues arising from EBPC's Part IV application with respect to the tolls and tariff on the Brunswick Pipeline Project. Additional benefits and burdens related to tolls, tariffs and service issues are also identified therein. The Board's determination on whether the tolls to be charged are just and reasonable, and whether there is unjust discrimination with respect to tolls, service or facilities, is contained in that chapter along with the Board's decision on EBPC's requested method of regulation.

The Board's weighing and balancing of all of the benefits and burdens of the Brunswick Pipeline Project, and its determination under Part III of the NEB Act is contained in Chapter 8 of these Reasons.

Its disposition with respect to EBPC's application is contained in Chapter 9.

## Chapter 3

# Facilities and Safety of Operation

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### 3.1 Facilities Description

An overview description of the facilities is provided in Chapter 1. Additional details are set out below. The pipeline would be constructed in two sections, an urban section of approximately 31 km through the City of Saint John, NB beginning at the Canaport™ LNG Terminal, and a rural section of approximately 113 km extending from the City of Saint John to the M&NP US interconnect. The urban section includes approximately 4.2 km through Rockwood Park, and a planned horizontal directional drilling (HDD) crossing of the Saint John River.

Six mainline valve sites would be installed, each with a sectionalized block valve that can be operated either manually or by remote control from the Duke Energy Gas Transmission (DEGT) Houston gas control center. Three of the valve sites would be located within the City of Saint John, and three sites would be located along the rural section of the pipeline.

One custody transfer station would be installed on the Brunswick Pipeline at the interconnect point between the pipeline and the Canaport™ LNG Terminal.

The applied-for facilities include two sets of pig launcher/receiver facilities. A launcher would be installed at the interconnect between the Brunswick Pipeline and the Canaport™ LNG Terminal, and a launcher/receiver facility would be installed at the mainline valve site located adjacent to the Maritimes & Northeast Pipeline Management Ltd. (M&NP) Saint John Lateral (SJL) valve site 63. Although not part of this application, a receiver barrel would be installed in the United States (US) at the Baileyville Compressor station.

### 3.2 Pipeline Design

#### 3.2.1 Codes and Standards

EBPC submitted that the applied-for facilities would be designed, constructed and tested in accordance with Canadian Standards Association (CSA) standard Z662-03, *Oil and Gas Pipeline Systems* (CSA Z662-03), the provisions of the NEB Act and other applicable governing codes. EBPC would also comply with the requirements of the *Onshore Pipeline Regulations, 1999* (OPR-99) for the construction, operation and maintenance of the pipeline. EBPC plans to conduct a 100 percent examination of all welds for the Project. Welding and testing would follow the requirements set out in CSA Z662-03. The pipeline would be tested in accordance with DEGT Procedure TP-CT1.0 dated 5 May 2004, "Pressure Testing of Gas Transmission Facilities", which complies with the requirements of both CSA Z662-03 and OPR-99.

### **3.2.2 Materials and Line Pipe**

In its application, EBPC provided a detailed explanation of the specifications for the pipe and other proposed facilities for the Project. The pipe specifications are summarized in Appendix IV. EBPC stated “the Brunswick Pipeline will be a state-of-the-art natural gas pipeline, incorporating the latest in corrosion protection technology and built to standards often exceeding Code requirements.”

A number of intervenors expressed concern about the thickness of the proposed pipeline and the possibility that it could be ruptured. However, EBPC submitted that the grades of steel and the pipeline thickness proposed for its pipeline were highly resistant to third party damage. It indicated that NEB standards for pipeline wall thickness were met or exceeded throughout the urban route. Further, EBPC stated that, based on a study it submitted entitled “Resistance to Puncture Pertaining to the Brunswick Pipeline” prepared by Kiefner & Associates, Inc., the risk of a third party event puncturing the urban pipeline would be remote.

### **3.3 Pipeline Construction**

EBPC submitted that its development team has considerable experience designing, constructing and operating pipelines. EBPC had established a contractual relationship with St. Clair Pipelines (1996) Ltd. (St. Clair) to provide project management and technical services to permit and construct the Brunswick Pipeline, as well as to operate the Brunswick Pipeline once it is in service. EBPC stated that St. Clair has the most extensive pipeline construction and operating experience available in Maritime Canada as it was responsible for the design and construction of the M&NP system and is the contract operator of that system. EBPC indicated that, through St. Clair, it has also been able to access the considerable depth of experience of the DEGT staff, which operate natural gas pipeline transmission and gas distribution facilities across Canada and the US.

#### **3.3.1 Blasting**

EBPC anticipated a substantial portion of the proposed corridor would require mechanical ripping or blasting to excavate the pipeline trench. EBPC stated that most of the proposed urban corridor through the City of Saint John would require some degree of blasting.

EBPC proposed designing blasts to account for adjacent structures, facilities, and services and to use blast mats to prevent scattering of rock and debris. A concise blasting and blast monitoring protocol would be established and enforced in residential areas.

Blasts would be designed to limit vibration levels to 50 millimetres per second (mm/sec) at peak particle velocity (PPV). For vibration sensitive-structures, vibration would be limited to 25 mm/sec at PPV. Further, EBPC’s contractor would conduct three test blasts based upon the blasting procedures prior to full scale blasting. If the test blasts do not produce an acceptably low level of vibration, the contractor would revise the blasting procedures.

EBPC committed to surveying all structures and facilities located within 200 m of the blasting zone both before and after blasting activities. Older homes in Milford would be assessed by a



professional engineer to determine if they warrant a sensitive structure status. Claims for damage would be reviewed by comparing pre-blast surveys to post-blast surveys.

All existing groundwater wells within 500 m of blasting activity would be identified. EBPC indicated it would undertake seismic monitoring for the well situated closest to the RoW, within 500 m of each side of a blast, during blasting activities.

### **3.3.2 Horizontal Directional Drilling (HDD)**

EBPC retained the specialized services of a consultant, AK Energy Services, to examine the feasibility of a number of HDD crossings along the corridors under review for the proposed pipeline. The crossing of the Saint John River between Pokiok and Pleasant Point attracted the most attention from participants during the proceeding. The most significant issues raised were noise and vibration, and the duration of construction. EBPC submitted that it plans to conduct this HDD during the winter construction season to avoid seasons during which residents would be more likely to keep their windows open throughout the day.

The issues and mitigation measures associated with HDD activity are addressed in the NEB's EA Report, which is attached in full as Appendix VII to these Reasons.

#### ***Views of the Board***

The Board notes that St. Clair, to whom the construction and operation of the Pipeline has been contracted, has a great deal of experience in doing so, including direct experience in this locale.

The Board is satisfied with the measures that EBPC has proposed to minimize and mitigate the effects of blasting during construction. Adequate protection of vibration-sensitive structures will be provided by monitoring blasts within 200 m and limiting vibrations to 25 mm/sec PPV. In the event that any damage were to occur during blasting to sensitive structures, groundwater wells, or otherwise, the Board would expect EBPC to reassess the blast design before blasting activity continued.

In light of the information EBPC has provided to date, the Board is satisfied that EBPC intends to continue to develop and implement appropriate construction methods to handle challenges faced during the HDDs. The Board finds that the commitments EBPC has made to monitor and control noise and vibration are sufficient. EBPC's commitment to hire experienced contractors to perform the HDDs provides further assurance to the Board that the HDDs can be carried out as EBPC has proposed. [For further discussion about noise related to HDDs, please see the NEB EA Report.]

### **3.4 Pipeline Safety**

#### **3.4.1 Risk Assessment**

In support of its application, EBPC submitted a report titled “Quantitative Risk Analysis of the Proposed Brunswick Natural Gas Pipeline” prepared by Bercha International Inc. (Bercha QRA Report). The purpose of the Bercha QRA Report was to evaluate the risks associated with operating the proposed pipeline and, if required, to identify any appropriate mitigative measures to minimize the risks to acceptable levels. The principle conclusions were summarized in that report as follows:

- The individual risk levels to members of the public were within acceptable limits and in the Insignificant risk regions.
- None of the individual specific risks fall into the Intolerable risk region.
- The HDD portion of the pipeline presents somewhat lower risk than the buried portion of the pipeline.
- The preferred route through Rockwood Park presents lower risks to the public than the other two alternatives.
- The preferred route through Rockwood Park presents significantly lower risks to the Saint John Regional Hospital than the northern route alternatives, although all route alternatives are in the Insignificant risk region.

The Bercha QRA Report included a number of general recommendations for EBPC to consider. These are summarized below:

- Land use control on the RoW should be maintained.
- An emergency response plan should be developed in conjunction with emergency response agencies and public representatives to manage any possible emergency.
- The preferred route through Rockwood Park is recommended, as it poses significantly lower risks to the Saint John Regional Hospital than the northern alternatives.
- Use of an existing RoW, wherever possible, is strongly supported. The addition of this pipeline to a well-marked and well-know utility RoW provides added safety protection.

Several intervenors expressed concerns about the risk associated with having the proposed facilities built through the City of Saint John, and in particular, near institutions like the Saint John Regional Hospital and in close proximity to residences like those in the community of Champlain Heights. Intervenors questioned the validity of the Bercha QRA Report and felt that the scope, breadth, basis, and depth of the assessment were inaccurate and insufficient to suitably identify and quantify the risks the urban section of the line may impose on the City of Saint John.

Mr. Ivan Court submitted a risk analysis report that had been prepared by the Saint John Fire Department (SJFD Risk Analysis Report) and provided to Common Council in September 2006. Bercha Engineering Limited (Bercha) reviewed this report for EBPC and concluded that because

the document had been prepared without adequate participation of pipeline and risk analysis experts, it contained numerous faulty statements and conclusions. EBPC submitted that it had discussed public safety, related to the preferred corridor, with the Saint John Fire Chief and that it had addressed all of the recommendations made within the SJFD Risk Analysis Report.

The Friends of Rockwood Park (FORP) submitted two independent reports critiquing the Bercha QRA Report. The first of these, "An Independent Analysis of the Proposed Brunswick Pipeline Routes in Saint John, New Brunswick", was prepared by Richard Kuprewicz of Accufacts, Inc. That report concluded that the Bercha QRA Report was missing critical information to support or justify the risk transects determined for the on-land route through the City of Saint John. The second report, "Evaluation of *Quantitative Risk Analysis of the Proposed Brunswick Natural Gas Pipeline*, by the Bercha Group", was prepared by John Wreathall of John Wreathall & Co., Ltd. This report concluded that the Bercha QRA Report was deficient in several ways and failed to justify the claim that the risks from the pipeline would be insignificant.

Bercha addressed each of these reports on behalf of EBPC. It stated that both reports were general and vague with no quantitative substantiation for their claims. Bercha stated that the commentary in the Kuprewicz report was based on a generic interpretation of the QRA and other reports on pipelines, and Mr. Kuprewicz's lack of experience with pipeline risk analysis led to his incorrect and unsubstantiated claim that "immediate ignition of a pipeline rupture natural gas release is the worst case". With regard to the Wreathall report, Bercha stated that it offered only negative comments with no useful suggestions, and that Mr. Wreathall's lack of experience and competence with pipeline risk analysis led to his conclusion that "a significantly delayed ignition" was the worse case. Bercha submitted that both these claims were incorrect, and "in fact, for a rupture, the worst case initial flow rate occurs neither immediately nor late, but in the first few minutes."

In support of its view that "an underground transmission pipeline is by far the safest and most environmentally friendly way to transport large volumes of natural gas", and to allay the concerns of a number of intervenors over the safety of the Brunswick Pipeline, EBPC submitted "A Summary of Existing High Pressure Natural Gas Transmission Pipelines in High Density Urban Areas". EBPC submitted that the mapping examples it provided "clearly illustrate that critical infrastructure, residential and commercial developments, schools, hospitals, shopping malls and other public facilities in closer proximity to existing gas transmission pipelines operate in Canada and the US in a fashion similar to how the Brunswick Pipeline will operate." EBPC argued that this fact is "irreconcilable with the dire consequence assessments" offered in the SJFD Risk Analysis report, the Kuprewicz report and the Wreathall report.

EBPC stated that risks are identified, assessed and mitigated in the design, construction, testing and operation phases of a pipeline project. By meeting or exceeding all of the requirements for pipeline safety prescribed by government regulations and industry standards, the proposed Project would meet or exceed established "accepted risk" criteria.

### ***Views of the Board***

The Board is of the view that EBPC has taken an acceptable approach to identifying and assessing the risks associated with the urban and rural

sections of the proposed Pipeline. The Board notes that the urban section of the proposed Pipeline has been designed for the requirements of a Class 3 location designation, which meets or exceeds the requirements of CSA Z662-03 for the types of development existing and anticipated along the pipeline route, including schools and institutions where evacuation may be difficult.

The Board accepts the Bercha QRA Report as accurately portraying the risks associated with this proposed project. The Board finds that the other risk assessment reports filed as evidence did not identify any critical issues which would cause the Board to question the conclusions contained within the Bercha QRA Report.

### **3.4.2 Quality Assurance and Integrity Programs**

#### **3.4.2.1 Quality Assurance Program**

EBPC committed to following the DEGT Quality Assurance Program. The Quality Assurance Program would ensure that pipeline construction materials, and inspection and test procedures, would meet the specifications provided for in the pipeline design.

#### **3.4.2.2 Pipeline Integrity Management Program**

EBPC committed to adopt and augment as necessary the M&NP pipeline integrity management program. As described by EBPC, the pipeline integrity management program would employ a cycle of hazard identification, condition monitoring, mitigation of hazards, documentation, and feedback measures, including the following:

- internal inspection programs;
- investigative excavation programs;
- slope monitoring and surveillance;
- watercourse crossing inspections;
- cathodic protection surveys; and
- leak detection surveys.

In its reply evidence, EBPC described at length how operational hazards and threats would be managed as a component of its integrity management program. EBPC has committed to run an in-line inspection tool roughly three years after commencement of operation, and subsequent tool runs approximately every seven to ten years.

### **3.4.3 Operation**

Many of the issues raised with respect to the operation of the proposed pipeline and the evidence on these issues were discussed in sections 7.2.1 and 7.2.4.1 of the NEB's EA Report, attached as

Appendix VII to these Reasons. The following sections should be read in conjunction with those sections of the EA.

#### **3.4.3.1 Control, Monitoring, and Leak Detection**

Several participants expressed concern over the ability of EBPC to react to potential leaks of natural gas from the proposed pipeline.

EBPC responded that the pipeline would be controlled from DEGT's Gas Control centre located in Houston, Texas. Control would be carried out using a supervisory control and data acquisition (SCADA) system that continuously monitors the pipeline operation parameters and processes pressure and volumetric data measured at each valve and flow meter. Based on this data, the SCADA and leak detection system would relay the commands for the operation of the control system. EBPC indicated that Gas Control would be alerted of a potential issue by a rate of pressure change alarm. It estimated that it would likely take about five to six minutes to detect a rapid pressure drop on the SCADA system, make a decision to shut in the line, and initiate the closure passwords. Further, EBPC submitted that to ensure that loss of power or communications would not impact control center response, there would be back-up power and communications systems to ensure that pressure and flow monitoring at valve sites and related communications to transmit system information could continue.

Additionally, EBPC submitted that regular inspection of the RoW by trained personnel, emergency call numbers, as well as the addition of an odourant (mercaptan) to the gas, would ensure detection of leaks too small to be detected by the sensors in the line.

#### **3.4.3.2 Emergency Preparedness and Response**

EBPC committed to adopting and augmenting as necessary the M&NP Emergency Preparedness and Response Program (EPRP). The EPRP would include the following components:

- Introduction;
- Risk Assessment;
- Federal and Provincial Agency List;
- Agency Liaison Program;
- Public Continuing Education Program for Emergency Planning Zone (EPZ) Residents and First Responders;
- Emergency Preparedness Manuals;
- Training; and
- Validation and Emergency Exercises.

EBPC committed to undertaking a risk assessment upon completion of the detailed routing process to establish the size of the EPZ. The size of the EPZ would be equal to or less than 800 m, defined as a circle with the specified radius measured from the point of a pipeline

incident. When extended for the length of the pipeline, the limits of the EPZ would parallel the pipeline at the specified distance on both sides of the pipeline.

Upon establishing an EPZ, EBPC indicated it would develop an accurate database identifying occupied structures within the EPZ. EBPC would develop and carry out its Continuing Education Program, targeting residents within the EPZ. This program would educate EPZ residents on pipeline location, potential emergency situations, safety procedures, the roles of residents, what to expect in the event of an emergency, and the actions of pipeline personnel and first responders. The Continuing Education Program would also target first responders, providing education on their duties and responsibilities, practices to ensure public and responder safety, assignment of clear roles, and chain of command.

EBPC has identified lead agencies that would be consulted after the detailed routing is substantially complete. These agencies were identified in the proceedings and are summarized in the NEB EA Report, and include the SJFD, Saint John City Police and Saint John Emergency Management Organization (EMO).

EBPC's Field Emergency Response Plan (ERP) would meet the Board requirement in the OPR-99 for an Emergency Preparedness Manual. The ERP for the Brunswick Pipeline would mirror the plan developed by M&NP for the SJL. EBPC committed to developing an ERP in accordance with NEB requirements and would prescribe measures to ensure effective and timely response to emergencies, and to protect the public. The ERP would:

- identify arrangements made to respond to pipeline incidents, including any mutual aid agreements made with outside agencies;
- outline roles and responsibilities related to emergency response;
- define notification and reporting requirements for incidents; and
- provide guidelines and site-specific emergency response procedures for operation and maintenance staff and emergency response agencies.

EBPC also committed to conducting emergency response exercises of varying scope, from table top exercises and internal field mock emergencies to full scale mock emergencies involving external agencies.

### ***Views of Interested Parties***

A number of intervenors were of the view that it was unacceptable to have critical infrastructure and facilities within the EPZ. Concerns were raised about facilities in close proximity to the proposed pipeline route, the potential for these facilities to be within the EPZ, and how a pipeline emergency would interact with critical structures within the EPZ. Through the proceedings many facilities and structures that could potentially fall within the EPZ were identified; for example, health care facilities, such as the Saint John Regional Hospital; a nursing home; a fire station; the Irving refinery; schools; churches; and a number of residences.

Concerns were raised regarding the capabilities of first responders to attend to a high pressure natural gas pipeline emergency. The SJFD Risk Analysis Report identified deficiencies in the

fire department's resources and capabilities and recommended a number of actions for EBPC to consider.

Intervenors submitted that details regarding first response to a pipeline emergency were either insufficient or impractical. Many intervenors sought information on how emergency response would be conducted: for instance, notification of residents, roles of first responders, and the possibility for evacuation. Intervenors were not satisfied that the means for notification were appropriate (e.g., knocking on doors, radio alerts), nor were they satisfied that the logistics were appropriately communicated to residents and businesses within the EPZ.

Secondary and emergency access was a topic of great concern to many participants, particularly to members of the communities of Milford and Randolph. Regarding Milford, it was the position of some intervenors that there was not a viable access route in the event of an emergency near the Lou Murphy overpass and that the agreement with J. D. Irving, Limited (J.D. Irving) to use Irving's road was not a viable alternative.

### ***EBPC's Response to Concerns Raised***

In response to concerns raised, EBPC described how the EPZ would be established after a risk assessment of the detailed pipeline routing was complete. EBPC maintained that the preferred corridor would provide flexibility for the final location of the pipeline and therefore the limits of the EPZ would be similarly flexible. EBPC does not expect that the Saint John Regional Hospital would fall within the EPZ. The Applicant cited numerous pipelines through urban corridors that pass in close proximity to facilities similar to those found in the City of Saint John, indicating that high pressure gas transmission pipelines are commonplace and can coexist within an urban setting.

EBPC responded to questions regarding the training and capabilities of first responders by assuring that training would be provided at EBPC's expense. Further, EBPC responded to the SJFD Risk Analysis Report by making commitments that addressed each of the recommendations, such as providing training and funding to first responders, consulting on the finalization of an ERP, and indicating there would be consideration of design alternatives. Details of the commitments were in EBPC's reply evidence.

In the event of a pipeline emergency, EBPC indicated that the Field ERP would be invoked. First responders and the EMO would notify homes and businesses by means of knocking on doors, mass broadcasts, and radio alerts. Any secondary fires or significant evacuation efforts would be handled by first responders and the EMO, including the selection and coordination of sheltering locations, incident command centers, and roadblocks. EBPC noted that public institutions typically require an evacuation plan and these plans would likely not require revision due to the presence of a natural gas pipeline. EBPC's role would be to advise first responders on the size of an appropriate evacuation zone, share relevant information that would be in the EPZ database, and to provide advice on when it would be safe for the public to return to their residences and businesses. EBPC committed to working with first responders and the EMO to adopt, promote, or help develop methods to notify the public and to identify areas with limited access and consider alternate routes. However, EBPC noted that primary responsibility in the event of a public emergency would lie with first responders.

Regarding secondary and emergency access, EBPC received assurance from J.D. Irving that access would be provided across its lands for emergency response vehicles and personnel should the existing access be impeded by a pipeline incident. EBPC confirmed that J.D. Irving personnel and equipment are on site 24 hours a day and could quickly open the gates for emergency access.

EBPC provided comments to the Board on a possible condition requiring that an emergency response exercise be conducted within six months after commencement of operation. According to EBPC, it discussed the draft conditions with first responders, and all parties agreed that an emergency response exercise should be conducted, but that it should be a table top exercise with the objectives of:

- verification of respective roles and responsibilities;
- verification of notification matrix; and,
- verification of practices and procedures.

### ***Views of the Board***

The views of the Board in the NEB EA Report under section 7.2.1 and 7.2.4.10 address many of the issues discussed above. To fully comply with the OPR-99 and meet the Board's expectations for an appropriate and effective EPRP, the Board expects EBPC's EPRP to include the following elements:

- emergency preparedness and response program development (hazard assessment);
- emergency procedures manual (EPM);
- liaison program (first responders);
- continuing education program (public);
- emergency response training;
- emergency response exercises;
- incident and response evaluation; and
- emergency response equipment.

Details on the expectations for each of these eight major expected elements can be found in Appendix B of the Guidance Notes for the OPR-99. The Board regularly conducts audits and inspections of companies' EPRPs for the purposes of verifying the presence of these elements and reviewing the appropriateness and effectiveness of each element.

As an initial step in this verification process, the Board generally places a condition on Certificates requiring the filing of the EPM within a



predetermined timeframe prior to commencement of operation. This requirement enables the Board to review and resolve concerns with companies prior to operation. Should serious deficiencies in the EPM be identified and unresolved within that timeframe, the Board may withhold leave to open of the pipeline until such deficiencies are resolved. Due to the varying complexity and scope of pipeline applications before the Board, the EPM is often not available until immediately prior to operation.

Typically, the Board requires an applicant to submit its EPM 14 days prior to commencement of operation. In this instance, the level of public concern has warranted a greater timeframe for the Board to review the EPM. Should a Certificate be issued, the Board would impose a condition to requiring EBPC to file its EPM within 60 days prior to operation (condition 18 of Appendix V). In this case, 60 days would provide a timeframe within which there is flexibility to resolve outstanding concerns. Further, Board Emergency Management Specialists would be available to clarify the Board's expectations for submission of the EPM, and the Board encourages EBPC to consult with the Board's specialists at any time prior to submitting its EPM. The Board also reminds EBPC that an evacuation plan with potential evacuation points should be included in the EPM.

The Board recognizes that EBPC has M&NP's SJL EPRP upon which to base its EPRP for the proposed facilities. EBPC has demonstrated in this proceeding that the elements it is proposing to include in its EPRP are similar to those that the Board expects to find in an EPRP.

The training, resources, and capabilities of first responders were questioned throughout the proceeding. The Board notes EBPC's commitment to resolve concerns, such as to provide training and funding to first responders. The Board views EBPC's resolution of many of these concerns as a positive indication of stakeholder consultation; however, supporting evidence of consultation throughout the remaining development of the EPM will be required. Should a Certificate be issued, the Board will impose a condition to require filing of evidence of such consultation (condition 19 of Appendix V).

With respect to EBPC's comment on the Board's proposed condition to conduct an emergency response exercise, the Board refers parties to its view in the NEB EA Report on this matter. Should a Certificate be issued, the Board will require EBPC to conduct a full emergency response exercise as recommended in the NEB EA Report and as detailed in condition 21 of Appendix V. The Board expects that EBPC would identify critical locations, for example, where access and egress by first responders may be impeded, and would focus its exercise upon those locations. The Board is satisfied from the evidence that there is a reasonable access alternative available for first responders and the EMO, in the event of

inaccessibility to the Lou Murphy overpass. However, due to the amount of public concern raised, the perceived lack of continuing public education, and the contested viability of secondary access, the Board strongly recommends that EBPC consider conducting the conditioned initial exercise near the community of Milford to evaluate the effectiveness of the EPRP as a whole.

To provide a baseline for verification of compliance with Board requirements and expectations regarding emergency response exercises, should a Certificate be issued, the Board will impose a condition for EBPC to file the proposed frequency and type of exercises and explain how results of such exercises would be integrated into the company's training and exercise program (condition 22 of Appendix V).

While EBPC cited a number of examples of high pressure natural gas transmission pipelines in an urban environment, the Board does not rely on precedence in making its decision. Successful operation of the Brunswick Pipeline under the Board's jurisdiction will be contingent, in part, upon adequate development and implementation of EBPC's EPRP.

Sections 53, 54 and 55 of OPR-99 require a company to conduct audits and inspections of its programs and systems to ensure that the pipeline is designed, constructed and operated safely and in compliance with regulatory requirements and conditions. The NEB routinely conducts audits and inspections of pipeline projects to verify regulatory compliance. These regulatory activities continue throughout the life of a project. The Board is of the view that the provisions of OPR-99 and the audit programs of the NEB, in conjunction with EBPC's commitments and fulfillment of the Certificate conditions referenced above, are sufficient to ensure that the Brunswick Pipeline will be operated in a safe manner.

## Chapter 4

# Supply and Markets

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### 4.1 Justification for the Project

EBPC stated that the proposed Brunswick Pipeline would be required to support the Canaport™ LNG Terminal and that the Project would provide access to a significant and diverse new source of natural gas supply for markets in Maritime Canada and Northeast US. This regional addition to supply would be able to accommodate demand growth and would facilitate further development of Canadian markets and infrastructure. In fact, some of the gas Repsol would export to the US using the Brunswick Pipeline may be re-imported to Canada. Repsol's long-term development plans potentially provide for future natural gas service to Quebec markets.

#### *Views of Interested Parties*

Nova Scotia Department of Energy (NSDOE) felt that the justification and benefits in evidence for the Project were not clear for Canadian markets and argued that the Project would not promote the benefits of economic efficiency that potentially could be gained by more fully utilizing existing pipeline infrastructure in the Maritimes.

Enbridge Gas New Brunswick (EGNB) believed that the diversity of supply that this Project could bring to the market created the possibility of greater economic benefit to Maritime markets. This benefit is particularly attractive for EGNB's customers, both current and future, as its customers would have the possibility of receiving service through a direct interconnection between the Brunswick Pipeline and EGNB's distribution facilities. However, EGNB stated that it believed Canadian markets would not be well served by this Project if the benefits of the additional supply were never realized by those markets.

In the opinion of Bear Head LNG Corporation, Anadarko Canada LNG Marketing, Corp. and Anadarko LNG Marketing, LLC (Anadarko), the Brunswick Pipeline Project is a bypass pipeline designed to avoid the postage stamp toll on the Canadian M&NP system. Anadarko was of the view that the Project, if approved, would unnecessarily duplicate existing pipeline facilities that could be modified to accommodate the proposed new source of gas supply. Furthermore, Anadarko argued that the capital cost of expanding M&NP's Canadian facilities would likely be less than the cost of the proposed Brunswick Pipeline [See section 7.2 for further discussion of Anadarko's position].

In reply to Anadarko's argument, Repsol maintained that "greenfield" pipelines, like the proposed Brunswick Pipeline, that are needed to tie new sources of supply into the North American gas transmission grid do not duplicate any existing facilities. The Brunswick Pipeline would be a "greenfield" pipeline system connecting a new source of supply to the integrated North American gas transmission infrastructure.

Atlantica Centre for Energy, Inc. submitted that the Canaport™ LNG Terminal under construction on the east side of Saint John could provide the Maritime region with a new, long-term secure source of significant quantities of natural gas that would help build a strong local economy. However, in order for the Canaport™ LNG Terminal to be useful, it must be able to deliver the natural gas to markets. The party submitted that the Brunswick Pipeline would be a means of accomplishing this.

A number of interested parties believed that the Brunswick Pipeline would fulfill no specific need for the Maritime Region given that supply from existent projects could more than adequately meet the needs of Maritime Canada natural gas customers. Furthermore, some of these parties saw a potential for decreased reliance on fossil fuel energy, including natural gas, in exchange for greener and renewable resources in the future.

### ***EBPC's Response to Concerns Raised***

EBPC reiterated that through the use of the proposed Brunswick Pipeline, natural gas from the Canaport™ LNG Terminal would be made available to customers in Maritime Canada and other regions both to serve existing demand and to facilitate further development of the natural gas markets and infrastructure in those regions. EBPC stated that the Brunswick Pipeline would provide a potential direct connection to a new long-term source of supply for Canadian markets and, via exchanges, would also provide existing shippers and/or Maritime markets the ability to use M&NP transportation that might otherwise go unused. Shippers would not contract for future service on the M&NP system without gas supply.

### ***Views of the Board***

The Board is of the view that there will be a continued interest in the regional use of natural gas in the future and the Board accepts EBPC's evidence with respect to the need and justification for the Project proposed. On the basis of the evidence, the Board is persuaded that the intended purpose of the Brunswick Pipeline is to connect a new incremental supply source to existing markets and is of the view that the Project as proposed does not duplicate existing facilities in the region. [See section 7.2 for further discussion of this issue].

While concern was expressed by some intervenors regarding potential future underutilization of regional pipeline infrastructure as a result of the introduction of the Brunswick Pipeline, the Board did not find reasonable grounds in the evidence to support this concern. To the contrary, the Board has been persuaded by the evidence before it that the implementation and subsequent operation of the proposed pipeline has the potential to encourage increased utilization of current energy infrastructure through the establishment of a new connection to a reliable incremental supply source, which could then be backhauled or otherwise transported through existing facilities. [See section 4.2.3 and Chapter 7 for further discussion of this matter.]

## **4.2 Gas Supply**

### **4.2.1 Supply to the Project**

EBPC submitted that the Brunswick Pipeline would interconnect with the Canaport™ LNG Terminal at Mispec Point in Saint John, NB. The Canaport™ LNG Terminal will be a facility capable of receiving LNG and regasifying up to 1,000,000 MMBtu/day of pipeline quality natural gas.

EBPC submitted that Repsol would be the owner of all of the natural gas output from the Canaport™ LNG Terminal. Accordingly, any gas supply transported through the Project would be provided by Repsol.

EBPC indicated that the Brunswick Pipeline would be able to transport, on a firm basis, 850,000 MMBtu/day. It would also be able to transport additional volumes of up to 150,000 MMBtu/day on an interruptible basis. These volumes would depend on system operating conditions, including operating pressure, and which customers would be taking service.

EBPC understood that Repsol plans to source the Canaport™ LNG Terminal's initial LNG supplies from Trinidad & Tobago. However, due to the logistical benefits that the Canaport™ LNG Terminal offers to most Atlantic Basin LNG supply projects, Repsol may acquire its LNG supplies from one or more of the other sources in the portfolio of Repsol YPF, Repsol's parent company, or even from third-party sponsored supply projects that could provide secure supply opportunities for Repsol. Repsol YPF is Spain's largest integrated oil company and one of the top ten private oil companies globally in terms of oil and natural gas production. Repsol assured the Board that the Repsol group of companies has sufficient LNG under contract to assure that the Canaport™ LNG Terminal and therefore the Brunswick Pipeline would be highly utilized.

The Applicant stated that the two LNG supply regions from which Eastern Canada may be expected to draw, the Atlantic Basin and the Middle East, represented 58 percent of world-wide capacity in 2005 and are likely to increase their share to 66 percent by 2010. According to EBPC, a substantial amount of new liquefaction capacity that could supply the Canaport™ LNG Terminal is scheduled for the Atlantic Basin.

#### ***Views of Interested Parties***

NSDOE was of the view that there was no specific evidence in this proceeding regarding Repsol's portfolio strategy or how it manages its portfolio. NSDOE was not persuaded by the evidence that this Project, as proposed, would result in any incremental supply of gas to the Maritime markets. It was concerned that there were no actual commitments to a dedicated gas supply for the Brunswick Pipeline, only intentions.

EGNB expressed concern that there was a lack of specific commitments regarding the quantity of LNG, and therefore natural gas supply for the Brunswick Pipeline, to be delivered to the Canaport™ LNG Terminal. Because of this uncertainty surrounding the supply available to the Canaport™ LNG Terminal, EGNB was not persuaded that the facility would produce adequate

## **ATTACHMENT “M”**

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CANADA

CONSOLIDATION

CODIFICATION

# National Energy Board Act

# Loi sur l'Office national de l'énergie

R.S.C., 1985, c. N-7

L.R.C. (1985), ch. N-7

Current to May 1, 2014

À jour au 1 mai 2014

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OFFICIAL STATUS  
OF CONSOLIDATIONS

CARACTÈRE OFFICIEL  
DES CODIFICATIONS

Subsections 31(1) and (2) of the *Legislation Revision and Consolidation Act*, in force on June 1, 2009, provide as follows:

Les paragraphes 31(1) et (2) de la *Loi sur la révision et la codification des textes législatifs*, en vigueur le 1<sup>er</sup> juin 2009, prévoient ce qui suit :

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consolidation is  
evidence

31. (1) Every copy of a consolidated statute or consolidated regulation published by the Minister under this Act in either print or electronic form is evidence of that statute or regulation and of its contents and every copy purporting to be published by the Minister is deemed to be so published, unless the contrary is shown.

31. (1) Tout exemplaire d'une loi codifiée ou d'un règlement codifié, publié par le ministre en vertu de la présente loi sur support papier ou sur support électronique, fait foi de cette loi ou de ce règlement et de son contenu. Tout exemplaire donné comme publié par le ministre est réputé avoir été ainsi publié, sauf preuve contraire.

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comme élément  
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Inconsistencies  
in Acts

(2) In the event of an inconsistency between a consolidated statute published by the Minister under this Act and the original statute or a subsequent amendment as certified by the Clerk of the Parliaments under the *Publication of Statutes Act*, the original statute or amendment prevails to the extent of the inconsistency.

(2) Les dispositions de la loi d'origine avec ses modifications subséquentes par le greffier des Parlements en vertu de la *Loi sur la publication des lois* l'emportent sur les dispositions incompatibles de la loi codifiée publiée par le ministre en vertu de la présente loi.

Incompatibilité  
— lois

NOTE

This consolidation is current to May 1, 2014. The last amendments came into force on April 1, 2014. Any amendments that were not in force as of May 1, 2014 are set out at the end of this document under the heading "Amendments Not in Force".

NOTE

Cette codification est à jour au 1 mai 2014. Les dernières modifications sont entrées en vigueur le 1 avril 2014. Toutes modifications qui n'étaient pas en vigueur au 1 mai 2014 sont énoncées à la fin de ce document sous le titre « Modifications non en vigueur ».



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R.S.C., 1985, c. N-7

L.R.C., 1985, ch. N-7

An Act to establish a National Energy Board

Loi constituant l'Office national de l'énergie

SHORT TITLE

TITRE ABRÉGÉ

Short title

1. This Act may be cited as the *National Energy Board Act*.

R.S., c. N-6, s. 1.

1. *Loi sur l'Office national de l'énergie*.

S.R., ch. N-6, art. 1.

Titre abrégé

INTERPRETATION

DÉFINITIONS ET INTERPRÉTATION

Definitions

2. In this Act,

"Arbitration Committee"  
« comité d'arbitrage »

"Arbitration Committee" means an Arbitration Committee appointed pursuant to section 91;

"Board"  
« Office »

"Board" means the National Energy Board established by section 3;

"certificate"  
« certificat »

"certificate" means a certificate of public convenience and necessity issued under Part III or III.1 except that "certificate" means

(a) in Part III, a certificate issued in respect of a pipeline, and

(b) in Part III.1, a certificate issued in respect of an international or interprovincial power line;

"company"  
« compagnie »

"company" includes

(a) a person having authority under a Special Act to construct or operate a pipeline, and

(b) a body corporate incorporated or continued under the *Canada Business Corporations Act* and not discontinued under that Act;

"export"  
« exportation »

"export" means, with reference to

(a) electricity, to send from Canada by a line of wire or other conductor electricity produced in Canada,

(b) oil,

(i) to export within the meaning of any provision of the *Energy Administration*

Définitions

2. Les définitions qui suivent s'appliquent à la présente loi.

« certificat » Certificat d'utilité publique délivré aux termes des parties III ou III.1, mais visant respectivement aux parties III et III.1 un certificat délivré pour un pipeline et une ligne internationale ou interprovinciale.

« comité d'arbitrage » Comité d'arbitrage nommé conformément à l'article 91.

« compagnie » Vise également toute personne autorisée aux termes d'une loi spéciale à construire ou à exploiter un pipeline et toute personne morale régie par la *Loi canadienne sur les sociétés par actions*.

« directeur de l'Enregistrement » Le directeur lui-même ou tout autre fonctionnaire auprès de qui peut se faire l'enregistrement de titres fonciers.

« droit » Sont compris parmi les droits les droits, taux, prix ou frais exigés :

a) au titre notamment de l'expédition, du transport, de la préservation, de la manutention, du stockage ou de la livraison des hydrocarbures ou d'un autre produit transporté par pipeline, ou des surestaries;

b) pour l'usage du pipeline, une fois celui-ci terminé et en mesure d'acheminer du pétrole ou du gaz;

« certificat »  
"certificate"

« comité d'arbitrage »  
"Arbitration Committee"

« compagnie »  
"company"

« directeur de l'Enregistrement »  
"registrar of deeds"

« droit »  
"toll"

Act that defines export for the purposes of any charge imposed under that Act in relation to fuel for use by an aircraft or a vessel, or

(ii) to send or take by any means

(A) from Canada, or

(B) to a place outside Canada from any area of land not within a province that belongs to Her Majesty in right of Canada or in respect of which Her Majesty in right of Canada has the right to dispose of or exploit the natural resources and that is situated in submarine areas in the internal waters of Canada, the territorial sea of Canada or the continental shelf of Canada, or

(c) gas, to effect any one of the operations referred to in subparagraph (b)(ii);

“gas”  
«gaz»

“gas” means

(a) any hydrocarbon or mixture of hydrocarbons that, at a temperature of 15°C and a pressure of 101.325 kPa, is in a gaseous state, or

(b) any substance designated as a gas product by regulations made under section 130;

“hydrocarbon”  
«hydrocarbure»

“hydrocarbon” does not include coal;

“import”  
«importation»

“import” means, with reference to gas or oil, to bring into Canada through pipelines, by railway tank car, by tank truck or by tanker;

“international power line”  
«ligne internationale de transport d’électricité» ou «ligne internationale»

“international power line” means facilities constructed or operated for the purpose of transmitting electricity from or to a place in Canada to or from a place outside Canada;

“interprovincial power line”  
«ligne interprovinciale de transport d’électricité» ou «ligne interprovinciale»

“interprovincial power line” means facilities constructed or operated for the purpose of transmitting electricity from a place in a province to a place in Canada outside that province;

“lands”  
«terrains»

“lands” means lands the acquiring, taking or using of which is authorized by this Act or a Special Act, and includes real property and any interest or right in real property or land and, in the Province of Quebec, any immovable, any right in an immovable and the right of a lessee

c) relativement à l’achat et à la vente du gaz appartenant à la compagnie qui le transporte par son pipeline, à l’exclusion du coût qu’il représente pour elle au point où il entre dans le pipeline.

«eaux navigables» S’entend au sens de l’article 2 de la *Loi sur la protection de la navigation*.

«eaux navigables»  
“navigable water”

«exportation»

«exportation»  
“export”

a) Dans le cas de l’électricité, le fait de transporter de l’électricité produite au Canada à l’extérieur du pays par une ligne de fil métallique ou un autre conducteur;

b) dans le cas du pétrole :

(i) soit le fait d’exporter, au sens des dispositions de la *Loi sur l’administration de l’énergie* portant sur les redevances en matière de carburant destiné aux aéronefs et aux navires,

(ii) soit le fait de l’acheminer par un moyen quelconque :

(A) ou bien à partir d’un point situé au Canada,

(B) ou bien, vers l’extérieur du Canada, à partir d’une terre appartenant à Sa Majesté du chef du Canada ou dont celle-ci a le droit d’exploiter les ressources naturelles ou d’en disposer, et située dans les zones sous-marines hors provinces et faisant partie des eaux intérieures, de la mer territoriale ou du plateau continental du Canada;

c) dans le cas du gaz, le fait de faire l’une ou l’autre des opérations visées au sous-alinéa b)(ii).

«gaz» Selon le cas :

«gaz»  
“gas”

a) hydrocarbure ou mélange d’hydrocarbures à l’état gazeux à la température de 15°C et à la pression de 101,325 kPa;

b) toute substance désignée comme produit du gaz aux termes des règlements d’application de l’article 130.

«hydrocarbure» Ce terme exclut le charbon.

«hydrocarbure»  
“hydrocarbon”

«importation» Le fait d’introduire du pétrole ou du gaz au Canada par pipeline, wagon-citerne, camion-citerne ou navire-citerne.

«importation»  
“import”

	in respect of any immovable. Those interests and rights may be in, to, on, under, over or in respect of those lands;		
“licence” « licence »	“licence” means a licence issued under Part VI or VII except that “licence” means (a) in Division I of Part VI, a licence for the exportation or importation of oil or gas, (b) in Division II of Part VI, a licence for the exportation of electricity, and (c) in Part VII, a licence permitting the movement of designated oil or gas out of a designated province or area;	« licence » Licence délivrée aux termes des parties VI ou VII et visant plus précisément, à la section I de la partie VI une licence d’exportation ou d’importation de pétrole ou de gaz, à la section II de cette même partie, une licence d’exportation d’électricité et, à la partie VII, la licence visée au paragraphe 125(1).	« licence » “licence”
“member” « membre »	“member” means a member of the Board;	« ligne internationale de transport d’électricité » ou « ligne internationale » Installations construites ou exploitées en vue du transport de l’électricité du Canada à l’étranger, ou inversement.	« ligne internationale de transport d’électricité » ou « ligne internationale » “international power line”
“Minister” « ministre »	“Minister” means such member of the Queen’s Privy Council for Canada as is designated by the Governor in Council as the Minister for the purposes of this Act;	« ligne interprovinciale de transport d’électricité » ou « ligne interprovinciale » Installations construites ou exploitées en vue du transport interprovincial de l’électricité.	« ligne interprovinciale de transport d’électricité » ou « ligne interprovinciale » “interprovincial power line”
“navigable water” « eaux navigables »	“navigable water” has the same meaning as in section 2 of the <i>Navigation Protection Act</i> ;	« loi spéciale »	« loi spéciale » “Special Act”
“negotiator” « négociateur »	“negotiator” means a negotiator appointed pursuant to subsection 88(2);	a) Loi fédérale autorisant la personne qui y est nommée à construire ou exploiter un pipeline ou portant précisément sur le pipeline qu’une personne a été autorisée, aux termes de cette loi, à construire ou à exploiter;  b) sauf dans le cadre de l’alinéa 115b), lettres patentes délivrées sous le régime de l’article 5.1 ou 5.4 de la <i>Loi sur les corporations canadiennes</i> , chapitre C-32 des Statuts révisés du Canada de 1970.	
“oil” « pétrole »	“oil” means (a) any hydrocarbon or mixture of hydrocarbons other than gas, or (b) any substance designated as an oil product by regulations made under section 130;	« membre » Membre de l’Office.	« membre » “member”
“penalty” « pénalité »	“penalty” means an administrative monetary penalty imposed under this Act for a violation;	« ministre » Le membre du Conseil privé de la Reine pour le Canada chargé par le gouverneur en conseil de l’application de la présente loi.	« ministre » “Minister”
“permit” « permis »	“permit” means a permit issued under section 41 or Part III.1 or VI;	« négociateur » Le négociateur nommé aux termes du paragraphe 88(2).	« négociateur » “negotiator”
“pipeline” « pipeline »	“pipeline” means a line that is used or to be used for the transmission of oil, gas or any other commodity and that connects a province with any other province or provinces or extends beyond the limits of a province or the offshore area as defined in section 123, and includes all branches, extensions, tanks, reservoirs, storage facilities, pumps, racks, compressors, loading facilities, interstation systems of communication by telephone, telegraph or radio and real and personal property, or immovable and movable, and works connected to them, but does not include a sewer or water pipeline that is used or proposed to be used solely for municipal purposes;	« Office » L’Office national de l’énergie constitué par l’article 3.	« Office » “Board”
		« pénalité » Sanction administrative pécuniaire infligée en vertu de la présente loi pour une violation.	« pénalité » “penalty”
		« permis » Permis délivré aux termes de l’article 41 ou des parties III.1 ou VI.	« permis » “permit”
		« pétrole » Selon le cas : a) hydrocarbure ou mélange d’hydrocarbures autre que le gaz;	« pétrole » “oil”

<p>“registrar of deeds” « directeur de l’Enregistrement »</p>	<p>“power” [Repealed, 1990, c. 7, s. 1]</p> <p>“registrar of deeds” includes the registrar of land titles or other officer with whom title to land is registered;</p>	<p>b) toute substance désignée comme produit pétrolier aux termes des règlements d’application de l’article 130.</p>	<p>« pipeline » “pipeline”</p>
<p>“Secretary” « secrétaire »</p>	<p>“Secretary” means the Secretary of the Board;</p>	<p>« pipeline » Canalisation servant ou destinée à servir au transport du pétrole, du gaz ou de tout autre produit, et reliant une province et une ou plusieurs autres provinces, ou s’étendant au-delà des limites d’une province ou de la zone extracôtière, au sens de l’article 123, y compris les branchements, extensions, citernes, réservoirs, installations de stockage ou de chargement, pompes, rampes de chargement, compresseurs, systèmes de communication entre stations par téléphone, télégraphe ou radio, ainsi que les ouvrages, ou autres immeubles ou meubles, ou biens réels ou personnels, connexes à l’exclusion des égouts ou canalisations de distribution d’eau servant ou destinés à servir uniquement aux besoins municipaux.</p>	
<p>“Special Act” « loi spéciale »</p>	<p>“Special Act” means</p> <p>(a) an Act of Parliament that authorizes a person named in the Act to construct or operate a pipeline or that is enacted with special reference to a pipeline that a person is by such an Act authorized to construct or operate, and</p> <p>(b) letters patent issued under section 5.1 or 5.4 of the <i>Canada Corporations Act</i>, chapter C-32 of the Revised Statutes of Canada, 1970, except for the purpose of paragraph 115(b) of this Act;</p>	<p>« secrétaire » Le secrétaire de l’Office.</p>	<p>« secrétaire » “Secretary”</p>
<p>“toll” « droit »</p>	<p>“toll” includes any toll, rate, charge or allowance charged or made</p> <p>(a) for the shipment, transportation, transmission, care, handling or delivery of hydrocarbons or of another commodity that is transmitted through a pipeline, or for storage or demurrage or the like,</p> <p>(b) for the provision of a pipeline when the pipeline is available and ready to provide for the transmission of oil or gas, and</p> <p>(c) in respect of the purchase and sale of gas that is the property of a company and that is transmitted by the company through its pipeline, excluding the cost to the company of the gas at the point where it enters the pipeline.</p> <p>R.S., 1985, c. N-7, s. 2; R.S., 1985, c. 28 (3rd Suppl.), s. 299; 1990, c. 7, s. 1; 1994, c. 24, s. 34(F); 1996, c. 10, s. 237, c. 31, s. 90; 2004, c. 25, s. 147; 2012, c. 19, s. 69, c. 31, s. 337.</p>	<p>« terrains » Terrains dont l’acquisition, la prise ou l’usage est autorisé par la présente loi ou par une loi spéciale. Les dispositions les concernant s’appliquent également aux biens réels et intérêts fonciers, ainsi qu’aux droits et intérêts afférents et, dans la province de Québec, aux immeubles ainsi qu’aux droits afférents et aux droits des locataires relativement aux immeubles. Ces droits et intérêts peuvent porter sur la surface ou le sous-sol de ces terrains.</p> <p>L.R. (1985), ch. N-7, art. 2; L.R. (1985), ch. 28 (3<sup>e</sup> suppl.), art. 299; 1990, ch. 7, art. 1; 1994, ch. 24, art. 34(F); 1996, ch. 10, art. 237, ch. 31, art. 90; 2004, ch. 25, art. 147; 2012, ch. 19, art. 69, ch. 31, art. 337.</p>	<p>« terrains » “lands”</p>

## APPLICATION

Binding on Her Majesty

**2.1** This Act is binding on Her Majesty in right of Canada or a province.

1990, c. 7, s. 2.

## CHAMP D’APPLICATION

**2.1** La présente loi lie Sa Majesté du chef du Canada ou d’une province.

1990, ch. 7, art. 2.

Obligation de Sa Majesté

PART I

NATIONAL ENERGY BOARD

ESTABLISHMENT OF THE BOARD

Board  
established

3. (1) There is hereby established a Board, to be called the National Energy Board, consisting of not more than nine members to be appointed by the Governor in Council.

Tenure of  
members

(2) Subject to subsection (3), each member of the Board shall be appointed to hold office during good behaviour for a period of seven years, but may be removed at any time by the Governor in Council on address of the Senate and House of Commons.

Re-appointment  
and retirement

(3) A member appointed pursuant to subsection (2) is eligible to be re-appointed to hold office during good behaviour for any term of seven years or less and every member ceases to hold office on attaining the age of seventy years.

Eligibility

(4) A person is not eligible to be appointed or to continue as a member of the Board if that person is not a Canadian citizen or permanent resident within the meaning of subsection 2(1) of the *Immigration and Refugee Protection Act* or is, as owner, shareholder, director, officer, partner or otherwise, engaged in the business of producing, selling, buying, transmitting, exporting, importing or otherwise dealing in hydrocarbons or electricity or holds any bond, debenture or other security of a corporation engaged in any such business.

Residence and  
other  
employment

(5) Each member, other than a member appointed under subsection 4(1), shall, during his term of office,

(a) reside in, or within a reasonable commuting distance of, Calgary, Alberta or at such other place in Canada as the Governor in Council may approve; and

(b) devote the whole of his time to the performance of his duties under this Act, and shall not accept or hold any office or employment inconsistent with his duties and functions under this Act.

R.S., 1985, c. N-7, s. 3; 1990, c. 7, s. 3; 1991, c. 27, s. 1; 2001, c. 27, s. 262.

Temporary  
members

4. (1) In addition to the number of members that may be appointed under subsection 3(1),

PARTIE I

OFFICE NATIONAL DE L'ÉNERGIE

CONSTITUTION

Constitution

3. (1) Est constitué l'Office national de l'énergie, composé d'au plus neuf membres nommés par le gouverneur en conseil.

Mandat

(2) Sous réserve du paragraphe (3), les membres de l'Office occupent leur poste à titre inamovible pour un mandat de sept ans, sous réserve de révocation par le gouverneur en conseil sur adresse du Sénat et de la Chambre des communes.

Reconduction du  
mandat et limite  
d'âge

(3) Le mandat des membres peut être reconduit pour toute période de sept ans ou moins; la limite d'âge pour le maintien en poste est de soixante-dix ans.

Conditions de  
nomination

(4) Pour être membre de l'Office, il faut, d'une part, être un citoyen canadien ou un résident permanent au sens du paragraphe 2(1) de la *Loi sur l'immigration et la protection des réfugiés*, d'autre part, ne pas participer, à titre notamment de propriétaire, d'actionnaire, d'administrateur, de dirigeant ou d'associé, à une entreprise se livrant à la production, la vente, l'achat, le transport, l'exportation ou l'importation d'hydrocarbures ou d'électricité, ou à d'autres opérations concernant ceux-ci, ni être détenteur de titres de créance, entre autres, obligations ou débetures, d'une personne morale exploitant une entreprise de cette nature.

Lieu de  
résidence et  
incompatibilités

(5) Les membres, à l'exception de ceux qui sont nommés aux termes du paragraphe 4(1), doivent, durant leur mandat :

a) résider à Calgary (Alberta) ou dans un lieu suffisamment proche de cette ville ou encore dans tout autre lieu au Canada agréé par le gouverneur en conseil;

b) se consacrer à l'accomplissement des fonctions prévues par la présente loi, à l'exclusion de tout poste ou emploi incompatible avec celles-ci.

L.R. (1985), ch. N-7, art. 3; 1990, ch. 7, art. 3; 1991, ch. 27, art. 1; 2001, ch. 27, art. 262.

Membres  
temporaires

4. (1) Le gouverneur en conseil peut nommer des membres temporaires de l'Office, aux

	the Governor in Council may, notwithstanding subsection 3(2), appoint temporary members of the Board on such terms and conditions as the Governor in Council may prescribe and any temporary member so appointed shall carry out such duties as may be assigned to that member by the Chairperson of the Board.	conditions qu'il fixe; ceux-ci remplissent les fonctions que leur assigne le président.	
	(2) [Repealed, 2012, c. 19, s. 70]	(2) [Abrogé, 2012, ch. 19, art. 70]	
Temporary members, other employment	(3) A member appointed under subsection (1) shall not, during his term of office, accept or hold any office or employment inconsistent with the member's duties under this Act. R.S., 1985, c. N-7, s. 4; 2012, c. 19, ss. 70, 99(E).	(3) Les membres temporaires ne peuvent, durant leur mandat, occuper un poste ou un emploi incompatible avec les fonctions que leur confère la présente loi. L.R. (1985), ch. N-7, art. 4; 2012, ch. 19, art. 70 et 99(A).	Incompatibilités
Remuneration	5. (1) Each member, other than a member appointed under subsection 4(1), shall be paid such remuneration for the services of that member as the Governor in Council may from time to time determine.	5. (1) Les membres permanents reçoivent la rémunération fixée par le gouverneur en conseil.	Rémunération
Idem	(2) Each member appointed under subsection 4(1) shall be paid such remuneration for the services of that member as the Governor in Council may from time to time determine.	(2) Les membres temporaires reçoivent la rémunération fixée par le gouverneur en conseil.	Membres temporaires
Expenses	(3) Each member is entitled to be paid reasonable travel and other expenses incurred in the performance of his duties while away from his ordinary place of residence. R.S., c. N-6, s. 4; R.S., c. 27(1st Supp.), s. 3; 1980-81-82-83, c. 84, s. 2.	(3) Tous les membres ont droit aux frais de déplacement et de séjour entraînés par l'accomplissement de leurs fonctions hors de leur lieu ordinaire de résidence. S.R., ch. N-6, art. 4; S.R., ch. 27(1 <sup>er</sup> suppl.), art. 3; 1980-81-82-83, ch. 84, art. 2.	Frais
EXECUTIVE OFFICERS		DIRIGEANTS	
Chairman and Vice-Chairman	6. (1) The Governor in Council shall designate one of the members to be Chairperson of the Board and another of the members to be Vice-chairperson of the Board.	6. (1) Le gouverneur en conseil désigne deux membres à titre de président et de vice-président respectivement.	Président et vice-président
Chairperson's duties	(2) The Chairperson is the chief executive officer of the Board. The Chairperson apportions work among the members and, if the Board sits in a panel, assigns members to the panel and a member to preside over it. The Chairperson also has supervision over and direction of the work of the Board's staff.	(2) Le président est le premier dirigeant de l'Office; à ce titre, il en assure la direction et contrôle la gestion de son personnel. Il est aussi responsable de la répartition du travail parmi les membres, de leur affectation à l'une ou l'autre des formations de l'Office et de la désignation du membre chargé de présider chaque formation.	Attributions du président
Directives regarding timeliness	(2.1) To ensure that an application before the Board is dealt with in a timely manner, the Chairperson may issue directives to the members authorized to deal with the application regarding the manner in which they are to do so.	(2.1) Afin que toute demande dont l'Office est saisi soit traitée en temps opportun, le président peut donner aux membres de l'Office chargés de la demande des instructions concernant la façon de la traiter.	Instructions – diligence
Measures to meet time limit	(2.2) If the Chairperson is of the opinion that a time limit imposed under any of sections	(2.2) Si le président est d'avis qu'un délai imposé sous le régime des articles 52, 58 ou	Mesures pour respecter les délais



52, 58 and 58.16 is not likely to be met in respect of an application, the Chairperson may take any measure that the Chairperson considers appropriate to ensure that the time limit is met, including

- (a) removing any or all members of the panel authorized to deal with the application;
- (b) authorizing one or more members to deal with the application;
- (c) increasing or decreasing the number of members dealing with the application; and
- (d) specifying the manner in which section 55.2 is to be applied in respect of the application.

Clarification

(2.3) For greater certainty, the power referred to in subsection (2.2) includes the power to designate a single member, including the Chairperson, as the sole member who is authorized to deal with the application.

Effects of measure

(2.4) If the composition of the panel dealing with an application is changed as a result of any measure taken under subsection (2.2),

- (a) evidence and representations received by the Board in relation to the application before the taking of the measure are considered to have been received after the taking of the measure; and
- (b) the Board is bound by every decision made by the Board in relation to the application before the taking of the measure unless the Board elects to review, vary or rescind it.

Inconsistencies

(2.5) In the event of any inconsistency between any directive issued under subsection (2.1) or measure taken under subsection (2.2) and any rule made under section 8, the directive or measure prevails to the extent of the inconsistency.

Vice-chairperson's duties

(3) If the Chairperson is absent or unable to act or if the office is vacant, the Vice-chairperson has all the Chairperson's powers and functions.

Acting Chairperson

(4) The Board may authorize one or more of its members to act as Chairperson for the time being in the event that the Chairperson and Vice-chairperson are absent or unable to act or if the offices are vacant.

58.16 ne sera vraisemblablement pas respecté à l'égard d'une demande, il peut prendre toute mesure qu'il juge indiquée afin qu'il le soit, notamment :

- a) écarter tout membre de la formation chargée de la demande;
- b) charger de la demande un ou plusieurs membres;
- c) modifier le nombre de membres chargés de la demande;
- d) préciser la façon d'appliquer l'article 55.2 à l'égard de la demande.

Clarification

(2.3) Il est entendu que le pouvoir visé au paragraphe (2.2) confère notamment au président le pouvoir de se désigner ou de désigner un membre comme le seul membre chargé de la demande.

Effets des mesures

(2.4) Advenant la prise de toute mesure, en vertu du paragraphe (2.2), modifiant la composition de la formation chargée d'une demande :

- a) la preuve et les observations reçues par l'Office relativement à la demande avant la prise de la mesure sont considérées comme ayant été reçues après la prise de celle-ci;
- b) l'Office est lié par toute décision qu'il a rendue relativement à la demande avant la prise de la mesure à moins qu'il ne choisisse de la réviser, de l'annuler ou de la modifier.

Primauté des mesures

(2.5) En cas de conflit, les instructions données en vertu du paragraphe (2.1) et les mesures prises en vertu du paragraphe (2.2) l'emportent sur toute disposition des règles établies par l'Office en vertu de l'article 8.

Attributions du vice-président

(3) En cas d'absence ou d'empêchement du président ou de vacance de son poste, le vice-président assume la présidence.

Intérim

(4) L'Office peut autoriser un ou plusieurs de ses membres à assurer l'intérim de la présidence en cas d'absence ou d'empêchement du président et du vice-président, ou de vacance de leur poste.

(5) [Repealed, 1990, c. 7, s. 4]  
R.S., 1985, c. N-7, s. 6; 1990, c. 7, s. 4; 2012, c. 19, s. 71.

(5) [Abrogé, 1990, ch. 7, art. 4]  
L.R. (1985), ch. N-7, art. 6; 1990, ch. 7, art. 4; 2012, ch. 19, art. 71.

#### HEAD OFFICE AND MEETINGS

#### SIÈGE ET RÉUNIONS

Head office 7. (1) The head office of the Board shall be at Calgary, Alberta.

Quorum (2) Three members constitute a quorum of the Board.

Exception (2.1) Despite subsection (2), if the number of members authorized to deal with an application as a result of any measure taken by the Chairperson under subsection 6(2.2) is less than three, the number of members authorized by the Chairperson to deal with the application constitutes a quorum of the Board.

Vacancy (3) A vacancy in the membership of the Board does not impair the right of the remaining members to act.

Time and place of sittings (4) The Board may sit at such times and places as it considers necessary or desirable for the proper conduct of its business.  
R.S., 1985, c. N-7, s. 7; 1991, c. 27, s. 2; 2012, c. 19, s. 72.

Siège 7. (1) Le siège de l'Office est fixé à Calgary (Alberta).

Quorum (2) Le quorum de l'Office est constitué de trois membres.

Exception (2.1) Si le nombre de membres chargés d'une demande est inférieur à trois en raison de mesures prises par le président en vertu du paragraphe 6(2.2), le nombre de membres chargés de la demande constitue toutefois le quorum de l'Office.

Vacance (3) Une vacance au sein de l'Office n'entrave pas son fonctionnement.

Réunions (4) L'Office tient ses réunions aux moments et lieux qu'il estime indiqués pour son bon fonctionnement.  
L.R. (1985), ch. N-7, art. 7; 1991, ch. 27, art. 2; 2012, ch. 19, art. 72.

#### RULES

#### RÈGLES

Rules 8. The Board may make rules respecting

(a) the sittings of the Board;

(b) the procedure for making applications, representations and complaints to the Board and the conduct of hearings before the Board, and generally the manner of conducting any business before the Board; and

(c) [Repealed, 2012, c. 19, s. 73]

(d) generally, the carrying on of the work of the Board, the management of its internal affairs and the duties of its officers and employees.  
R.S., 1985, c. N-7, s. 8; 2012, c. 19, s. 73.

Règles 8. L'Office peut établir des règles concernant :

a) ses séances;

b) les modalités de présentation des demandes, observations et plaintes, le déroulement de ses audiences, et, de façon générale, la manière de traiter les affaires dont il est saisi;

c) [Abrogé, 2012, ch. 19, art. 73]

d) de façon générale, la poursuite de ses travaux, son fonctionnement interne et les fonctions du personnel.  
L.R. (1985), ch. N-7, art. 8; 2012, ch. 19, art. 73.

#### STAFF

#### PERSONNEL

Secretary and other officers and employees 9. (1) The Secretary and the other officers and employees necessary for the proper conduct of the business of the Board shall be appointed in the manner authorized by law.

Superannuation (2) For the purposes of the *Public Service Superannuation Act*, the members and Secretary of the Board and the officers and employ-

Nomination 9. (1) Le secrétaire et le reste du personnel nécessaire au bon fonctionnement de l'Office sont nommés conformément à la loi.

Pension de retraite (2) Pour l'application de la *Loi sur la pension de la fonction publique*, les membres et le secrétaire de l'Office, ainsi que le reste du per-

	ees appointed as provided in subsection (1) shall be deemed to be persons employed in the public service.	sonnel nommé au titre du paragraphe (1), sont réputés appartenir à la fonction publique.	
Exception	(3) Subsection (2) does not apply to a member of the Board appointed under subsection 4(1) unless the member was, immediately before being appointed, a person employed or deemed to be employed in the Public Service.	(3) Le paragraphe (2) ne s'applique aux membres temporaires que si, au moment de leur nomination, ils appartenaient ou étaient réputés appartenir à la fonction publique.	Exception
Health and safety officers	(4) Any officer or employee appointed as provided in subsection (1) may be designated as a regional health and safety officer or as a health and safety officer for the purposes of Part II of the <i>Canada Labour Code</i> .	(4) Un membre du personnel visé au paragraphe (1) peut être désigné agent de santé et de sécurité ou agent régional de santé et de sécurité pour l'application de la partie II du <i>Code canadien du travail</i> .	Agents de santé et de sécurité
Deemed appointment	(5) Where a position in the federal public administration is transferred to the Board within ninety days after this subsection comes into force, the incumbent of the position continues in the position in the Board and any person so continuing is deemed to have been appointed in accordance with subsection (1).	(5) Les titulaires des postes de l'administration publique fédérale transférés à l'Office dans les quatre-vingt-dix jours suivant l'entrée en vigueur du présent paragraphe sont maintenus dans le même poste à l'Office et sont réputés avoir été nommés à leur poste en vertu du paragraphe (1).	Nomination par défaut
Probation	(6) Notwithstanding subsection (5) and section 28 of the <i>Public Service Employment Act</i> , no person deemed by that subsection to have been appointed is subject to probation, unless that person was subject to probation immediately before the appointment, in which case that person continues to be subject to probation as if the position had not been transferred. R.S., 1985, c. N-7, s. 9; 1994, c. 10, s. 19; 2000, c. 20, s. 27; 2003, c. 22, ss. 224(E), 225(E).	(6) Malgré le paragraphe (5) et l'article 28 de la <i>Loi sur l'emploi dans la fonction publique</i> , la personne réputée avoir été ainsi nommée à l'Office n'est pas assujettie à une période de probation à moins qu'elle ne soit déjà en probation à la date de sa nomination, auquel cas elle y reste assujettie. L.R. (1985), ch. N-7, art. 9; 1994, ch. 10, art. 19; 2000, ch. 20, art. 27; 2003, ch. 22, art. 224(A) et 225(A).	Probation
Experts	<b>10.</b> The Governor in Council may appoint and fix the remuneration of experts or persons having technical or special knowledge to assist the Board in any matter in an advisory capacity. R.S., c. N-6, s. 9.	<b>10.</b> Le gouverneur en conseil peut nommer auprès de l'Office, à titre consultatif, des experts ou autres personnes compétentes et fixer leur rémunération. S.R., ch. N-6, art. 9.	Experts

#### POWERS OF THE BOARD

Board a court	<b>11. (1)</b> The Board is a court of record.
Official Seal	(2) The Board shall have an official seal, which shall be judicially noticed.
Powers with respect to witnesses, etc.	(3) The Board has, with respect to the attendance, swearing and examination of witnesses, the production and inspection of documents, the enforcement of its orders, the entry on and inspection of property and other matters necessary or proper for the due exercise of its jurisdiction, all such powers, rights and privileges as are vested in a superior court of record.

#### POUVOIRS DE L'OFFICE

Cour d'archives	<b>11. (1)</b> L'Office est une cour d'archives.
Sceau officiel	(2) L'Office a un sceau officiel, dont l'authenticité est admise d'office.
Pouvoirs quant aux témoins	(3) L'Office a, pour la comparution, la prestation de serment et l'interrogatoire des témoins, la production et l'examen des documents, l'exécution de ses ordonnances, la visite de lieux et toutes autres questions relevant de sa compétence, les attributions d'une cour supérieure d'archives.

Expeditious proceedings	<p>(4) Subject to subsections 6(2.1) and (2.2), all applications and proceedings before the Board are to be dealt with as expeditiously as the circumstances and considerations of fairness permit, but, in any case, within the time limit provided for under this Act, if there is one.</p> <p>R.S., 1985, c. N-7, s. 11; 2012, c. 19, s. 74.</p>	<p>(4) Sous réserve des paragraphes 6(2.1) et (2.2), l'Office tranche les demandes et procédures dont il est saisi le plus rapidement possible, compte tenu des circonstances et de l'équité, mais en tout état de cause dans le délai prévu sous le régime de la présente loi, le cas échéant.</p> <p>L.R. (1985), ch. N-7, art. 11; 2012, ch. 19, art. 74.</p>	Rapidité
Jurisdiction	<p><b>12. (1)</b> The Board has full and exclusive jurisdiction to inquire into, hear and determine any matter</p> <p>(a) where it appears to the Board that any person has failed to do any act, matter or thing required to be done by this Act or by any regulation, certificate, licence or permit, or any order or direction made by the Board, or that any person has done or is doing any act, matter or thing contrary to or in contravention of this Act, or any such regulation, certificate, licence, permit, order or direction; or</p> <p>(b) where it appears to the Board that the circumstances may require the Board, in the public interest, to make any order or give any direction, leave, sanction or approval that by law it is authorized to make or give, or with respect to any matter, act or thing that by this Act or any such regulation, certificate, licence, permit, order or direction is prohibited, sanctioned or required to be done.</p>	<p><b>12. (1)</b> L'Office a compétence exclusive pour examiner, entendre et trancher les questions soulevées par tout cas où il estime :</p> <p>a) soit qu'une personne contrevient ou a contrevenu, par un acte ou une omission, à la présente loi ou à ses règlements, ou à un certificat, une licence ou un permis qu'il a délivrés, ou encore à ses ordonnances ou instructions;</p> <p>b) soit que les circonstances peuvent l'obliger, dans l'intérêt public, à prendre une mesure — ordonnance, instruction, autorisation, sanction ou approbation — qu'en droit il est autorisé à prendre ou qui se rapporte à un acte que la présente loi ou ses règlements, un certificat, une licence ou un permis qu'il a délivrés, ou encore ses ordonnances ou instructions interdisent, sanctionnent ou exigent.</p>	Compétence
Idem	<p>(1.1) The Board may inquire into any accident involving a pipeline or international power line or other facility the construction or operation of which is regulated by the Board and may, at the conclusion of the inquiry, make</p> <p>(a) findings as to the cause of the accident or factors contributing to it;</p> <p>(b) recommendations relating to the prevention of future similar accidents; or</p> <p>(c) any decision or order that the Board can make.</p>	<p>(1.1) L'Office peut enquêter sur tout accident relatif à un pipeline, une ligne internationale ou toute autre installation dont la construction ou l'exploitation est assujettie à sa réglementation, en dégager les causes et facteurs, faire des recommandations sur les moyens d'éliminer ces accidents ou d'éviter qu'ils ne se produisent et rendre toute décision ou ordonnance qu'il lui est loisible de rendre.</p>	Idem
Matters of law and fact	<p>(2) For the purposes of this Act, the Board has full jurisdiction to hear and determine all matters, whether of law or of fact.</p> <p>R.S., 1985, c. N-7, s. 12; 1990, c. 7, s. 5.</p>	<p>(2) Pour l'application de la présente loi, l'Office a la compétence voulue pour trancher les questions de droit ou de fait.</p> <p>L.R. (1985), ch. N-7, art. 12; 1990, ch. 7, art. 5.</p>	Questions de droit et de fait
Jurisdiction — Inuvialuit Settlement Region	<p><b>12.1 (1)</b> The Board shall, for a period of 20 years beginning on the day on which this section comes into force, be the regulator — under any law of the Legislature of the Northwest</p>	<p><b>12.1 (1)</b> L'Office national de l'énergie agit, pendant une période de vingt ans commençant à l'entrée en vigueur du présent article, à titre d'organisme de réglementation, au titre de toute</p>	Compétence : région désignée des Inuvialuits

Territories that is made under paragraph 19(1) (a), (b) or (c) of the *Northwest Territories Act* — in respect of that portion of the Inuvialuit Settlement Region, as defined in section 2 of the *Canada Oil and Gas Operations Act*, that is situated in the onshore as defined in section 2 of the *Northwest Territories Act*.

loi de la Législature des Territoires du Nord-Ouest édictée en vertu des alinéas 19(1)a), b) ou c) de la *Loi sur les Territoires du Nord-Ouest*, à l'égard de toute partie de la région désignée des Inuvialuits au sens de l'article 2 de la *Loi sur les opérations pétrolières au Canada* comprise dans la région intracôtière au sens de l'article 2 de la *Loi sur les Territoires du Nord-Ouest*.

Successive periods and termination

(2) The Government of Canada and the Government of the Northwest Territories may agree that the Board shall be the regulator for successive periods of 20 years each; they may also, before the expiry of each successive period, agree to its earlier termination.

(2) Les gouvernements du Canada et des Territoires du Nord-Ouest peuvent proroger la période prévue au paragraphe (1) à une ou plusieurs reprises. En outre, ils peuvent, avant l'expiration de chaque période supplémentaire, fixer une période plus courte.

Prorogation et abrégement

2014, c. 2, s. 18.

2014, ch. 2, art. 18.

Mandatory orders

### 13. The Board may

(a) order and require any person to do, forthwith, or within or at any specified time and in any manner prescribed by the Board, any act, matter or thing that such person is or may be required to do under this Act, or any regulation, certificate, licence or permit, or any order or direction made or given under this Act; and

(b) forbid the doing or continuing of any act, matter or thing that is contrary to this Act or any such regulation, certificate, licence, permit, order or direction.

### 13. L'Office peut :

a) enjoindre à quiconque d'accomplir sans délai ou dans le délai imparti, ou à un moment précis, et selon les modalités qu'il fixe, un acte qu'imposent ou que peuvent imposer la présente loi ou ses règlements, ou un certificat, une licence, un permis, une ordonnance ou des instructions qui en découlent;

b) interdire ou faire cesser tout acte contraire à ceux-ci.

S.R., ch. N-6, art. 12.

Ordres et interdictions

Authorization regarding Board's powers, duties and functions

14. (1) The Chairperson may authorize one or more members, either jointly or severally, to exercise any of the Board's powers or to perform any of the Board's duties and functions under this Act, except those under subsection 45(3), sections 46, 47, 48, 52 to 54, 56, 58, 58.11, 58.14, 58.16, 58.32, 58.35, 58.37 and 129 and under Parts IV, VI, VII and IX.

14. (1) Le président peut autoriser les membres, conjointement ou individuellement, à exercer toute attribution que la présente loi confère à l'Office, sauf celles que prévoient le paragraphe 45(3), les articles 46, 47, 48, 52 à 54, 56, 58, 58.11, 58.14, 58.16, 58.32, 58.35, 58.37 et 129 et les parties IV, VI, VII et IX.

Autorisation — exercice des attributions

Presumption

(2) Any power exercised or any duty or function performed by a member or members under the authorization is considered to have been exercised or performed by the Board.

(2) Les pouvoirs et fonctions ainsi exercés sont considérés comme l'ayant été par l'Office.

L.R. (1985), ch. N-7, art. 14; 1990, ch. 7, art. 6; 2012, ch. 19, art. 75.

Fiction

R.S., 1985, c. N-7, s. 14; 1990, c. 7, s. 6; 2012, c. 19, s. 75.

Powers of members authorized to report

15. (1) The Chairperson may authorize one or more of the members to report to the Board on any question or matter arising in connection with the business of or any application or proceeding before the Board, and the member or members so authorized have all the powers of

15. (1) Le président peut autoriser un ou plusieurs membres à faire rapport à l'Office sur tout point relatif aux travaux ou aux demandes ou procédures dont celui-ci est saisi; ce ou ces membres sont investis, pour l'établissement du rapport et des recommandations sur les mesures

Rapport

the Board for the purpose of taking evidence or acquiring the necessary information for the purpose of making the report and the recommendations contained in it as to the decision or order of the Board to be made on the question or matter.

à prendre par l'Office, des pouvoirs de l'Office en matière de recueil de témoignages ou d'obtention de renseignements.

Not a quorum

(1.1) Notwithstanding subsection 7(2) of this Act and paragraph 22(2)(a) of the *Interpretation Act*, three or more members authorized to report to the Board pursuant to subsection (1) do not constitute a quorum of the Board.

(1.1) Par dérogation au paragraphe 7(2) de la présente loi et à l'alinéa 22(2)a) de la *Loi d'interprétation*, trois membres ou plus chargés de faire rapport en application du paragraphe (1) ne constituent pas le quorum.

Exception au quorum

Board to deal with report

(2) When a report is made to the Board under subsection (1), it may be adopted as the decision or order of the Board or otherwise dealt with as the Board considers advisable.

(2) L'Office peut adopter le rapport pour valoir décision ou ordonnance ou en faire ce qu'il estime utile.

Adoption du rapport

Board may act on own motion

(3) The Board may of its own motion inquire into, hear and determine any matter or thing that under this Act it may inquire into, hear and determine.

(3) L'Office peut, de sa propre initiative, examiner, entendre et trancher toute question qui relève de sa compétence aux termes de la présente loi.

Initiative

R.S., 1985, c. N-7, s. 15; 1990, c. 7, s. 7; 2012, c. 19, ss. 76, 99(E).

L.R. (1985), ch. N-7, art. 15; 1990, ch. 7, art. 7; 2012, ch. 19, art. 76 et 99(A).

Incapacity of single member

16. (1) If a member who is conducting a hearing under an authorization under section 14 or 15 becomes incapacitated, resigns or dies during the hearing or after the conclusion of the hearing but before making a decision or report, the Chairperson may authorize another member

16. (1) En cas d'incapacité, de démission ou de décès du membre chargé d'une audience aux termes des articles 14 ou 15, le président peut charger un autre membre :

Incapacité du membre agissant seul

(a) to continue the hearing and to make a decision or report to the Board, if the incapacity, resignation or death occurs during the hearing; or

a) dans les cas où l'audience n'est pas terminée, de poursuivre celle-ci jusqu'au prononcé de la décision ou la présentation du rapport à l'Office;

(b) to examine all the evidence presented at the hearing and to make a decision, or report to the Board, based on the evidence, if the incapacity, resignation or death occurs after the conclusion of the hearing but before a decision is given or a report to the Board is made.

b) dans les cas où l'audience est terminée mais où il n'y a pas eu encore de décision ou de rapport à l'Office, procéder à l'examen de tous les éléments de preuve présentés et, sur leur fondement, prononcer la décision ou faire rapport à l'Office.

Incapacity of member of quorum

(2) If a hearing is being conducted by three members and one member becomes incapacitated, resigns or dies during the hearing or after the conclusion of it but before a decision is given,

(2) En cas d'incapacité, de démission ou de décès de l'un des trois membres chargés d'une audience :

Incapacité d'un membre entraînant absence de quorum

(a) the Chairperson may authorize another member to replace the incapacitated or deceased member, or the member who resigned, for the rest of the hearing and to participate in the decision, if the incapacity,

a) le président peut charger un autre membre de le remplacer jusqu'à la fin de l'audience et au prononcé de la décision;

b) dans le cas où l'audience est terminée, les deux membres restants peuvent, s'ils le font unanimement, prononcer la décision comme si le membre décédé, démissionnaire ou frappé d'incapacité prenait part à la décision.

resignation or death occurs during the hearing; or

(b) if the incapacity, resignation or death occurs after the conclusion of the hearing but before a decision is given, the remaining members may, if unanimous, give a decision as if the incapacitated or deceased member, or the member who resigned, were present and participating in the decision.

Incapacity of member — Part III certificate

(3) If a hearing in relation to an application for a certificate under Part III is being conducted by three members and one member becomes incapacitated, resigns or dies during the hearing or after its conclusion but before the report that is required to be prepared under subsection 52(1) is finalized,

(a) the Chairperson may authorize another member to replace the incapacitated or deceased member, or the member who resigned, for the rest of the hearing and to participate in the finalizing of the report, if the incapacity, resignation or death occurs during the hearing; or

(b) if the incapacity, resignation or death occurs after the conclusion of the hearing but before the report is finalized, the remaining members may, if unanimous, finalize the report as if the incapacitated or deceased member, or the member who resigned, were present and participating in its finalization.

Effects of authorization

(4) If a member is authorized under paragraph (2)(a) or (3)(a) to replace a member,

(a) evidence and representations received by the Board in the course of the hearing before the replacement are considered to have been received after the replacement; and

(b) the Board is bound by every decision made by the Board in the course of the hearing before the replacement unless the Board elects to review, vary or rescind a decision.

Chairperson's powers

(5) Nothing in subsections (1) to (3) precludes the Chairperson from taking a measure under subsection 6(2.2).

Member ceasing to hold office

(6) A person who resigns or otherwise ceases to hold office as a member may, if authorized to do so by the Chairperson and on any terms and conditions that the Chairperson prescribes, continue to inquire into, hear and con-

(3) En cas d'incapacité, de démission ou de décès de l'un des trois membres chargés d'une audience portant sur une demande de certificat présentée au titre de la partie III :

a) le président peut charger un autre membre de le remplacer jusqu'à la fin de l'audience et l'achèvement du rapport dont l'établissement est exigé au paragraphe 52(1);

b) dans le cas où l'audience est terminée, les membres restants peuvent, s'ils le font unanimement, achever le rapport comme si le membre décédé, démissionnaire ou frappé d'incapacité prenait part à l'achèvement.

Incapacité d'un membre — certificat visé à la partie III

(4) Advenant le remplacement d'un membre en vertu des alinéas (2)a) ou (3)a) :

a) la preuve et les observations reçues par l'Office dans le cadre de l'audience avant le remplacement sont réputées avoir été reçues après le remplacement;

b) l'Office est lié par toute décision qu'il a rendue dans le cadre de l'audience avant le remplacement à moins qu'il ne choisisse de la réviser, de l'annuler ou de la modifier.

Effets du remplacement d'un membre

(5) Les paragraphes (1) à (3) ne portent aucunement atteinte aux pouvoirs du président de prendre des mesures en vertu du paragraphe 6(2.2).

Pouvoirs du président

(6) Sur autorisation du président et aux conditions que celui-ci fixe, le membre qui a cessé d'exercer sa charge par suite de démission ou pour tout autre motif peut terminer

Maintien en poste

clude any proceeding to which that person was assigned while that person was a member and the person shall for that purpose be considered to continue to be a member.

R.S., 1985, c. N-7, s. 16; 1990, c. 7, s. 8; 2012, c. 19, s. 77.

Confidentiality

**16.1** In any proceedings under this Act, the Board may take any measures and make any order that it considers necessary to ensure the confidentiality of any information likely to be disclosed in the proceedings if the Board is satisfied that

(a) disclosure of the information could reasonably be expected to result in a material loss or gain to a person directly affected by the proceedings, or could reasonably be expected to prejudice the person's competitive position; or

(b) the information is financial, commercial, scientific or technical information that is confidential information supplied to the Board and

(i) the information has been consistently treated as confidential information by a person directly affected by the proceedings, and

(ii) the Board considers that the person's interest in confidentiality outweighs the public interest in disclosure of the proceedings.

1994, c. 10, s. 20.

Confidentiality

**16.2** In respect of any order, or in any proceedings, of the Board under this Act, the Board may take any measures and make any order that the Board considers necessary to ensure the confidentiality of information that is contained in the order or is likely to be disclosed in the proceedings if the Board is satisfied that

(a) there is a real and substantial risk that disclosure of the information will impair the security of pipelines, international power lines, buildings, structures or systems, including computer or communication systems, or methods employed to protect them; and

(b) the need to prevent disclosure of the information outweighs the public interest in

toute affaire dont il est saisi. Il conserve à cette fin sa qualité de membre.

L.R. (1985), ch. N-7, art. 16; 1990, ch. 7, art. 8; 2012, ch. 19, art. 77.

Caractère  
confidentiel des  
renseignements

**16.1** Dans le cadre des procédures visées à la présente loi, l'Office peut prendre toute mesure ou rendre toute ordonnance qu'il juge nécessaire pour assurer la confidentialité des renseignements qui seront probablement divulgués au cours de celles-ci lorsqu'il conclut :

a) soit que la divulgation risquerait vraisemblablement de causer des pertes ou profits financiers appréciables aux intéressés, ou de nuire à leur compétitivité;

b) soit qu'il s'agit de renseignements financiers, commerciaux, scientifiques ou techniques de nature confidentielle obtenus par lui, traités comme tels de façon constante par les intéressés et dont la non-divulgation revêt pour ces derniers un intérêt supérieur à celui revêtu pour le public par la publicité des procédures.

1994, ch. 10, art. 20.

Confidentialité

**16.2** Dans le cadre des ordonnances ou des procédures visées par la présente loi, l'Office peut prendre toute mesure ou rendre toute ordonnance qu'il juge nécessaire pour assurer la confidentialité de renseignements contenus dans l'ordonnance ou de renseignements qui seront probablement divulgués au cours des procédures lorsqu'il conclut :

a) qu'il y a un risque sérieux que la divulgation des renseignements compromette la sécurité de pipelines, de lignes internationales, de bâtiments ou ouvrages ou de réseaux ou systèmes divers, y compris de réseaux ou systèmes informatisés ou de communications, ou de méthodes employées pour leur protection;

b) que la nécessité d'empêcher la divulgation des renseignements l'emporte sur l'importance, au regard de l'intérêt public, de la



disclosure of orders and proceedings of the Board.

2004, c. 15, s. 82.

Participant  
funding program

**16.3** For the purposes of this Act, the Board may establish a participant funding program to facilitate the participation of the public in hearings that are held under section 24.

2010, c. 12, s. 2149.

publicité des ordonnances et des procédures de l'Office.

2004, ch. 15, art. 82.

Fonds de  
participation

**16.3** L'Office peut, pour l'application de la présente loi, créer un programme d'aide financière visant à faciliter la participation du public aux audiences publiques tenues au titre de l'article 24.

2010, ch. 12, art. 2149.

## ORDERS AND DECISIONS

Enforcement of  
Board orders

**17. (1)** Any decision or order made by the Board may, for the purpose of enforcement thereof, be made a rule, order or decree of the Federal Court or of a superior court of a province and shall be enforced in like manner as a rule, order or decree of that court.

Procedure for  
enforcement

**(2)** To make a decision or order of the Board a rule, order or decree of the Federal Court or a superior court, the usual practice and procedure of the court in such matters may be followed, or in lieu thereof the Secretary may produce to the court a certified copy of the decision or order under the seal of the Board and thereupon the decision or order becomes a rule, order or decree of the court.

R.S., c. N-6, s. 15; R.S., c. 10(2nd Supp.), s. 64.

General or  
particular orders

**18.** Where the Board may make or issue any order or direction or prescribe any terms or conditions or do any other thing in relation to any person, the Board may do so, either generally or in any particular case or class of cases.

R.S., 1985, c. N-7, s. 18; 2007, c. 35, s. 152(E).

Conditional  
orders, etc.

**19. (1)** Without limiting the generality of any provision of this Act that authorizes the Board to impose terms and conditions in respect of a certificate, licence or order issued by the Board, the Board may direct in any certificate, licence or order that it or any portion or provision thereof shall come into force at a future time or on the happening of any contingency, event or condition specified in the certificate, licence or order or on the performance to the satisfaction of the Board of any conditions that the Board may impose in the certificate, licence or order, and the Board may direct that the whole or any portion of the certificate, licence or order shall have force for a limited time or until the happening of a specified event.

## ORDONNANCES ET DÉCISIONS

**17. (1)** Les décisions ou ordonnances de l'Office peuvent, en vue de leur exécution, être assimilées à des ordonnances, jugements ou règles de la Cour fédérale ou de toute cour supérieure d'une province et, le cas échéant, elles sont exécutées comme les autres ordonnances, jugements ou règles du tribunal.

Exécution des  
ordonnances de  
l'Office

**(2)** L'assimilation visée au paragraphe (1) se fait selon la pratique et la procédure suivies par le tribunal à cet égard ou par la production au greffe du tribunal, par le secrétaire, d'une copie de la décision ou de l'ordonnance, certifiée conforme et revêtue du sceau de l'Office. La décision ou l'ordonnance deviennent dès lors des ordonnances, jugements ou règles du tribunal.

Procédure  
d'exécution

S.R., ch. N-6, art. 15; S.R., ch. 10(2<sup>e</sup> suppl.), art. 64.

**18.** L'Office peut rendre ses ordonnances, donner ses instructions ou fixer ses conditions soit de façon générale, soit pour un cas particulier ou une catégorie de cas particulière.

Ordonnances  
générales ou  
particulières

L.R. (1985), ch. N-7, art. 18; 2007, ch. 35, art. 152(A).

**19. (1)** L'Office peut, par une mention à cette fin, reporter la prise d'effet, en tout ou en partie, des certificats et licences et de ses ordonnances à une date ultérieure ou faire dépendre cette prise d'effet d'un événement, certain ou incertain, ou d'une condition, ou de l'exécution, d'une façon qu'il juge acceptable, de certaines des conditions dont ils sont assortis; il peut en outre décider que tout ou partie de ceux-ci n'aura d'effet que pendant une période déterminée ou jusqu'à l'arrivée d'un événement précis. Le présent paragraphe n'a pas pour effet de limiter la portée générale des autres dispositions de la présente loi qui autorisent l'Office à assortir les certificats ou licences, ou ses ordonnances, de conditions.

Ordonnances  
conditionnelles

Non-application	(1.1) Subsection (1) does not apply in respect of an application for a certificate under Part III.	(1.1) Le paragraphe (1) ne s'applique pas à l'égard de la demande de certificat au titre de la partie III.	Non-application
Interim orders	(2) The Board may, instead of making an order final in the first instance, make an interim order, and may reserve its decision pending further proceedings in connection with any matter. R.S., 1985, c. N-7, s. 19; 2012, c. 19, s. 78.	(2) L'Office peut rendre des ordonnances provisoires; il peut aussi réserver sa décision pendant le règlement d'autres questions. L.R. (1985), ch. N-7, art. 19; 2012, ch. 19, art. 78.	Ordonnances provisoires
Granting of relief may be partial	20. (1) On any application made to the Board, the Board may make a decision or order granting the whole or part only of the application, or may grant such further or other related relief, in addition to or in lieu of that applied for, as to the Board may seem just and proper, to the same extent as if the application had been for such partial or related relief.	20. (1) L'Office peut rendre une décision ou une ordonnance faisant droit en tout ou en partie à la demande dont il est saisi ou accorder en sus ou au lieu de la réparation souhaitée celle qu'il estime indiquée tout comme si elle faisait l'objet de la demande.	Réparation partielle
Non-application	(2) Subsection (1) does not apply in respect of an application for a certificate under Part III. R.S., 1985, c. N-7, s. 20; 1990, c. 7, s. 9(E); 2012, c. 19, s. 79.	(2) Le paragraphe (1) ne s'applique pas à l'égard de la demande de certificat au titre de la partie III. L.R. (1985), ch. N-7, art. 20; 1990, ch. 7, art. 9(A); 2012, ch. 19, art. 79.	Non-application
Review, etc., of decisions and orders	21. (1) Subject to subsection (2), the Board may review, vary or rescind any decision or order made by it or rehear any application before deciding it.	21. (1) Sous réserve du paragraphe (2), l'Office peut réviser, annuler ou modifier ses ordonnances ou décisions, ou procéder à une nouvelle audition avant de statuer sur une demande.	Révision des ordonnances
Variation of certificates, licences and permits	(2) The Board may vary a certificate, licence or permit but the variation of a certificate or licence is not effective until approved by the Governor in Council.	(2) L'Office peut modifier les certificats, licences ou permis qu'il a délivrés, mais les modifications des certificats et licences ne prennent effet qu'une fois agréées par le gouverneur en conseil.	Modification
Exception	(3) This section does not apply to (a) a decision, operating licence or authorization to which section 28.2 or 28.3 applies; or (b) an approval of a development plan under section 5.1 of the <i>Canada Oil and Gas Operations Act</i> . R.S., 1985, c. N-7, s. 21; 1990, c. 7, s. 10; 1994, c. 10, s. 21.	(3) Le présent article ne s'applique pas aux décisions, permis de travaux ou autorisations visés aux articles 28.2 ou 28.3 ni aux approbations de plans de mise en valeur visées à l'article 5.1 de la <i>Loi sur les opérations pétrolières au Canada</i> . L.R. (1985), ch. N-7, art. 21; 1990, ch. 7, art. 10; 1994, ch. 10, art. 21.	Exception
Transfer of certificates and licences	21.1 (1) A transfer of a certificate or licence is not effective until authorized by the Board, with the approval of the Governor in Council.	21.1 (1) La validité des transferts de certificats ou licences est subordonnée à l'autorisation de l'Office et à l'agrément du gouverneur en conseil.	Transfert de certificats ou licences
Idem	(2) The Board may, in authorizing the transfer of a certificate or licence, impose, in addition to or in lieu of any terms and conditions to which the certificate or licence was previously subject, such further or other terms and condi-	(2) L'Office peut, en procédant à l'autorisation, imposer, en sus ou au lieu de celles auxquelles le certificat ou la licence sont déjà assu-	Conditions additionnelles

	tions as the Board considers necessary or desirable in order to give effect to the purposes and provisions of this Act. 1990, c. 7, s. 10.	jettis, les conditions qu'il estime utiles à l'application de la présente loi. 1990, ch. 7, art. 10.	
Transfer of permits	<b>21.2</b> (1) A transfer of a permit is not effective until authorized by the Board.	<b>21.2</b> (1) La validité des transferts de permis est subordonnée à l'autorisation de l'Office.	Transfert de permis
Idem	(2) The Board may, in authorizing the transfer of a permit, impose, in addition to or in lieu of any terms and conditions to which the permit was previously subject, such further or other terms and conditions respecting the matters prescribed by the regulations as the Board considers necessary or desirable in order to give effect to the purposes and provisions of this Act. 1990, c. 7, s. 10.	(2) L'Office peut, en procédant à l'autorisation, imposer, en sus ou au lieu de celles auxquelles le permis est déjà assujéti, les conditions, en ce qui touche les facteurs prévus par règlement, qu'il estime utiles à l'application de la présente loi. 1990, ch. 7, art. 10.	Conditions additionnelles
Appeal to Federal Court of Appeal	<b>22.</b> (1) An appeal lies from a decision or order of the Board to the Federal Court of Appeal on a question of law or of jurisdiction, after leave to appeal is obtained from that Court.	<b>22.</b> (1) Il peut être interjeté appel devant la Cour d'appel fédérale, avec l'autorisation de celle-ci, d'une décision ou ordonnance de l'Office, sur une question de droit ou de compétence.	Appel à la Cour d'appel fédérale
Application for leave to appeal	(1.1) An application for leave to appeal must be made within thirty days after the release of the decision or order sought to be appealed from or within such further time as a judge of that Court under special circumstances allows.	(1.1) La demande d'autorisation doit être faite dans les trente jours suivant la publication de la décision ou de l'ordonnance ou dans le délai supérieur accordé par l'un des juges de la Cour en raison de circonstances spéciales.	Demande d'autorisation
Entry of appeal	(2) No appeal lies after leave has been obtained under subsection (1) unless it is entered in the Federal Court of Appeal within sixty days from the making of the order granting leave to appeal.	(2) Sous peine d'irrecevabilité, l'appel doit être inscrit devant la Cour d'appel fédérale dans les soixante jours qui suivent le prononcé de l'ordonnance accordant l'autorisation d'appel.	Inscription de l'appel
Board may be heard	(3) The Board is entitled to be heard by counsel or otherwise on the argument of an appeal.	(3) L'Office peut plaider sa cause à l'appel par procureur ou autrement.	Plaidoirie de l'Office
Report not decision or order	(4) For greater certainty, for the purpose of this section, no report submitted by the Board under section 52 or 53 — or under section 29 or 30 of the <i>Canadian Environmental Assessment Act, 2012</i> — and no part of any such report, is a decision or order of the Board. R.S., 1985, c. N-7, s. 22; 1990, c. 7, s. 11; 2012, c. 19, s. 80.	(4) Pour l'application du présent article, il est entendu que tout rapport — ou partie de rapport — présenté par l'Office au titre des articles 52 ou 53 ou au titre des articles 29 ou 30 de la <i>Loi canadienne sur l'évaluation environnementale (2012)</i> ne constitue ni une décision ni une ordonnance de celui-ci. L.R. (1985), ch. N-7, art. 22; 1990, ch. 7, art. 11; 2012, ch. 19, art. 80.	Rapports ne sont ni des décisions ni des ordonnances
Decisions final	<b>23.</b> (1) Except as provided in this Act, every decision or order of the Board is final and conclusive.	<b>23.</b> (1) Sauf exceptions prévues à la présente loi, les décisions ou ordonnances de l'Office sont définitives et sans appel.	Caractère définitif des décisions
Decision or order	(2) Any minute or other record of the Board or any document issued by the Board, in the form of a decision or order, shall for the pur-	(2) Les procès-verbaux ou autres actes de l'Office, ou les documents émanant de lui, qui sont sous forme de décision ou d'ordonnance, sont réputés, pour l'application du présent ar-	Décision ou ordonnance

	poses of this section be deemed to be a decision or order of the Board. R.S., c. N-6, s. 19; R.S., c. 10(2nd Supp.), s. 65.	ticle, être des décisions ou ordonnances de l'Office. S.R., ch. N-6, art. 19; S.R., ch. 10(2 <sup>e</sup> suppl.), art. 65.	
Public hearings	<b>24.</b> (1) Subject to subsection (2), hearings before the Board with respect to the issuance, revocation or suspension of certificates or for leave to abandon the operation of a pipeline shall be public.	<b>24.</b> (1) Sous réserve du paragraphe (2), doivent faire l'objet d'audiences publiques les cas de délivrance, d'annulation ou de suspension de certificats ainsi que les demandes de cessation d'exploitation d'un pipeline.	Audiences publiques
Exception	(2) A public hearing need not be held where the Board, on the application or with the consent of the holder, revokes or suspends (a) a certificate issued in respect of an international or interprovincial power line, regardless of whether the power line has been brought into commercial operation under that certificate; or (b) a certificate issued in respect of a pipeline, if the pipeline has not been brought into commercial operation under that certificate.	(2) Les cas d'annulation ou de suspension de certificat décidés à la demande ou avec le consentement du titulaire n'ont pas à faire l'objet d'une audience publique; l'exception n'est toutefois valable à l'égard d'un certificat visant un pipeline que si ce dernier n'a pas encore été commercialement mis en service.	Exception
Other matters	(3) The Board may hold a public hearing in respect of any other matter if it considers it advisable to do so. R.S., 1985, c. N-7, s. 24; 1990, c. 7, s. 12; 2012, c. 19, s. 81.	(3) L'Office peut, s'il l'estime utile, tenir une audience publique sur toute autre question. L.R. (1985), ch. N-7, art. 24; 1990, ch. 7, art. 12; 2012, ch. 19, art. 81.	Autres sujets
	<b>FEES, LEVIES AND CHARGES</b>	<b>DROITS, REDEVANCES ET FRAIS</b>	
Regulations imposing fees, etc.	<b>24.1</b> (1) Subject to the approval of the Treasury Board, the National Energy Board may, for the purposes of recovering all or a portion of such costs as the National Energy Board determines to be attributable to its responsibilities under this or any other Act of Parliament, make regulations (a) imposing fees, levies or charges on any person or company authorized under this Act to (i) construct or operate a pipeline or an international or interprovincial power line, (ii) charge tolls, (iii) export or import oil or gas, or (iv) export electricity; and (b) providing for the manner of calculating the fees, levies and charges in respect of the person or company and their payment to the National Energy Board.	<b>24.1</b> (1) Sous réserve de l'agrément du Conseil du Trésor, et afin de recouvrer tout ou partie des frais qu'il juge afférents à l'exercice de ses attributions dans le cadre de la présente loi et de toute autre loi fédérale, l'Office peut, par règlement : a) imposer des droits, redevances ou frais à chaque personne ou compagnie pouvant, au titre de la présente loi, construire ou exploiter un pipeline ou une ligne internationale ou interprovinciale, exiger des droits, exporter ou importer du gaz ou du pétrole ou exporter de l'électricité; b) déterminer leur mode de calcul à l'égard de la personne ou de la compagnie et prévoir leur paiement.	Règlement d'imposition

Interest on late payments

(2) A regulation made under subsection (1) may specify the rate of interest or the manner of calculating the rate of interest payable by a person or company on any fee, levy or charge not paid by the person or company on or before the date it is due and the time from which interest is payable.

(2) Les règlements d'application du paragraphe (1) peuvent préciser le taux, ou le mode de calcul du taux, des intérêts exigibles d'une personne ou d'une compagnie sur les droits, redevances ou frais en souffrance, de même que la date à compter de laquelle les intérêts commencent à courir.

Intérêts

Debt due to Her Majesty

(3) Fees, levies or charges imposed under this section and any interest payable on them constitute a debt to Her Majesty in right of Canada and may be recovered as such in any court of competent jurisdiction.

(3) Les droits, redevances ou frais prévus par le présent article et les intérêts exigibles sur ceux-ci constituent des créances de Sa Majesté du chef du Canada, dont le recouvrement peut être poursuivi à ce titre devant tout tribunal compétent.

Créances de Sa Majesté

1990, c. 7, s. 13.

1990, ch. 7, art. 13.

#### PROOF OF DOCUMENTS

#### PREUVE DES DOCUMENTS

Proof of documents

##### 25. In any action or other proceedings

(a) any document purporting to be certified by the Secretary, or by any other person authorized by the Board to certify documents for the purposes of this section, and sealed with the seal of the Board to be a true copy of any minute, decision, licence, certificate, permit, order, instruction, book of reference, book entry, plan, drawing or other document or any part thereof, is, without proof of the signature of the Secretary or other person, evidence of the original document of which it purports to be a copy, and that the document was made, given, issued or deposited at the time stated in the certification, if a time is stated therein, and is signed, certified, attested or executed by the persons by whom and in the manner in which the document purports to be signed, certified, attested or executed as shown or appearing from the certified copy; and

(b) a document purporting to be certified by the Secretary, or by any other person authorized by the Board to certify documents for the purposes of this section, and sealed with the seal of the Board stating that a valid and subsisting document of authorization has or has not been issued by the Board to a person or persons named in the certified document, is evidence of the facts stated in it, without proof of the signature or official character of the person appearing to have signed the document and without further proof.

R.S., 1985, c. N-7, s. 25; 2007, c. 35, s. 153.

##### 25. Dans le cadre de toute action ou autre procédure :

a) le document censé porter le sceau de l'Office et être, par certification du secrétaire, ou de toute autre personne autorisée à cet effet par l'Office pour les besoins du présent article, une copie conforme d'un document — notamment procès-verbal, décision, licence, certificat, permis, ordonnance, instruction, livre de renvoi, écriture, plan ou dessin —, ou d'un extrait de celui-ci, constitue, sans qu'il soit nécessaire de prouver l'authenticité de la signature du secrétaire ou de l'autre personne, une preuve du document original, de la date donnée dans la certification comme étant celle du document, ou de la délivrance ou du dépôt de celui-ci, de l'authenticité des signatures qui y sont reproduites, ainsi que de l'accomplissement des formalités qui sont censées les avoir accompagnées;

b) le document censé porter le sceau de l'Office, certifié par le secrétaire, ou par toute autre personne autorisée à cet effet par l'Office pour les besoins du présent article, et énonçant qu'un acte d'autorisation prévu, valide et en vigueur, a — ou n'a pas — été délivré par l'Office à la ou aux personnes qui y sont mentionnées fait foi de son contenu, sans autre preuve et sans qu'il soit nécessaire de prouver l'authenticité de la signature qui y est apposée ou la qualité officielle du secrétaire.

Preuve des documents

L.R. (1985), ch. N-7, art. 25; 2007, ch. 35, art. 153.

## PART II

### ADVISORY FUNCTIONS

Study and review

26. (1) The Board shall study and keep under review matters over which Parliament has jurisdiction relating to

- (a) the exploration for, and the production, recovery, manufacture, processing, transmission, transportation, distribution, sale, purchase, exchange and disposal of, energy and sources of energy in and outside Canada; and
- (b) the safety and security of pipelines and international power lines.

Report and recommendations to Minister

(1.1) The Board shall report on the matters referred to in subsection (1) from time to time to the Minister and shall recommend to the Minister such measures within the jurisdiction of Parliament as it considers necessary or advisable in the public interest for

- (a) the control, supervision, conservation, use, marketing and development of energy and sources of energy; and
- (b) the safety and security of pipelines and international power lines.

Request of Minister

(2) The Board shall, with respect to energy matters, sources of energy and the safety and security of pipelines and international power lines,

- (a) provide the Minister with such advice as the Minister may request, including advice relating to the export pricing of oil and gas;
- (b) prepare such studies and reports as the Minister may request; and
- (c) recommend to the Minister the making of such arrangements as it considers desirable for cooperation with governmental or other agencies in or outside Canada.

Use of government agencies

(3) In carrying out its duties and functions under this section, the Board shall, wherever appropriate, utilize agencies of the Government of Canada to obtain technical, economic and statistical information and advice.

Other advisory functions

(4) The Board and its officers and employees may, on request, provide advice about energy matters, sources of energy and the safety and security of pipelines and international power lines to

## PARTIE II

### FONCTIONS CONSULTATIVES

Étude et suivi

26. (1) L'Office étudie les questions ressortissant au Parlement, et en assure le suivi, en ce qui concerne :

- a) l'exploration, la production, la récupération, la transformation, le transport, la distribution, la vente, l'achat, l'échange et l'aliénation, dans le domaine de l'énergie et des sources d'énergie, au Canada ou à l'étranger;
- b) la sûreté et la sécurité des pipelines et des lignes internationales.

Rapports et recommandations au ministre

(1.1) Il présente des rapports au ministre sur ces questions et lui fait des recommandations sur les mesures ressortissant au Parlement qu'il estime utiles à l'intérêt public :

- a) pour le contrôle, la surveillance, l'usage rationnel, la commercialisation et l'exploitation de l'énergie et des sources d'énergie;
- b) pour la sûreté et la sécurité des pipelines et des lignes internationales.

Demande du ministre

(2) En matière d'énergie, de sources d'énergie et de sûreté et sécurité des pipelines et des lignes internationales, l'Office :

- a) conseille le ministre sur toute question que celui-ci lui soumet, notamment sur le prix à l'exportation du pétrole et du gaz;
- b) effectue les études et rapports que demande celui-ci;
- c) recommande à celui-ci les arrangements qu'il juge utiles en vue de la coopération avec des organismes d'État ou autres, au Canada ou à l'étranger.

Recours aux organismes fédéraux

(3) Dans l'exercice des attributions prévues au présent article, l'Office recourt, dans la mesure du possible, aux organismes fédéraux pour obtenir des renseignements et conseils d'ordre technique, économique et statistique.

Autres fonctions de l'Office

(4) L'Office, ses dirigeants ou ses employés peuvent, sur demande, conseiller, en matière d'énergie, de sources d'énergie et de sûreté et sécurité des pipelines et des lignes internationales, les ministres et leurs fonctionnaires, quel que soit le ministère — fédéral, provincial ou

(a) ministers, officers and employees of any government department or ministry, whether federal, provincial or territorial; and

(b) members, officers and employees of any government agency, whether federal, provincial or territorial.

R.S., 1985, c. N-7, s. 26; 1994, c. 10, s. 22; 2004, c. 15, s. 83.

Publication of studies and reports

27. Studies and reports of the Board made under this Part may be made public with the approval of the Minister.

R.S., c. N-6, s. 23.

Powers of Board

28. For the purposes of this Part, the Board has all the powers of commissioners under Part I of the *Inquiries Act*.

R.S., c. N-6, s. 24.

## PART II.1

### OIL AND GAS INTERESTS, PRODUCTION AND CONSERVATION

#### INTERPRETATION

Definitions of "oil" and "gas"

28.1 For the purposes of this Part, "oil" and "gas" have the same meaning as in the *Canada Oil and Gas Operations Act*.

1994, c. 10, s. 23.

#### DECLARATIONS OF SIGNIFICANT DISCOVERY AND COMMERCIAL DISCOVERY

Application

28.2 (1) This section applies to any decision of the Board to make, amend or revoke a declaration of significant discovery under section 28 of the *Canada Petroleum Resources Act* or a declaration of commercial discovery under section 35 of that Act.

Notice

(2) At least thirty days before making a decision to which this section applies, the Board shall give written notice of its intention to make the decision to any person the Board considers to be directly affected by the decision.

Request for hearing

(3) A person to whom notice is given may, in writing, request a hearing in respect of the decision, but the request must be received by the Board within thirty days after the notice is given.

territorial —, ainsi que les membres, dirigeants et employés des organismes des gouvernements fédéral, provinciaux ou territoriaux.

L.R. (1985), ch. N-7, art. 26; 1994, ch. 10, art. 22; 2004, ch. 15, art. 83.

27. Les études et rapports de l'Office effectués aux termes de la présente partie peuvent être rendus publics, avec l'approbation du ministre.

S.R., ch. N-6, art. 23.

28. Pour l'application de la présente partie, l'Office est investi des pouvoirs d'un commissaire nommé aux termes de la partie I de la *Loi sur les enquêtes*.

S.R., ch. N-6, art. 24.

## PARTIE II.1

### DROITS, PRODUCTION ET USAGE RATIONNEL DU PÉTROLE ET DU GAZ

#### DÉFINITIONS

28.1 Pour l'application de la présente partie, « gaz » et « pétrole » s'entendent au sens de la *Loi sur les opérations pétrolières au Canada*.

1994, ch. 10, art. 23.

#### DÉCLARATIONS DE DÉCOUVERTE IMPORTANTE ET DE DÉCOUVERTE EXPLOITABLE

28.2 (1) Le présent article s'applique aux décisions de l'Office visant à faire, modifier ou annuler une déclaration de découverte importante en vertu de l'article 28 de la *Loi fédérale sur les hydrocarbures* ou une déclaration de découverte exploitable en vertu de l'article 35 de cette loi.

(2) L'Office avise par écrit, au moins trente jours au préalable, les personnes qui, selon lui, seront touchées directement par les décisions visées au présent article.

(3) La personne ainsi avisée peut demander par écrit la tenue d'une audience avant le prononcé de la décision. La demande doit parvenir à l'Office dans les trente jours suivant la réception de l'avis.

Publication des études et rapports

Pouvoirs de l'Office

Définitions de « gaz » et « pétrole »

Déclaration

Avis

Demande d'audience

Decision if no request received	(4) If no request is received in accordance with subsection (3), the Board may make the decision.	(4) À défaut de demande d'audience dans le délai imparti, l'Office peut décider de la question.	Décision de l'Office
Hearing if request received	(5) If a request is received in accordance with subsection (3), the Board shall fix a suitable time and place for the hearing and notify each person who requested the hearing.	(5) En cas de demande d'audience, l'Office fixe la date, l'heure et l'endroit de celle-ci et avise toutes les personnes qui en ont fait la demande.	Tenue de l'audience
Representations	(6) Each person who requests a hearing may make representations and introduce witnesses and documents at the hearing.	(6) Les personnes qui ont demandé la tenue de l'audience peuvent y présenter des observations, y faire entendre des témoins et y produire des documents.	Observations
Decision	(7) At or after the conclusion of the hearing, the Board shall make the decision, give notice of it to each person who requested the hearing and, if the person requests reasons, publish or make available the reasons for the decision. 1994, c. 10, s. 23.	(7) L'Office rend sa décision dès la fin de l'audience ou après délibération. Il avise de la décision les personnes qui ont demandé la tenue de l'audience et, à la demande d'une de celles-ci, en rend les motifs publics ou accessibles. 1994, ch. 10, art. 23.	Décision
OPERATING LICENCES AND AUTHORIZATIONS			
Variation of licences, etc.	<b>28.3</b> The Board may vary the terms of any operating licence or authorization issued under section 5 of the <i>Canada Oil and Gas Operations Act</i> . 1994, c. 10, s. 23.	<b>28.3</b> L'Office peut modifier les permis de travaux ou les autorisations accordés aux termes de l'article 5 de la <i>Loi sur les opérations pétrolières au Canada</i> . 1994, ch. 10, art. 23.	Modification : permis ou autorisations
CHIEF CONSERVATION OFFICER			
Application to appeals	<b>28.4</b> (1) This section applies to appeals brought under section 21 or subsection 25(8) of the <i>Canada Oil and Gas Operations Act</i> by a person aggrieved by an order of the Chief Conservation Officer or by any action or measure taken or authorized or directed to be taken by that Officer.	<b>28.4</b> (1) Le présent article s'applique aux appels interjetés en vertu de l'article 21 et du paragraphe 25(8) de la <i>Loi sur les opérations pétrolières au Canada</i> par les personnes qui s'estiment lésées par un arrêté du délégué à l'exploitation ou par toute mesure prise, ordonnée ou autorisée par lui.	Procédure d'appel
Powers on appeal	(2) After hearing an appeal to which this section applies, the Board may (a) set aside, confirm or vary the order, action or measure that is the subject of the appeal; (b) order any works to be undertaken that the Board considers necessary to prevent waste, the escape of oil or gas or any other contravention of the <i>Canada Oil and Gas Operations Act</i> or the regulations made under that Act; or (c) make any other order that the Board considers appropriate. 1994, c. 10, s. 23.	(2) Après audition de l'appel visé au présent article, l'Office peut soit infirmer, confirmer ou modifier l'arrêté ou la mesure du délégué à l'exploitation, soit ordonner d'entreprendre les travaux qu'il juge nécessaires pour empêcher le gaspillage ou le dégagement de pétrole ou de gaz ou pour prévenir toute contravention à la <i>Loi sur les opérations pétrolières au Canada</i> ou à ses règlements, soit rendre toute ordonnance qu'il juge indiquée. 1994, ch. 10, art. 23.	Pouvoir de décision
DÉLÉGUÉ À L'EXPLOITATION			



Applications for show cause hearing relating to waste	<p><b>28.5 (1)</b> This section applies to applications by the Chief Conservation Officer to the Board under section 22 of the <i>Canada Oil and Gas Operations Act</i> for a show cause hearing relating to waste, as defined in paragraph 18(2)(f) or (g) of that Act, in the recovery of oil or gas from a pool.</p>	<p><b>28.5 (1)</b> Le présent article s'applique aux demandes présentées à l'Office par le délégué à l'exploitation en vertu de l'article 22 de la <i>Loi sur les opérations pétrolières au Canada</i> en vue de la tenue d'une audience sur un cas de gaspillage, au sens des alinéas 18(2)f) ou g) de cette loi, dans la récupération du pétrole ou du gaz d'un gisement.</p>	Demande d'audience en cas de gaspillage
Order	<p>(2) On receiving an application, the Board shall make an order requiring the operators within the pool to show cause at a hearing, to be held on a day specified in the order, why the Board should not make a direction in respect of the waste.</p>	<p>(2) Sur réception de la demande, l'Office doit, par ordonnance, enjoindre aux exploitants du gisement de lui exposer, lors d'une audience tenue à la date spécifiée, les raisons pour lesquelles il ne devrait pas se prononcer sur le gaspillage.</p>	Ordonnance de l'Office
Hearing	<p>(3) On the day specified in the order, the Board shall hold a hearing at which the Chief Conservation Officer, the operators and other interested persons shall be given an opportunity to be heard.</p>	<p>(3) L'Office tient l'audience à la date spécifiée et donne au délégué à l'exploitation, aux exploitants et aux autres intéressés la possibilité de présenter leurs observations.</p>	Audience
Direction	<p>(4) If, after the hearing, the Board is of the opinion that waste is occurring in the recovery of oil or gas from a pool, the Board may, by order,</p> <p>(a) direct the introduction of a scheme for the collection, processing, disposition or reinjection of any gas produced from the pool; or</p> <p>(b) direct repressurizing, recycling or pressure maintenance for the pool or any part of the pool and for or incidental to that purpose, direct the introduction or injection of gas, water or any other substance into the pool or any part of the pool.</p>	<p>(4) Si, à l'issue de l'audience, il estime qu'il y a gaspillage dans la récupération du pétrole ou du gaz du gisement, l'Office peut, par ordonnance, exiger :</p> <p>a) soit l'application d'un plan de collecte, de transformation ou de réinjection des gaz produits par le gisement;</p> <p>b) soit la recompression, le recyclage ou le maintien de la pression pour tout ou partie du gisement et, à cette fin ou à des fins connexes, y faire introduire ou injecter du gaz, de l'eau ou une autre substance.</p>	Ordonnance
Additional direction	<p>(5) In addition to making a direction under subsection (4), the Board may, by order, direct that the pool or any part of the pool specified in the order be shut in if the requirements of the order are not met or unless a scheme is approved by the Board and in operation by a date fixed in the order.</p>	<p>(5) L'Office peut en outre, par ordonnance, exiger l'arrêt total ou partiel de l'exploitation du gisement en cas de non-respect de l'ordonnance visée au paragraphe (4) ou s'il n'y a pas de plan approuvé par lui en cours d'application à la date spécifiée dans l'ordonnance.</p>	Ordonnance supplémentaire
Continuation pending approval of scheme	<p>(6) Notwithstanding subsections (4) and (5), the Board may, by order, permit the continued operation of a pool or any part of a pool after the date fixed by a direction under this section if, in the opinion of the Board, a scheme or other action described in paragraph (4)(a) or (b) is in the course of preparation, but the continued operation is subject to any conditions imposed by the Board.</p> <p>1994, c. 10, s. 23.</p>	<p>(6) Par dérogation aux paragraphes (4) et (5), l'Office peut, par ordonnance, permettre la poursuite de l'exploitation totale ou partielle d'un gisement après la date spécifiée, s'il estime que le plan ou les mesures visés aux alinéas (4)a) ou b) sont en cours de préparation; la poursuite de l'exploitation est alors assujettie aux conditions qu'il impose.</p> <p>1994, ch. 10, art. 23.</p>	Exploitation provisoire

CHIEF SAFETY OFFICER

DÉLÉGUÉ À LA SÉCURITÉ

Application	<b>28.6</b> (1) This section applies to an order referred by the Chief Safety Officer to the Board under subsection 58(5) of the <i>Canada Oil and Gas Operations Act</i> .	<b>28.6</b> (1) Le présent article s'applique aux ordres déferés à l'Office par le délégué à la sécurité en vertu du paragraphe 58(5) de la <i>Loi sur les opérations pétrolières au Canada</i> .	Demande de révision
Review and decision	(2) The Board shall review the need for the order and may confirm it or set it aside.	(2) L'Office étudie l'à-propos de l'ordre et peut le confirmer ou l'infirmer.	Révision et décision
Burden of proof	(3) The burden of establishing that the order is not needed is on the person who requested that the order be referred to the Board. 1994, c. 10, s. 23.	(3) Il incombe à la personne qui a demandé le renvoi de l'ordre d'établir son inutilité. 1994, ch. 10, art. 23.	Charge de la preuve

ORDERS

ORDONNANCES

Offence	<b>28.7</b> (1) Every person who fails to comply with an order of the Board under section 28.4 or 28.5 is guilty of an offence and is liable  (a) on summary conviction, to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding one year or to both; or  (b) on conviction on indictment, to a fine not exceeding one million dollars or to imprisonment for a term not exceeding five years or to both.	<b>28.7</b> (1) Quiconque ne se conforme pas à l'ordonnance rendue par l'Office en vertu des articles 28.4 ou 28.5 commet une infraction et encourt, sur déclaration de culpabilité :  a) par procédure sommaire, une amende maximale de cent mille dollars et un emprisonnement maximal d'un an, ou l'une de ces peines;  b) par mise en accusation, une amende maximale d'un million de dollars et un emprisonnement maximal de cinq ans, ou l'une de ces peines.	Infraction
Applicable provisions	(2) Sections 65 to 71 of the <i>Canada Oil and Gas Operations Act</i> apply, with such modifications as the circumstances require, in respect of an offence under subsection (1). 1994, c. 10, s. 23.	(2) Les articles 65 à 71 de la <i>Loi sur les opérations pétrolières au Canada</i> s'appliquent, avec les adaptations nécessaires, à l'infraction prévue au paragraphe (1). 1994, ch. 10, art. 23.	Dispositions applicables
Orders not statutory instruments	<b>28.8</b> For greater certainty, an order of the Board made under this Part is not a statutory instrument as defined in the <i>Statutory Instruments Act</i> . 1994, c. 10, s. 23.	<b>28.8</b> Il demeure entendu que les ordonnances de l'Office prévues à la présente partie ne sont pas des textes réglementaires au sens de la <i>Loi sur les textes réglementaires</i> . 1994, ch. 10, art. 23.	Dérogation

PART III

PARTIE III

CONSTRUCTION AND OPERATION OF PIPELINES

CONSTRUCTION ET EXPLOITATION DES PIPELINES

GENERAL

DISPOSITIONS GÉNÉRALES

Companies only	<b>29.</b> (1) No person, other than a company, shall construct or operate a pipeline.	<b>29.</b> (1) Seules les compagnies ont le droit de construire ou d'exploiter un pipeline.	Exclusivité
Exception	(2) Nothing in this section shall be construed to prohibit or prevent any person from operating or improving a pipeline constructed before October 1, 1953, but every such pipeline shall be operated in accordance with this Act.	(2) Le présent article n'a pas pour effet d'empêcher quiconque d'exploiter ou d'améliorer un pipeline construit avant le 1 <sup>er</sup> octobre 1953, mais l'exploitation du pipeline doit se faire conformément à la présente loi.	Exception

Powers of  
liquidators,  
trustees, etc.

(3) For the purposes of this Act,

(a) a liquidator, receiver or manager of the property of a company, appointed by a court of competent jurisdiction to carry on the business of the company,

(b) a trustee — or the holder of a power of attorney within the meaning of the *Civil Code of Québec* — for the holders of bonds, debentures, debenture stock or other evidence of indebtedness of the company, secured under a trust deed, an act constituting a hypothec or other instrument or act, on or against the property of the company, if the trustee or holder is authorized by the instrument or act to carry on the business of the company, and

(c) a person, other than a company,

(i) operating a pipeline constructed before October 1, 1953, or

(ii) constructing or operating a pipeline exempted from subsection (1) by an order of the Board made under subsection 58(1),

is deemed to be a company.

Administrator in  
Province of  
Quebec

(3.1) In the Province of Quebec the administrator of the property of the company appointed by a court of competent jurisdiction to carry on the business of the company is also deemed to be the company.

R.S., 1985, c. N-7, s. 29; 2001, c. 4, s. 102.

Operation of  
pipeline

**30. (1)** No company shall operate a pipeline unless

(a) there is a certificate in force with respect to that pipeline; and

(b) leave has been given under this Part to the company to open the pipeline.

Compliance  
with conditions

(2) No company shall operate a pipeline otherwise than in accordance with the terms and conditions of the certificate issued with respect thereto.

R.S., c. N-6, s. 26.

#### LOCATION OF PIPELINES

Approval of  
Board

**31.** Except as otherwise provided in this Act, no company shall begin the construction of a section or part of a pipeline unless

(3) Pour l'application de la présente loi, sont assimilés aux compagnies :

a) le liquidateur, le séquestre ou le gérant des biens d'une compagnie, nommé par un tribunal compétent pour exercer les activités d'une compagnie;

b) le fondé de pouvoir au sens du *Code civil du Québec* ou le fiduciaire agissant pour le bénéfice des détenteurs de titres de créance d'une compagnie — notamment bons, obligations, débentures ou débentures-actions — garantis par acte constitutif d'hypothèque au sens du *Code civil du Québec*, par acte de fiducie ou autre sur les biens de celle-ci, pourvu qu'il soit autorisé par l'acte à exercer les activités de la compagnie;

c) la personne autre qu'une compagnie qui :

(i) soit exploite un pipeline construit avant le 1<sup>er</sup> octobre 1953,

(ii) soit construit ou exploite un pipeline soustrait à l'application du paragraphe (1) par ordonnance de l'Office rendue en vertu du paragraphe 58(1).

(3.1) Dans la province de Québec, est également assimilé à une compagnie l'administrateur des biens de la compagnie nommé par un tribunal compétent pour exercer les activités de la compagnie.

L.R. (1985), ch. N-7, art. 29; 2001, ch. 4, art. 102.

**30. (1)** La compagnie ne peut exploiter un pipeline que si les conditions suivantes sont réunies :

a) il existe un certificat en vigueur relativement à ce pipeline;

b) elle a été autorisée à mettre le pipeline en service aux termes de la présente partie.

(2) La compagnie doit exploiter le pipeline conformément aux conditions du certificat délivré à cet égard.

S.R., ch. N-6, art. 26.

#### TRACÉ DES PIPELINES

**31.** Sauf dispositions contraires de la présente loi, la compagnie ne peut commencer la construction d'une section ou partie de pipeline que si les conditions suivantes sont réunies :

Pouvoirs des  
liquidateurs et  
syndics

Administrateur  
dans la province  
de Québec

Exploitation  
d'un pipeline

Observation des  
conditions

Approbation de  
l'Office

(a) the Board has by the issue of a certificate granted the company leave to construct the line;

(b) the company has complied with all applicable terms and conditions to which the certificate is subject;

(c) the plan, profile and book of reference of the section or part of the proposed line have been approved by the Board; and

(d) copies of the plan, profile and book of reference so approved, duly certified as such by the Secretary, have been deposited in the offices of the registrars of deeds for the districts or counties through which the section or part of the pipeline is to pass.

R.S., c. N-6, s. 27; 1980-81-82-83, c. 116, s. 9.

Application for certificate

32. (1) On an application for a certificate, the company shall file with the Board a map in such detail as the Board may require showing the general location of the proposed line and such plans, specifications and information as the Board may require.

Notice to provincial attorney general

(2) The company shall file a copy of the application and of the map referred to in subsection (1) with the attorney general of each province to which the application relates in whole or in part, and the Board shall require notice of the application to be given by publication in newspapers or otherwise.

R.S., 1985, c. N-7, s. 32; 1990, c. 7, s. 15.

#### PLAN, PROFILE AND BOOK OF REFERENCE

Plan, etc., of pipeline

33. (1) When the Board has issued a certificate, the company shall prepare and submit to the Board a plan, profile and book of reference of the pipeline.

Details

(2) The plan and profile shall be drawn with such detail as the Board may require.

Description of lands

(3) The book of reference shall describe the portion of land proposed to be taken in each parcel of land to be traversed, giving the numbers of the parcels, and the area, length and width of the portion of each parcel to be taken, and the names of the owners and occupiers in so far as they can be ascertained.

Further information

(4) The plan, profile and book of reference shall be prepared to the satisfaction of the Board, and the Board may require the company

a) l'Office l'a, par la délivrance d'un certificat, autorisée à construire la canalisation;

b) elle s'est conformée aux conditions dont le certificat est assorti;

c) les plan, profil et livre de renvoi de la section ou partie de la canalisation projetée ont été approuvés par l'Office;

d) des copies des plan, profil et livre de renvoi approuvés, certifiées conformes par le secrétaire, ont été déposées aux bureaux des directeurs de l'Enregistrement des districts ou comtés que doit traverser cette section ou partie du pipeline.

S.R., ch. N-6, art. 27; 1980-81-82-83, ch. 116, art. 9.

32. (1) La demande de certificat doit être accompagnée d'une carte comportant le détail que l'Office peut exiger et indiquant l'emplacement général de la canalisation projetée, ainsi que des plans, devis et renseignements qu'il peut demander.

Documents à produire

(2) La compagnie est tenue de transmettre une copie de la demande et de la carte au procureur général de chaque province touchée par la demande; l'Office doit exiger qu'un avis de la demande soit donné par publication dans des journaux ou par un autre moyen.

Avis aux procureurs généraux des provinces

L.R. (1985), ch. N-7, art. 32; 1990, ch. 7, art. 15.

#### PLAN, PROFIL ET LIVRE DE RENVOI

33. (1) Une fois le certificat délivré, la compagnie doit préparer et soumettre à l'Office les plan, profil et livre de renvoi du pipeline.

Présentation à l'Office

(2) Les plan et profil donnent les détails que l'Office peut exiger.

Détails

(3) Le livre de renvoi doit décrire la portion de terrain qu'il est prévu de prendre dans chaque parcelle à traverser, en donnant le numéro des parcelles et les longueur et largeur et superficie de la portion à prendre, ainsi que les noms des propriétaires et occupants, dans la mesure où il est possible de les constater.

Désignation des terrains

(4) Les plan, profil et livre de renvoi doivent répondre aux exigences de l'Office; celui-ci peut enjoindre à la compagnie de fournir tous

Autres renseignements

to furnish any further or other information that the Board considers necessary.

R.S., c. N-6, s. 29; R.S., c. 27(1st Supp.), s. 9.

# DETERMINATION OF DETAILED ROUTE AND APPROVAL

Notice to owners

**34. (1)** Where a company has prepared and submitted to the Board a plan, profile and book of reference pursuant to subsection 33(1), the company shall, in a manner and in a form to be determined by the Board,

(a) serve a notice on all owners of lands proposed to be acquired, in so far as they can be ascertained; and

(b) publish a notice in at least one issue of a publication, if any, in general circulation within the area in which the lands are situated.

Contents of notices

(2) The notices mentioned in subsection (1) shall describe the proposed detailed route of the pipeline, the location of the offices of the Board and the right of the owner and of persons referred to in subsection (4) to make, within the time referred to in subsection (3) or (4), as the case may be, representations to the Board respecting the detailed route of the pipeline.

Written statement of interest and grounds for opposition

(3) Where an owner of lands who has been served with a notice pursuant to subsection (1) wishes to oppose the proposed detailed route of a pipeline, the owner may, within thirty days of being served, file with the Board a written statement setting out the nature of the owner's interest in the proposed detailed route and the grounds for his opposition to that route.

Opposition by persons adversely affected

(4) A person who anticipates that their lands may be adversely affected by the proposed detailed route of a pipeline, other than an owner of lands referred to in subsection (3), may oppose the proposed detailed route by filing with the Board within thirty days following the last publication of the notice referred to in subsection (1) a written statement setting out the nature of that person's interest and the grounds for the opposition to the proposed detailed route of the pipeline.

R.S., 1985, c. N-7, s. 34; 2004, c. 25, s. 148(E).

Public hearing

**35. (1)** Where a written statement is filed with the Board pursuant to subsection 34(3) or (4) within the time limited for doing so under that subsection, the Board shall forthwith order

renseignements complémentaires ou supplémentaires qu'il estime nécessaires.

S.R., ch. N-6, art. 29; S.R., ch. 27(1<sup>er</sup> suppl.), art. 9.

# DÉTERMINATION ET ACCEPTATION DU TRACÉ DÉTAILLÉ

Avis aux propriétaires

**34. (1)** La compagnie qui soumet les plan, profil et livre de renvoi visés au paragraphe 33(1) doit, selon les modalités fixées par l'Office :

a) signifier un avis à tous les propriétaires des terrains à acquérir, dans la mesure où leur identité peut être établie;

b) publier un avis dans au moins un numéro d'une éventuelle publication largement diffusée dans la région où se trouvent ces terrains.

Teneur des avis

(2) Les avis prévus au paragraphe (1) doivent donner le tracé détaillé du pipeline et l'adresse des bureaux de l'Office, et énoncer que le propriétaire et les personnes visées au paragraphe (4) ont le droit de présenter à l'Office, dans le délai prévu au paragraphe (3) ou (4), selon le cas, des observations à cet égard.

Opposition

(3) Le propriétaire de terrains à qui un avis a été signifié conformément au paragraphe (1) peut s'opposer au tracé détaillé en transmettant à l'Office, dans les trente jours suivant la signification, une déclaration écrite indiquant la nature de son intérêt et les motifs de son opposition.

Autres opposants

(4) Toute personne qui, sans être propriétaire de terrains visés au paragraphe (3), estime que le tracé peut nuire à ses terrains peut s'opposer au tracé détaillé en transmettant à l'Office, dans les trente jours suivant la dernière publication de l'avis prévu au paragraphe (1), une déclaration écrite indiquant la nature de son intérêt et les motifs de son opposition.

L.R. (1985), ch. N-7, art. 34; 2004, ch. 25, art. 148(A).

Audience publique

**35. (1)** S'il reçoit les déclarations visées au paragraphe 34(3) ou (4) dans les délais fixés, l'Office ordonne la tenue, dans la région où se trouvent les terrains visés par la déclaration,

that a public hearing be conducted within the area in which the lands to which the statement relates are situated with respect to any grounds of opposition set out in any such statement.

d'une audience publique sur les motifs d'opposition qui y sont énoncés.

Notice of public hearing

(2) The Board shall fix a suitable time and place for the public hearing referred to in subsection (1) and cause notice of the time and place so fixed to be given by publishing it in at least one issue of a publication, if any, in general circulation within the area in which the lands proposed to be acquired are situated and by sending it to each person who filed a written statement with the Board pursuant to subsection 34(3) or (4).

(2) L'Office fixe les date, heure et lieu appropriés à la tenue de l'audience publique mentionnée au paragraphe (1). Il fait publier l'avis de tenue de l'audience dans au moins un numéro d'une éventuelle publication largement diffusée dans la région où se trouvent les terrains et l'envoie aussi à chacun des opposants.

Avis d'audience publique

Opportunity to be heard

(3) At the time and place fixed for the public hearing pursuant to subsection (2), the Board shall hold a public hearing and shall permit each person who filed a written statement with the Board pursuant to subsection 34(3) or (4) to make representations and may allow any other interested person to make such representations before it as the Board deems proper.

(3) L'Office tient une audience publique aux date, heure et lieu fixés et donne la possibilité à chacune des personnes qui lui ont transmis une déclaration d'opposition de lui présenter des observations; il peut aussi autoriser d'autres personnes intéressées à lui présenter des observations s'il les juge acceptables.

Possibilité de faire des observations

Inspection of lands

(4) The Board or a person authorized by the Board may make such inspection of lands proposed to be acquired for or affected by the pipeline construction as the Board deems necessary.

(4) L'Office ou la personne qu'il autorise à cet effet peut procéder aux visites, des terrains à acquérir ou de ceux qui sont touchés, qu'il estime nécessaires.

Inspection des terrains

Where written statements disregarded

(5) The Board is not required to give any notice, hold any hearing or take any other action pursuant to this section with respect to any written statement filed with the Board pursuant to subsection 34(3) or (4) and may at any time disregard any such written statement, if

(5) L'Office est dispensé de prendre les mesures prévues au présent article à l'égard des déclarations qui lui ont été transmises conformément au paragraphe 34(3) ou (4), notamment la transmission des avis et la tenue d'une audience, ou peut, à tout moment, ne pas tenir compte de ces déclarations, dans l'un ou l'autre des cas suivants :

Cas où il n'est pas tenu compte des déclarations d'opposition

(a) the person who filed the statement files a notice of withdrawal thereof with the Board; or

(b) it appears to the Board that the statement is frivolous or vexatious or is not made in good faith.

a) la personne qui a transmis la déclaration d'opposition lui communique un avis de retrait de celle-ci;

b) la déclaration d'opposition lui semble futile, vexatoire ou dénuée de bonne foi.

1980-81-82-83, c. 80, s. 2.

1980-81-82-83, ch. 80, art. 2.

Matters to be taken into account

36. (1) Subject to subsections (2) and 35(5), the Board shall not give approval to a plan, profile and book of reference unless the Board has taken into account all written statements filed with it pursuant to subsection 34(3) or (4) and all representations made to it at a public hearing in order to determine the best possible detailed route of the pipeline and the most appro-

36. (1) Sous réserve des paragraphes (2) et 35(5), l'Office ne peut approuver les plan, profil et livre de renvoi sans tenir compte des déclarations qui lui ont été transmises conformément aux paragraphes 34(3) ou (4) et des observations qui lui ont été présentées en audience publique dans la détermination du meilleur tracé possible et des méthodes et mo-

Observations à prendre en compte

	priate methods and timing of constructing the pipeline.	ments les plus appropriés à la construction du pipeline.	
Exception	(2) The Board may approve a plan, profile and book of reference in respect of any section or part of a pipeline where no written statement under subsection 34(3) or (4) has been filed with the Board in respect of that section or part. 1980-81-82-83, c. 80, s. 2.	(2) L'Office peut approuver les plan, profil et livre de renvoi relatifs à toute section ou partie d'un pipeline qui n'ont pas fait l'objet de la déclaration visée au paragraphe 34(3) ou (4). 1980-81-82-83, ch. 80, art. 2.	Exception
Terms and conditions	37. In any approval referred to in section 36, the Board may impose such terms and conditions as it considers proper. 1980-81-82-83, c. 80, s. 2.	37. L'Office peut assortir l'approbation donnée aux termes de l'article 36 des conditions qu'il juge indiquées. 1980-81-82-83, ch. 80, art. 2.	Conditions
Notice of decision	38. Where the Board has held a public hearing under subsection 35(3) in respect of any section or part of a pipeline and approved or refused to approve a plan, profile and book of reference respecting that section or part, it shall forthwith forward a copy of its decision and the reasons therefor to the Minister and to each person who made representations to the Board at the public hearing. 1980-81-82-83, c. 80, s. 2.	38. L'Office transmet sans délai, motifs à l'appui, une copie de toute décision d'approbation ou de refus d'approbation des plan, profil et livre de renvoi relatifs à une section ou partie de pipeline rendue après l'audience publique visée au paragraphe 35(3) au ministre et à chacune des personnes qui lui ont présenté des observations à l'audience. 1980-81-82-83, ch. 80, art. 2.	Avis de la décision
Costs of making representations	39. The Board may fix such amount as it deems reasonable in respect of the actual costs reasonably incurred by any person who made representations to the Board at a public hearing under subsection 35(3) and the amount so fixed shall be payable forthwith to that person by the company whose pipeline route is affected by the public hearing. 1980-81-82-83, c. 80, s. 2.	39. L'Office peut fixer à la somme qu'il juge raisonnable les frais entraînés par la présentation d'observations lors d'une audience publique; ce montant doit être versé sans délai à la personne en cause par la compagnie dont le tracé a donné lieu à la tenue de l'audience. 1980-81-82-83, ch. 80, art. 2.	Paiement des frais
Effect of approval	40. The Board shall not, by the issue of a certificate or by approving a plan, profile and book of reference, be deemed to have relieved the company from otherwise complying with this Act. R.S., c. N-6, s. 30.	40. En délivrant un certificat ou en approuvant les plan, profil et livre de renvoi, l'Office n'est pas réputé dispenser la compagnie de se conformer par ailleurs à la présente loi. S.R., ch. N-6, art. 30.	Effet de l'approbation

#### ERRORS

#### ERREURS

Application for correction of errors	41. (1) Where any omission, misstatement or error is made in a registered plan, profile or book of reference, the company shall apply to the Board for a permit to correct the omission, misstatement or error.	41. (1) La compagnie est tenue de demander à l'Office la délivrance d'un permis destiné à corriger toute omission, inexactitude ou erreur dans les plan, profil ou livre de renvoi déposés.	Demande de correction
How corrected	(2) The Board may in its discretion issue a permit setting out the nature of the omission, misstatement or error referred to in subsection (1) and the correction allowed.	(2) L'Office peut, à son appréciation, délivrer un permis énonçant la nature de l'omission, de l'inexactitude ou de l'erreur, et la correction admise.	Modalités

Registration	<p>(3) On the deposit of copies of the permit issued under subsection (2), certified as such by the Secretary, in the offices of the registrars of deeds of the districts or counties in which the lands affected are situated, the plan, profile or book of reference shall be taken to be corrected in accordance therewith, and the company may, thereupon, subject to this Act, construct its pipeline in accordance with the correction.</p> <p>R.S., 1985, c. N-7, s. 41; 1990, c. 7, s. 16.</p>	<p>(3) Sur dépôt de copies du permis, certifiées conformes par le secrétaire, auprès des directeurs de l'Enregistrement des districts ou comtés où sont situés les terrains, les plan, profil ou livre de renvoi sont considérés comme corrigés en conséquence; la compagnie peut dès lors, sous réserve des autres dispositions de la présente loi, construire sa canalisation conformément à la correction.</p> <p>L.R. (1985), ch. N-7, art. 41; 1990, ch. 7, art. 16.</p>	Enregistrement
Error as to names	<p>42. A pipeline may be made, carried or placed across, on or under the lands of a person on the located line, although, through error or any other cause, the name of that person has not been entered in the book of reference, or although some other person is erroneously mentioned as the owner or holder of an interest or right in the lands.</p> <p>R.S., 1985, c. N-7, s. 42; 2004, c. 25, s. 149.</p>	<p>42. Le pipeline peut passer par, sur ou sous les terrains se trouvant le long du tracé, lors même que, par erreur ou pour une autre cause, le nom de la personne à qui ils appartiennent n'aurait pas été inscrit au livre de renvoi ou qu'une autre personne qu'elle y aurait été désignée comme propriétaire ou comme titulaire d'un droit ou d'un intérêt sur eux.</p> <p>L.R. (1985), ch. N-7, art. 42; 2004, ch. 25, art. 149.</p>	Erreur de nom
DUTIES OF REGISTRARS OF DEEDS		OBLIGATIONS DES DIRECTEURS DE L'ENREGISTREMENT	
Registration of plans, etc.	<p>43. (1) Every registrar of deeds shall receive and preserve in his office all plans, profiles, books of reference, certified copies thereof and other documents, required by this Act to be deposited with the registrar, and shall endorse thereon the day, hour and minute when they were so deposited.</p>	<p>43. (1) Les directeurs de l'Enregistrement sont tenus d'accepter et de conserver dans leur bureau les documents — plans, profils et livres de renvoi et copies certifiées conformes de ceux-ci, et autres — qui doivent être déposés auprès d'eux aux termes de la présente loi et d'inscrire sur ceux-ci la date, l'heure et la minute du dépôt.</p>	Enregistrement des documents
Copies	<p>(2) Any person may inspect the plans, profiles, books of reference, copies and documents deposited under subsection (1) and may make extracts therefrom and copies thereof as occasion requires.</p>	<p>(2) Le public a accès aux documents déposés aux termes du paragraphe (1) et peut en faire des reproductions totales ou partielles, s'il y a lieu.</p>	Copies
Certified copies	<p>(3) A registrar of deeds shall, at the request of any person, certify copies of any plan, profile, book of reference, certified copy thereof or other document deposited in the registrar's office under this Act, or of such portions thereof as may be required, on being paid therefor at the rate of twenty cents for each hundred words copied, and such additional sum for any copy of plan or profile furnished by the registrar as is reasonable and customary in like cases, together with one dollar for each certification given by the registrar.</p>	<p>(3) Sur demande, le directeur de l'Enregistrement délivre des copies certifiées conformes de documents visés au paragraphe (1), ou des extraits de ceux-ci, moyennant paiement, d'une part, de frais de reproduction — au taux de vingt cents par cent mots, et, pour les plans ou profils, un montant supplémentaire normal et usuel en pareil cas — et, d'autre part, d'un montant d'un dollar par certification.</p>	Délivrance de copies certifiées conformes
Certification of registrar	<p>(4) The certification of the registrar of deeds shall set out that the plan, profile or document referred to in subsection (3), a copy of which,</p>	<p>(4) La certification du directeur de l'Enregistrement doit énoncer que le document en question a été déposé à son bureau, à telle date,</p>	Certification



or any portion of which, is certified by the registrar, is deposited in the registrar's office, and shall state the time when it was deposited, that the registrar has carefully compared the copy certified with the document on file and that it is a true copy of the original.

et que lui-même a collationné avec soin la copie certifiée sur le document produit et que celle-ci est conforme à l'original.

Evidence

(5) A certified copy referred to in subsection (4) is evidence of the original deposited and is evidence that the original was deposited at the time stated and certified, and that it was signed, certified, attested or otherwise executed by the persons by whom and in the manner in which the original purports to be signed, certified, attested or executed, as shown or appearing by the certified copy, and, in the case of a plan, that the plan is prepared according to a scale and in a manner and form sanctioned by the Board.

R.S., c. N-6, s. 34.

(5) La copie certifiée conforme constitue une preuve de l'original déposé, de la date du dépôt et de l'authenticité des signatures qui y sont reproduites, ainsi que de l'accomplissement des formalités qui sont censées les avoir accompagnées, et, s'il s'agit d'un plan, du fait qu'il est conforme aux normes, notamment quant à l'échelle, sanctionnées par l'Office.

S.R., ch. N-6, art. 34.

Preuve

#### FURTHER PLANS

#### AUTRES PLANS

Further plans

44. In addition to the plans, profiles and books of reference elsewhere provided for in this Act, a company shall, with all reasonable expedition, prepare and deposit with the Board such further or other material, including plans, specifications and drawings with respect to any portion of its pipeline or works, as the Board may from time to time order or require.

R.S., c. N-6, s. 35.

44. Outre les plans, profils et livres de renvoi, la compagnie dépose au bureau de l'Office tous documents complémentaires ou supplémentaires, notamment plans, devis et dessins relatifs à quelque partie du pipeline ou de ses ouvrages, que l'Office peut exiger.

S.R., ch. N-6, art. 35.

Présentation à l'Office

#### DEVIATIONS

#### DÉVIATIONS

Approval of deviations

45. (1) When a deviation, change or alteration is required by a company to be made in its pipeline, or any portion of that pipeline, as already constructed or as merely located and approved, a plan, profile and book of reference of the portion of the pipeline proposed to be changed, showing the deviation, change or alteration proposed to be made, shall be submitted for the approval of the Board.

45. (1) La compagnie qui doit modifier ou faire dévier le pipeline qu'elle a construit, ou dont le tracé a déjà été approuvé, doit soumettre à l'Office, pour approbation, les plan, profil et livre de renvoi de la partie à modifier, en y indiquant la déviation ou modification projetée.

Approbation des déviations

Construction of works after approval

(2) When the plan, profile and book of reference, submitted pursuant to subsection (1), of the portion of the pipeline proposed to be changed have been approved by the Board, and copies thereof have been deposited as provided in this Act with respect to the original plan, profile and book of reference, the company may make the deviation, change or alteration, and all the provisions of this Act are applicable to the portion of the pipeline, at any time so

(2) Une fois les plan, profil et livre de renvoi de la partie à modifier approuvés et après dépôt de copies de ceux-ci conforme aux exigences de la présente loi à l'égard des plan, profil et livre de renvoi initiaux, la compagnie peut procéder à la déviation ou modification; les dispositions de la présente loi applicables à la canalisation initiale s'appliquent à la partie ainsi modifiée ou à modifier.

Construction selon l'approbation

changed or proposed to be changed, in the same manner as they are applicable to the original pipeline.

Exemptions

(3) The Board may exempt a company from all or any of the provisions of this section where the deviation, change or alteration was made or is to be made for the purpose of benefiting a pipeline, or for any other purpose of public advantage, as may seem to the Board expedient, but the deviation, change or alteration shall not exceed such distance as the Board requires from the centre line of the pipeline, located or constructed in accordance with the plans, profiles and books of reference approved by the Board under this Act.

R.S., c. N-6, s. 36.

DIVERSION OR RELOCATION

Diversions and relocation

46. (1) The Board may, on such terms and conditions as it considers proper, direct a company to divert or relocate its pipeline if the Board is of the opinion that the diversion or relocation is necessary

(a) to facilitate the construction, reconstruction or relocation of a highway or a railway or any other work affecting a public interest; or

(b) to prevent or remove an interference with a drainage system.

Costs of diversion or relocation

(2) The Board may direct by whom and to whom the costs of the diversion or relocation referred to in subsection (1) shall be paid.

Procedures

(3) The Board shall not direct a company to divert or relocate any section or part of its pipeline unless the procedures set out in sections 34 to 38 have been complied with in respect of the section or part to be diverted or relocated.

Idem

(4) For the purposes of ensuring that the procedures set out in sections 34 to 38 are complied with, the Board may order the company to carry out such of those procedures as the company would be required to carry out if the company had prepared and submitted to the Board a plan, profile and book of reference pursuant to subsection 33(1) and those sections shall apply, with such modifications as the circumstances require, in respect of any matter related to the carrying out of those procedures.

Exemptions

(3) L'Office peut, selon qu'il l'estime utile, soustraire totalement ou partiellement une compagnie à l'application du présent article si la déviation ou la modification est destinée à l'amélioration d'un pipeline ou à toute autre fin d'intérêt public; cette dispense ne peut toutefois se donner que si la déviation ou modification n'entraîne pas, par rapport à la ligne centrale du pipeline, tracé ou construit en conformité avec les plans, profils et livres de renvoi approuvés par l'Office aux termes de la présente loi, un écart plus grand que celui que fixe l'Office.

S.R., ch. N-6, art. 36.

DÉTOURNEMENT OU CHANGEMENT DE TRACÉ D'UN PIPELINE

Changement de tracé d'un pipeline

46. (1) Dans le cas d'un pipeline déjà en place, l'Office peut, aux conditions qu'il juge indiquées, ordonner à la compagnie d'en changer le tracé, s'il estime que cette mesure s'impose :

a) pour faciliter la construction, la reconstruction ou le changement de tracé d'une voie publique, d'un chemin de fer ou de tout autre ouvrage d'intérêt public;

b) pour empêcher qu'il ne nuise à un système de drainage.

Frais

(2) L'Office peut décider par qui et à qui doivent être payés les frais relatifs au changement de tracé.

Formalités

(3) L'Office ne peut ordonner à la compagnie de changer le tracé de son pipeline que si les formalités visées aux articles 34 à 38 ont été remplies à l'égard de la section ou partie en cause.

Idem

(4) Pour s'assurer de l'accomplissement des formalités visées aux articles 34 à 38, l'Office peut ordonner à la compagnie de prendre les mesures auxquelles elle aurait été tenue si elle lui avait soumis les plan, profil et livre de renvoi conformément au paragraphe 33(1); ces articles doivent s'appliquer, compte tenu des adaptations de circonstance, à toute question qui se rapporte à l'accomplissement de ces formalités.

Costs of representations to Board	(5) The Board may fix such amount as it deems reasonable in respect of the actual costs reasonably incurred by any person who made representations to the Board under this section and may direct by whom and to whom the amount so fixed shall be paid.  R.S., c. N-6, s. 37; R.S., c. 27(1st Supp.), s. 10; 1980-81-82-83, c. 80, s. 4.	(5) L'Office peut fixer à la somme qu'il juge raisonnable les frais entraînés par la présentation d'observations conformément au présent article et peut déterminer par qui et à qui la somme ainsi fixée est payable.  S.R., ch. N-6, art. 37; S.R., ch. 27(1 <sup>re</sup> suppl.), art. 10; 1980-81-82-83, ch. 80, art. 4.	Frais
LEAVE TO OPEN PIPELINES		AUTORISATION DE MISE EN SERVICE	
Leave to open line	47. (1) No pipeline and no section of a pipeline shall be opened for the transmission of hydrocarbons or any other commodity by a company until leave to do so has been obtained from the Board.	47. (1) La compagnie ne peut mettre en service, pour le transport d'hydrocarbures ou d'autres produits, un pipeline ou une section de celui-ci que si elle a obtenu de l'Office une autorisation à cette fin.	Nécessité d'une autorisation
Grant of leave	(2) Leave may be granted by the Board under this section if the Board is satisfied that the pipeline may safely be opened for transmission.  R.S., 1985, c. N-7, s. 47; 1996, c. 10, s. 237.1.	(2) L'Office ne délivre l'autorisation prévue au présent article que s'il est convaincu que le pipeline peut, sans danger, être mis en service pour le transport.  L.R. (1985), ch. N-7, art. 47; 1996, ch. 10, art. 237.1.	Octroi de l'autorisation
REGULATION OF CONSTRUCTION, ETC.		RÈGLEMENTATION DE LA CONSTRUCTION	
Safety and security	48. (1) To promote the safety and security of operation of a pipeline, the Board may order a company to repair, reconstruct or alter part of the pipeline, and may direct that, until the work is done, that part of the pipeline not be used or be used in accordance with such terms and conditions as the Board may specify.	48. (1) Pour favoriser la sûreté et la sécurité de l'exploitation d'un pipeline, l'Office peut ordonner à la compagnie de réparer, reconstruire ou modifier une partie de celui-ci et, selon le cas, interdire l'utilisation de cette partie avant la fin des travaux ou assujettir son utilisation aux conditions qu'il peut indiquer.	Sûreté et sécurité
Other measures	(1.1) The Board may order a company to take measures that the Board considers necessary for the safety and security of a pipeline.	(1.1) L'Office peut ordonner à la compagnie de prendre les mesures qu'il estime nécessaires à la sûreté et à la sécurité d'un pipeline.	Autres mesures
Regulations as to safety and security	(2) The Board may, with the approval of the Governor in Council, make regulations governing the design, construction, operation and abandonment of a pipeline and providing for the protection of property and the environment and the safety and security of the public and of the company's employees in the construction, operation and abandonment of a pipeline.	(2) L'Office peut, avec l'approbation du gouverneur en conseil, prendre des règlements concernant la conception, la construction, l'exploitation et la cessation d'exploitation d'un pipeline ainsi que, dans le cadre de ces opérations, la protection des biens et de l'environnement et la sécurité du public et du personnel de la compagnie.	Règlements sur la sécurité
Exempting orders respecting companies	(2.1) The Board may make orders exempting companies from any or all of the provisions of the regulations made under subsection (2).	(2.1) L'Office peut, par ordonnance, soustraire totalement ou partiellement des compagnies à l'application des règlements pris en vertu du paragraphe (2).	Ordonnances d'exemption
Terms and conditions	(2.2) In any order made under subsection (2.1), the Board may impose such terms and conditions as it considers proper.	(2.2) L'Office peut assujettir l'ordonnance visée au paragraphe (2.1) aux conditions qu'il estime indiquées.	Conditions
Offence	(3) Every person who contravenes an order made under subsection (1) or (1.1) or a regula-	(3) Quiconque contrevient à un règlement pris sous le régime du paragraphe (2) ou à une ordonnance rendue en vertu des paragraphes	Infraction

tion made under subsection (2) is guilty of an offence and liable

(a) on summary conviction, to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding one year or to both; or

(b) on conviction on indictment, to a fine not exceeding one million dollars or to imprisonment for a term not exceeding five years or to both.

Application of subsections 121(2) to (5)

(4) Subsections 121(2) to (5) apply, with any modifications that the circumstances require, to an offence referred to in subsection (3).

R.S., 1985, c. N-7, s. 48; 1990, c. 7, s. 17; 1994, c. 10, s. 24; 2004, c. 15, s. 84; 2012, c. 19, s. 82.

#### INSPECTION OFFICERS

Designation of inspection officers

49. (1) The Board may designate any person as an inspection officer for the purpose of ensuring

(a) the safety and security of the public and of a company's employees;

(b) the protection of property and the environment;

(b.1) the safety and security of pipelines;

(c) compliance with this Part, any regulations made under section 48 and any orders and certificates issued by the Board under this Part; and

(d) compliance with section 112 and any orders and regulations made under that section.

Powers of officers

(2) For the purpose described in subsection (1), an inspection officer may at any reasonable time

(a) have access to and inspect

(i) any lands or pipeline, including a pipeline that is under construction or has been abandoned,

(ii) any excavation activity extending within thirty metres of the pipeline, and

(iii) any facility being constructed across, on, along or under the pipeline;

(b) direct a company or person conducting an excavation activity or constructing a facility described in paragraph (a) to perform any

(1) ou (1.1) commet une infraction et encourt, sur déclaration de culpabilité :

a) par procédure sommaire, une amende maximale de cent mille dollars et un emprisonnement maximal d'un an, ou l'une de ces peines;

b) par mise en accusation, une amende maximale de un million de dollars et un emprisonnement maximal de cinq ans, ou l'une de ces peines.

(4) Les paragraphes 121(2) à (5) s'appliquent, avec les adaptations nécessaires, aux infractions prévues au paragraphe (3).

L.R. (1985), ch. N-7, art. 48; 1990, ch. 7, art. 17; 1994, ch. 10, art. 24; 2004, ch. 15, art. 84; 2012, ch. 19, art. 82.

#### INSPECTEURS

Application des paragraphes 121(2) à (5)

Nomination des inspecteurs

49. (1) L'Office peut nommer des inspecteurs pour veiller à la sécurité du public et des employés des compagnies, à la protection des biens et de l'environnement, à la sûreté et à la sécurité des pipelines, au contrôle d'application de la présente partie, des règlements pris en vertu de l'article 48, de l'article 112 et des ordonnances et règlements pris en vertu de cet article, ainsi que des ordonnances prises et des certificats délivrés par l'Office en vertu de la présente partie.

(2) Pour l'application du paragraphe (1), l'inspecteur, à toute heure convenable :

a) a accès aux lieux ou installations suivants et peut y procéder aux inspections nécessaires :

(i) les terrains ou pipelines, y compris les pipelines en construction ou abandonnés,

(ii) les sites de travaux d'excavation dans les trente mètres des pipelines,

(iii) les installations en construction au-dessus, au-dessous ou le long des pipelines;

b) peut obliger une compagnie ou la personne responsable des travaux d'excavation

Pouvoirs

tests that the inspection officer considers necessary for an inspection; and

(c) examine and make copies of any information contained in any books, records or documents, or in any computer systems, that the inspector believes on reasonable grounds contain any information relating to the design, construction, operation, maintenance or abandonment of a pipeline.

R.S., 1985, c. N-7, s. 49; 1990, c. 7, s. 18; 1994, c. 10, s. 25; 2004, c. 15, s. 85.

Certificate of authority

**50.** The Board shall provide every inspection officer with a certificate of authority and, when carrying out duties under this Part, the inspection officer shall show the certificate to any person who asks to see it.

R.S., 1985, c. N-7, s. 50; 1990, c. 7, s. 18; 1994, c. 10, s. 25.

Assistance to officers

**51.** Any officer or employee, or agent or mandatary, of a company and any person conducting an excavation activity or constructing a facility described in paragraph 49(2)(a) shall give an inspection officer all reasonable assistance to enable the officer to carry out duties under this Part.

R.S., 1985, c. N-7, s. 51; 1990, c. 7, s. 18; 1994, c. 10, s. 25; 2004, c. 25, s. 150(E).

Grounds for making order

**51.1 (1)** An inspection officer who is expressly authorized by the Board to make orders under this section may make an order if the inspection officer has reasonable grounds to believe that a hazard to the safety or security of the public or of employees of a company or a detriment to property or the environment is being or will be caused by

(a) the construction, operation, maintenance or abandonment of a pipeline, or any part of a pipeline; or

(b) an excavation activity or the construction of a facility described in paragraph 49(2)(a).

Terms of order

(2) The order may require

(a) work associated with the pipeline, excavation activity or facility to be suspended until

(i) the hazardous or detrimental situation has been remedied to the satisfaction of an inspection officer, or

(ii) the order is stayed or rescinded under section 51.2; and

ou de construction visés à l'alinéa a) à effectuer les essais qu'il juge nécessaires;

c) peut procéder à l'examen et faire des copies des documents, notamment les livres, dossiers ou données informatiques qu'il croit, pour des motifs raisonnables, contenir des renseignements sur la conception, la construction, l'exploitation, l'entretien ou la cessation d'exploitation d'un pipeline.

L.R. (1985), ch. N-7, art. 49; 1990, ch. 7, art. 18; 1994, ch. 10, art. 25; 2004, ch. 15, art. 85.

Certificat

**50.** L'Office remet à chaque inspecteur un certificat attestant sa qualité, que celui-ci présente, sur demande, lors de l'accomplissement de ses fonctions.

L.R. (1985), ch. N-7, art. 50; 1990, ch. 7, art. 18; 1994, ch. 10, art. 25.

Assistance

**51.** Les dirigeants, les employés et les mandataires de la compagnie et la personne responsable des travaux d'excavation ou de construction visés à l'alinéa 49(2)a) sont tenus de prêter à l'inspecteur toute l'assistance nécessaire pour l'accomplissement de ses fonctions.

L.R. (1985), ch. N-7, art. 51; 1990, ch. 7, art. 18; 1994, ch. 10, art. 25; 2004, ch. 25, art. 150(A).

Motifs raisonnables

**51.1 (1)** L'inspecteur peut donner un ordre au titre du présent article, s'il y est expressément habilité par l'Office et s'il a des motifs raisonnables de croire que la construction, l'exploitation, l'entretien ou la cessation d'exploitation d'un pipeline ou d'une partie de celui-ci ou les travaux d'excavation ou de construction visés à l'alinéa 49(2)a) risquent de porter atteinte à la sécurité du public ou des employés de la compagnie ou de causer des dommages aux biens ou à l'environnement.

(2) L'ordre peut, selon le cas :

a) prévoir la suspension des activités afférentes au pipeline ou aux travaux d'excavation ou de construction jusqu'à ce que soit la situation qui présente des risques ait été corrigée, de l'avis de l'inspecteur, soit il ait été suspendu ou infirmé en vertu de l'article 51.2;

Teneur de l'ordre

	<p>(b) the company or any person involved in the pipeline, the excavation activity or the construction of the facility to take any measure specified in the order to ensure the safety or security of the public or of employees of the company or to protect property or the environment.</p>	<p>b) exiger de la compagnie ou de toute personne responsable du pipeline ou des travaux d'excavation ou de construction qu'elle mette en oeuvre les mesures qui y sont précisées pour assurer la sécurité du public ou des employés de la compagnie ou la protection des biens ou de l'environnement.</p>	
Notice and report	<p>(3) An inspection officer who makes an order under this section shall, as soon as possible,</p> <p>(a) give written notice of the order to the persons to whom it is directed, including the terms of the order and a statement of the reasons for the order; and</p> <p>(b) report the circumstances and terms of the order to the Board.</p> <p>1994, c. 10, s. 25; 2004, c. 15, s. 86(E).</p>	<p>(3) L'inspecteur, dès que possible, avise par écrit les personnes touchées de la teneur et des motifs de l'ordre. Il fait rapport à l'Office des faits justifiant l'ordre et de la teneur de celui-ci.</p> <p>1994, ch. 10, art. 25; 2004, ch. 15, art. 86(A).</p>	Avis et rapport de l'inspecteur
Request for review	<p><b>51.2</b> (1) A person to whom an order under section 51.1 is directed may request in writing that the Board review the order.</p>	<p><b>51.2</b> (1) La personne visée par l'ordre prévu à l'article 51.1 peut en demander, par écrit, la révision à l'Office.</p>	Demande de révision
Stay of order	<p>(2) A request for review does not operate as a stay of the order, but the Board may grant a stay pending the review.</p>	<p>(2) La demande de révision n'emporte suspension de l'ordre que si l'Office le prévoit.</p>	Suspension
Review and decision	<p>(3) The Board shall</p> <p>(a) review the circumstances and terms of an order that it is requested to review;</p> <p>(b) confirm, vary or rescind the order; and</p> <p>(c) give notice of its decision to the persons who requested the review.</p> <p>1994, c. 10, s. 25.</p>	<p>(3) L'Office étudie l'ordre et les faits relatifs à celui-ci, le confirme, le modifie ou l'infirmes et donne avis de sa décision aux personnes qui ont demandé la révision.</p> <p>1994, ch. 10, art. 25.</p>	Révision
Information confidential	<p><b>51.3</b> No inspection officer shall disclose to any person any information regarding any secret process or trade secret obtained while performing duties under this Part, except for the purposes of this Part or as required by law.</p> <p>1994, c. 10, s. 25.</p>	<p><b>51.3</b> Il est interdit aux inspecteurs de communiquer à qui que ce soit les renseignements qu'ils ont obtenus en application de la présente partie au sujet d'un secret de fabrication ou de commerce, sauf pour l'application de la présente partie ou en exécution d'une obligation légale.</p> <p>1994, ch. 10, art. 25.</p>	Confidentialité des renseignements
Offence and punishment	<p><b>51.4</b> (1) Every person who contravenes section 51 or fails to comply with an order under section 51.1 is guilty of an offence and is liable</p> <p>(a) on summary conviction, to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding one year or to both; or</p> <p>(b) on conviction on indictment, to a fine not exceeding one million dollars or to im-</p>	<p><b>51.4</b> (1) Quiconque contrevient à l'article 51 ou ne se conforme pas à l'ordre donné en vertu de l'article 51.1 commet une infraction et encourt, sur déclaration de culpabilité :</p> <p>a) par procédure sommaire, une amende maximale de cent mille dollars et un emprisonnement maximal d'un an, ou l'une de ces peines;</p> <p>b) par mise en accusation, une amende maximale d'un million de dollars et un em-</p>	Infractions et peines

	<p>prisonment for a term not exceeding five years or to both.</p>	<p>prisonnement maximal de cinq ans, ou l'une de ces peines.</p>	
Defence — no notice	<p>(2) No person shall be found guilty of an offence for failing to comply with an order under section 51.1 unless the person was given written notice of the order in accordance with paragraph 51.1(3)(a).</p>	<p>(2) Une personne ne peut être déclarée coupable d'une infraction pour inobservation de l'ordre visé à l'article 51.1 si elle n'en a pas été avisée par écrit aux termes du paragraphe 51.1(3).</p>	<p>Défense : absence d'avis</p>
Application of subsections 121(2) to (5)	<p>(3) Subsections 121(2) to (5) apply, with such modifications as the circumstances require, in respect of an offence under this section.</p> <p>1994, c. 10, s. 25.</p>	<p>(3) Les paragraphes 121(2) à (5) s'appliquent, avec les adaptations nécessaires, à l'infraction prévue au présent article.</p> <p>1994, ch. 10, art. 25.</p>	<p>Application des paragraphes 121(2) à (5)</p>
<p>CERTIFICATES</p>			
Report	<p><b>52.</b> (1) If the Board is of the opinion that an application for a certificate in respect of a pipeline is complete, it shall prepare and submit to the Minister, and make public, a report setting out</p> <p>(a) its recommendation as to whether or not the certificate should be issued for all or any portion of the pipeline, taking into account whether the pipeline is and will be required by the present and future public convenience and necessity, and the reasons for that recommendation; and</p> <p>(b) regardless of the recommendation that the Board makes, all the terms and conditions that it considers necessary or desirable in the public interest to which the certificate will be subject if the Governor in Council were to direct the Board to issue the certificate, including terms or conditions relating to when the certificate or portions or provisions of it are to come into force.</p>	<p><b>52.</b> (1) S'il estime qu'une demande de certificat visant un pipeline est complète, l'Office établit et présente au ministre un rapport, qu'il doit rendre public, où figurent :</p> <p>a) sa recommandation motivée à savoir si le certificat devrait être délivré ou non relativement à tout ou partie du pipeline, compte tenu du caractère d'utilité publique, tant pour le présent que pour le futur, du pipeline;</p> <p>b) quelle que soit sa recommandation, toutes les conditions qu'il estime utiles, dans l'intérêt public, de rattacher au certificat si le gouverneur en conseil donne instruction à l'Office de le délivrer, notamment des conditions quant à la prise d'effet de tout ou partie du certificat.</p>	<p>Rapport de l'Office</p>
Factors to consider	<p>(2) In making its recommendation, the Board shall have regard to all considerations that appear to it to be directly related to the pipeline and to be relevant, and may have regard to the following:</p> <p>(a) the availability of oil, gas or any other commodity to the pipeline;</p> <p>(b) the existence of markets, actual or potential;</p> <p>(c) the economic feasibility of the pipeline;</p> <p>(d) the financial responsibility and financial structure of the applicant, the methods of financing the pipeline and the extent to which</p>	<p>(2) En faisant sa recommandation, l'Office tient compte de tous les facteurs qu'il estime directement liés au pipeline et pertinents, et peut tenir compte de ce qui suit :</p> <p>a) l'approvisionnement du pipeline en pétrole, gaz ou autre produit;</p> <p>b) l'existence de marchés, réels ou potentiels;</p> <p>c) la faisabilité économique du pipeline;</p> <p>d) la responsabilité et la structure financières du demandeur et les méthodes de financement du pipeline ainsi que la mesure dans laquelle les Canadiens auront la possibilité de</p>	<p>Facteurs à considérer</p>

	<p>Canadians will have an opportunity to participate in the financing, engineering and construction of the pipeline; and</p> <p>(e) any public interest that in the Board's opinion may be affected by the issuance of the certificate or the dismissal of the application.</p>	<p>participer au financement, à l'ingénierie ainsi qu'à la construction du pipeline;</p> <p>e) les conséquences sur l'intérêt public que peut, à son avis, avoir la délivrance du certificat ou le rejet de la demande.</p>	
Environmental assessment	<p>(3) If the application relates to a designated project within the meaning of section 2 of the <i>Canadian Environmental Assessment Act, 2012</i>, the report must also set out the Board's environmental assessment prepared under that Act in respect of that project.</p>	<p>(3) Si la demande vise un projet désigné au sens de l'article 2 de la <i>Loi canadienne sur l'évaluation environnementale (2012)</i>, le rapport contient aussi l'évaluation environnementale de ce projet établi par l'Office sous le régime de cette loi.</p>	Évaluation environnementale
Time limit	<p>(4) The report must be submitted to the Minister within the time limit specified by the Chairperson. The specified time limit must be no longer than 15 months after the day on which the applicant has, in the Board's opinion, provided a complete application. The Board shall make the time limit public.</p>	<p>(4) Le rapport est présenté dans le délai fixé par le président. Ce délai ne peut excéder quinze mois suivant la date où le demandeur a, de l'avis de l'Office, complété la demande. Le délai est rendu public par l'Office.</p>	Délai
Excluded period	<p>(5) If the Board requires the applicant to provide information or undertake a study with respect to the pipeline and the Board, with the Chairperson's approval, states publicly that this subsection applies, the period that is taken by the applicant to comply with the requirement is not included in the calculation of the time limit.</p>	<p>(5) Si l'Office exige du demandeur, relativement au pipeline, la communication de renseignements ou la réalisation d'études et déclare publiquement, avec l'approbation du président, que le présent paragraphe s'applique, la période prise par le demandeur pour remplir l'exigence n'est pas comprise dans le calcul du délai.</p>	Période exclue du délai
Public notice of excluded period	<p>(6) The Board shall make public the dates of the beginning and ending of the period referred to in subsection (5) as soon as each of them is known.</p>	<p>(6) L'Office rend publiques, sans délai, la date où commence la période visée au paragraphe (5) et celle où elle se termine.</p>	Avis publics — période exclue
Extension	<p>(7) The Minister may, by order, extend the time limit by a maximum of three months. The Governor in Council may, on the recommendation of the Minister, by order, further extend the time limit by any additional period or periods of time.</p>	<p>(7) Le ministre peut, par arrêté, proroger le délai pour un maximum de trois mois. Le gouverneur en conseil peut, par décret pris sur la recommandation du ministre, accorder une ou plusieurs prorogations supplémentaires.</p>	Prorogations
Minister's directives	<p>(8) To ensure that the report is prepared and submitted in a timely manner, the Minister may, by order, issue a directive to the Chairperson that requires the Chairperson to</p> <p>(a) specify under subsection (4) a time limit that is the same as the one specified by the Minister in the order;</p> <p>(b) issue a directive under subsection 6(2.1), or take any measure under subsection 6(2.2), that is set out in the order; or</p>	<p>(8) Afin que le rapport soit établi et présenté en temps opportun, le ministre peut, par arrêté, donner au président instruction :</p> <p>a) de fixer, en vertu du paragraphe (4), un délai identique à celui indiqué dans l'arrêté;</p> <p>b) de donner, en vertu du paragraphe 6(2.1), les instructions qui figurent dans l'arrêté, ou de prendre, en vertu du paragraphe 6(2.2), les mesures qui figurent dans l'arrêté;</p>	Instructions du ministre



	(c) issue a directive under subsection 6(2.1) that addresses a matter set out in the order.	c) de donner, en vertu du paragraphe 6(2.1), des instructions portant sur une question précisée dans l'arrêté.	
Order binding	(9) Orders made under subsection (7) are binding on the Board and those made under subsection (8) are binding on the Chairperson.	(9) Les décrets et arrêtés pris en vertu du paragraphe (7) lient l'Office et les arrêtés pris en vertu du paragraphe (8) lient le président.	Caractère obligatoire
Publication	(10) A copy of each order made under subsection (8) must be published in the <i>Canada Gazette</i> within 15 days after it is made.	(10) Une copie de l'arrêté pris en vertu du paragraphe (8) est publiée dans la <i>Gazette du Canada</i> dans les quinze jours de sa prise.	Publication
Report is final and conclusive	(11) Subject to sections 53 and 54, the Board's report is final and conclusive. R.S., 1985, c. N-7, s. 52; 1990, c. 7, s. 18; 1996, c. 10, s. 238; 2012, c. 19, s. 83.	(11) Sous réserve des articles 53 et 54, le rapport de l'Office est définitif et sans appel. L.R. (1985), ch. N-7, art. 52; 1990, ch. 7, art. 18; 1996, ch. 10, art. 238; 2012, ch. 19, art. 83.	Caractère définitif
Order to reconsider	53. (1) After the Board has submitted its report under section 52, the Governor in Council may, by order, refer the recommendation, or any of the terms and conditions, set out in the report back to the Board for reconsideration.	53. (1) Une fois que l'Office a présenté son rapport en vertu de l'article 52, le gouverneur en conseil peut, par décret, renvoyer la recommandation ou toute condition figurant au rapport à l'Office pour réexamen.	Décret ordonnant un réexamen
Factors and time limit	(2) The order may direct the Board to conduct the reconsideration taking into account any factor specified in the order and it may specify a time limit within which the Board shall complete its reconsideration.	(2) Le décret peut préciser tout facteur dont l'Office doit tenir compte dans le cadre du réexamen ainsi que le délai pour l'effectuer.	Facteurs et délais
Order binding	(3) The order is binding on the Board.	(3) Le décret lie l'Office.	Caractère obligatoire
Publication	(4) A copy of the order must be published in the <i>Canada Gazette</i> within 15 days after it is made.	(4) Une copie du décret est publiée dans la <i>Gazette du Canada</i> dans les quinze jours de sa prise.	Publication
Obligation of Board	(5) The Board shall, before the expiry of the time limit specified in the order, if one was specified, reconsider its recommendation or any term or condition referred back to it, as the case may be, and prepare and submit to the Minister a report on its reconsideration.	(5) L'Office, dans le délai précisé — le cas échéant — dans le décret, réexamine la recommandation ou toute condition visée par le décret, établit un rapport de réexamen et le présente au ministre.	Obligation de l'Office
Contents of report	(6) In the reconsideration report, the Board shall (a) if its recommendation was referred back, either confirm the recommendation or set out a different recommendation; and (b) if a term or condition was referred back, confirm the term or condition, state that it no longer supports it or replace it with another one.	(6) Dans son rapport de réexamen, l'Office : a) si le décret vise la recommandation, confirme celle-ci ou en formule une autre; b) si le décret vise une condition, confirme la condition visée par le décret, déclare qu'il ne la propose plus ou la remplace par une autre.	Rapport de réexamen
Terms and conditions	(7) Regardless of what the Board sets out in the reconsideration report, the Board shall also set out in the report all the terms and conditions, that it considers necessary or desirable in the public interest, to which the certificate	(7) Peu importe ce qu'il mentionne dans le rapport de réexamen, l'Office y mentionne aussi toutes les conditions qu'il estime utiles, dans l'intérêt public, de rattacher au certificat si le	Conditions

	would be subject if the Governor in Council were to direct the Board to issue the certificate.	gouverneur en conseil donne instruction à l'Office de délivrer le certificat.	
Report is final and conclusive	(8) Subject to section 54, the Board's reconsideration report is final and conclusive.	(8) Sous réserve de l'article 54, le rapport de réexamen est définitif et sans appel.	Caractère définitif
Reconsideration of report under this section	(9) After the Board has submitted its report under subsection (5), the Governor in Council may, by order, refer the Board's recommendation, or any of the terms or conditions, set out in the report, back to the Board for reconsideration. If it does so, subsections (2) to (8) apply. R.S., 1985, c. N-7, s. 53; 2012, c. 19, s. 83.	(9) Une fois que l'Office a présenté son rapport au titre du paragraphe (5), le gouverneur en conseil peut, par décret, renvoyer la recommandation ou toute condition figurant au rapport à l'Office pour réexamen. Les paragraphes (2) à (8) s'appliquent alors. L.R. (1985), ch. N-7, art. 53; 2012, ch. 19, art. 83.	Réexamen du rapport présenté en application du présent article
Order regarding issuance or non-issuance	54. (1) After the Board has submitted its report under section 52 or 53, the Governor in Council may, by order,  (a) direct the Board to issue a certificate in respect of the pipeline or any part of it and to make the certificate subject to the terms and conditions set out in the report; or  (b) direct the Board to dismiss the application for a certificate.	54. (1) Une fois que l'Office a présenté son rapport en application des articles 52 ou 53, le gouverneur en conseil peut, par décret :  (a) donner à l'Office instruction de délivrer un certificat à l'égard du pipeline ou d'une partie de celui-ci et de l'assortir des conditions figurant dans le rapport;  (b) donner à l'Office instruction de rejeter la demande de certificat.	Décret concernant la délivrance du certificat
Reasons	(2) The order must set out the reasons for making the order.	(2) Le gouverneur en conseil énonce, dans le décret, les motifs de celui-ci.	Motifs
Time limit	(3) The order must be made within three months after the Board's report under section 52 is submitted to the Minister. The Governor in Council may, on the recommendation of the Minister, by order, extend that time limit by any additional period or periods of time. If the Governor in Council makes an order under subsection 53(1) or (9), the period that is taken by the Board to complete its reconsideration and to report to the Minister is not to be included in the calculation of the time limit.	(3) Le décret est pris dans les trois mois suivant la remise, au titre de l'article 52, du rapport au ministre. Le gouverneur en conseil peut, par décret pris sur la recommandation du ministre, proroger ce délai une ou plusieurs fois. Dans le cas où le gouverneur en conseil prend un décret en vertu des paragraphes 53(1) ou (9), la période que prend l'Office pour effectuer le réexamen et faire rapport n'est pas comprise dans le calcul du délai imposé pour prendre le décret.	Délais
Order is final and conclusive	(4) Every order made under subsection (1) or (3) is final and conclusive and is binding on the Board.	(4) Les décrets pris en vertu des paragraphes (1) ou (3) sont définitifs et sans appel et lient l'Office.	Caractère définitif
Obligation of Board	(5) The Board shall comply with the order made under subsection (1) within seven days after the day on which it is made.	(5) L'Office est tenu de se conformer au décret pris en vertu du paragraphe (1) dans les sept jours suivant sa prise.	Obligation de l'Office
Publication	(6) A copy of the order made under subsection (1) must be published in the <i>Canada Gazette</i> within 15 days after it is made. R.S., 1985, c. N-7, s. 54; 1990, c. 7, s. 19; 2012, c. 19, s. 83.	(6) Une copie du décret pris en vertu du paragraphe (1) est publiée dans la <i>Gazette du Canada</i> dans les quinze jours de sa prise. L.R. (1985), ch. N-7, art. 54; 1990, ch. 7, art. 19; 2012, ch. 19, art. 83.	Publication
Application for judicial review	55. (1) Judicial review by the Federal Court of Appeal with respect to any order made under subsection 54(1) is commenced by making an application for leave to the Court.	55. (1) Le contrôle judiciaire par la Cour d'appel fédérale de tout décret pris en vertu du paragraphe 54(1) est subordonné au dépôt d'une demande d'autorisation.	Demande de contrôle judiciaire

Application	<p>(2) The following rules govern an application under subsection (1):</p> <p>(a) the application must be filed in the Registry of the Federal Court of Appeal (“the Court”) within 15 days after the day on which the order is published in the <i>Canada Gazette</i>;</p> <p>(b) a judge of the Court may, for special reasons, allow an extended time for filing and serving the application or notice; and</p> <p>(c) a judge of the Court shall dispose of the application without delay and in a summary way and, unless a judge of the Court directs otherwise, without personal appearance.</p> <p>R.S., 1985, c. N-7, s. 55; 1990, c. 7, s. 20; 2012, c. 19, s. 83.</p>	<p>(2) Les règles ci-après s’appliquent à la demande d’autorisation :</p> <p>a) elle doit être déposée au greffe de la Cour d’appel fédérale — la Cour — dans les quinze jours suivant la publication du décret dans la <i>Gazette du Canada</i>;</p> <p>b) le délai peut toutefois être prorogé, pour motifs valables, par un juge de la Cour;</p> <p>c) il est statué sur la demande à bref délai et selon la procédure sommaire et, sauf autorisation d’un juge de la Cour, sans comparution en personne.</p> <p>L.R. (1985), ch. N-7, art. 55; 1990, ch. 7, art. 20; 2012, ch. 19, art. 83.</p>	Application
Continuation of jurisdiction and obligation	<p><b>55.1</b> (1) A failure by the Board to comply with subsection 52(1) or 53(5) within the required time limit does not affect its jurisdiction to deal with the application or its obligation to submit the report, and anything done by it in relation to the application remains valid.</p>	<p><b>55.1</b> (1) Le défaut de l’Office de se conformer aux paragraphes 52(1) ou 53(5) dans le délai fixé ne porte atteinte ni à sa compétence à l’égard de la demande en cause ni à son obligation de présenter le rapport ni à la validité des actes posés à l’égard de la demande en cause.</p>	Maintien de l’obligation et de la compétence
Governor in Council’s powers	<p>(2) Despite subsection 54(3), the Governor in Council may make an order under subsection 54(1) after the expiry of the time limit for doing so.</p> <p>2012, c. 19, s. 83.</p>	<p>(2) Malgré le paragraphe 54(3), le gouverneur en conseil peut prendre un décret en vertu du paragraphe 54(1) même une fois le délai pour le faire expiré.</p> <p>2012, ch. 19, art. 83.</p>	Pouvoir du gouverneur en conseil
Representations	<p><b>55.2</b> On an application for a certificate, the Board shall consider the representations of any person who, in the Board’s opinion, is directly affected by the granting or refusing of the application, and it may consider the representations of any person who, in its opinion, has relevant information or expertise. A decision of the Board as to whether it will consider the representations of any person is conclusive.</p> <p>2012, c. 19, s. 83.</p>	<p><b>55.2</b> Si une demande de certificat est présentée, l’Office étudie les observations de toute personne qu’il estime directement touchée par la délivrance du certificat ou le rejet de la demande et peut étudier les observations de toute personne qui, selon lui, possède des renseignements pertinents ou une expertise appropriée. La décision de l’Office d’étudier ou non une observation est définitive.</p> <p>2012, ch. 19, art. 83.</p>	Observations
<div> <div>REVOCATION AND SUSPENSION</div> <div>ANNULATION ET SUSPENSION</div> </div>			
Revocation or suspension of certificate	<p><b>56.</b> (1) Subject to subsection (2), the Board may, by order, with the approval of the Governor in Council, revoke or suspend a certificate if any term or condition thereof has not been complied with or has been contravened.</p>	<p><b>56.</b> (1) Sous réserve du paragraphe (2), l’Office peut, par ordonnance et avec l’approbation du gouverneur en conseil, annuler ou suspendre un certificat en cas de contravention à l’une ou l’autre des conditions dont celui-ci est assorti.</p>	Annulation ou suspension du certificat
Notice and hearing	<p>(2) No order shall be made under subsection (1) unless notice of the alleged non-compliance or contravention has been given to the holder of</p>	<p>(2) L’Office ne peut rendre d’ordonnance aux termes du paragraphe (1) que s’il a avisé le titulaire du certificat de l’infraction reprochée</p>	Avis et audition

the certificate and the Board has afforded the holder an opportunity of being heard.

Revocation or suspension on application, etc., of holder

(3) Notwithstanding subsections (1) and (2), the Board may, by order, revoke or suspend a certificate on the application or with the consent of the holder thereof.

R.S., c. N-6, s. 47; R.S., c. 27(1st Supp.), s. 13.

et donné à celui-ci la possibilité de se faire entendre.

(3) Malgré les paragraphes (1) et (2), l'Office peut, par ordonnance, annuler ou suspendre un certificat sur demande du titulaire de celui-ci, ou avec son consentement.

S.R., ch. N-6, art. 47; S.R., ch. 27(1<sup>er</sup> suppl.), art. 13.

Annulation ou suspension sur demande

#### CONDITIONS TO CERTIFICATE

Compliance

57. Every certificate is subject to the condition that the provisions of this Act and the regulations in force at the date of issue of the certificate and as subsequently enacted, made or amended, as well as every order made under the authority of this Act, will be complied with.

R.S., 1985, c. N-7, s. 57; 1990, c. 7, s. 21(F).

#### CONDITIONS DU CERTIFICAT

57. Constitue une condition du certificat l'observation des dispositions de la présente loi et de ses règlements en vigueur à la date de délivrance et par la suite, ainsi que des ordonnances prises ou rendues sous le régime de la présente loi.

L.R. (1985), ch. N-7, art. 57; 1990, ch. 7, art. 21(F).

Observation

#### EXEMPTIONS

Exempting orders respecting pipelines, etc.

58. (1) The Board may make orders exempting

(a) pipelines or branches of or extensions to pipelines, not exceeding in any case forty kilometres in length, and

(b) any tanks, reservoirs, storage facilities, pumps, racks, compressors, loading facilities, interstation systems of communication by telephone, telegraph or radio, and real and personal property, or immovable and movable, and works connected to them, that the Board considers proper,

from any or all of the provisions of sections 29 to 33 and 47.

(2) [Repealed, 1990, c. 7, s. 22]

Terms

(3) In any order made under this section the Board may impose such terms and conditions as it considers proper.

Time limit

(4) If an application for an order under subsection (1) is made, the Board shall, within the time limit specified by the Chairperson, either make an order under that subsection or dismiss the application.

Maximum time limit and obligation to make it public

(5) The time limit specified by the Chairperson must be no longer than 15 months after the day on which the applicant has, in the opinion of the Board, provided a complete application. The Board shall make the time limit public.

#### EXEMPTIONS

58. (1) L'Office peut, par ordonnance, soustraire totalement ou partiellement à l'application des articles 29 à 33 et 47 :

a) les pipelines, ou embranchements ou extensions de ceux-ci, ne dépassant pas quarante kilomètres de long;

b) les citernes, réservoirs, installations de stockage et de chargement, pompes, rampes de chargement, compresseurs, systèmes de communication entre stations par téléphone, télégraphe ou radio, ainsi que les ouvrages ou autres immeubles ou meubles, ou biens réels ou personnels, connexes qu'il estime indiqués.

(2) [Abrogé, 1990, ch. 7, art. 22]

(3) L'Office peut assortir toute ordonnance qu'il rend aux termes du présent article des conditions qu'il estime indiquées.

(4) Si une demande d'ordonnance au titre du paragraphe (1) est présentée, l'Office est tenu, dans le délai fixé par le président, soit de rendre une ordonnance en vertu de ce paragraphe soit de rejeter la demande.

(5) Le délai fixé par le président ne peut excéder quinze mois suivant la date où le demandeur a, de l'avis de l'Office, complété la demande. Le délai est rendu public par l'Office.

Pipelines

Conditions

Délais

Restriction et publicité

Environmental assessment	<p>(6) If the application relates to a designated project within the meaning of section 2 of the <i>Canadian Environmental Assessment Act, 2012</i>, the Board shall also, within the time limit,</p> <p>(a) prepare a report, as required by paragraph 22(b) of that Act, with respect to its environmental assessment of the designated project; and</p> <p>(b) comply with subsections 27(1) and 54(1) of that Act with respect to that assessment.</p>	<p>(6) Si la demande vise un projet désigné au sens de l'article 2 de la <i>Loi canadienne sur l'évaluation environnementale (2012)</i>, l'Office est aussi tenu, dans le même délai :</p> <p>a) d'une part, d'établir le rapport d'évaluation environnementale relatif au projet exigé par l'alinéa 22b) de cette loi;</p> <p>b) d'autre part, de se conformer, s'ils s'appliquent, aux paragraphes 27(1) et 54(1) de cette loi à l'égard de cette évaluation.</p>	Évaluation environnementale
Excluded period — applicant	<p>(7) If the Board requires the applicant to provide information or undertake a study with respect to the pipeline or anything referred to in paragraph (1)(b) to which the application relates and the Board, with the Chairperson's approval, states publicly that this subsection applies, the period that is taken by the applicant to comply with the requirement is not included in the calculation of the time limit.</p>	<p>(7) Si l'Office exige du demandeur, relativement au pipeline ou à tout élément visé à l'alinéa (1)b) faisant l'objet de la demande, la communication de renseignements ou la réalisation d'études et déclare publiquement, avec l'approbation du président, que le présent paragraphe s'applique, la période prise par le demandeur pour remplir l'exigence n'est pas comprise dans le calcul du délai.</p>	Période exclue du délai — demandeur
Public notice of excluded period	<p>(8) The Board shall make public the dates of the beginning and ending of the period referred to in subsection (7) as soon as each of them is known.</p>	<p>(8) L'Office rend publiques, sans délai, la date où commence la période visée au paragraphe (7) et celle où elle se termine.</p>	Avis publics — période exclue
Excluded period — Governor in Council	<p>(9) If the Board has referred a matter to the Governor in Council under subsection 52(2) of the <i>Canadian Environmental Assessment Act, 2012</i>, the period that begins on the day on which the reference is made and ends on the day on which the Governor in Council makes a decision in relation to the matter is not included in the calculation of the time limit.</p>	<p>(9) Si l'Office renvoie au gouverneur en conseil une question en application du paragraphe 52(2) de la <i>Loi canadienne sur l'évaluation environnementale (2012)</i>, la période commençant le jour du renvoi et se terminant le jour où le gouverneur en conseil prend une décision sur la question n'est pas comprise dans le calcul du délai.</p>	Période exclue du délai — gouverneur en conseil
Extension	<p>(10) The Minister may, by order, extend the time limit by a maximum of three months. The Governor in Council may, on the recommendation of the Minister, by order, further extend the time limit by any additional period or periods of time.</p>	<p>(10) Le ministre peut, par arrêté, proroger le délai pour un maximum de trois mois. Le gouverneur en conseil peut, par décret pris sur la recommandation du ministre, accorder une ou plusieurs prorogations supplémentaires.</p>	Prorogations
Continuation of jurisdiction and obligation	<p>(11) A failure by the Board to comply with subsection (4) within the required time limit does not affect its jurisdiction to deal with the application or its obligation to make the order or to dismiss the application, and anything done by it in relation to the application remains valid.</p> <p>R.S., 1985, c. N-7, s. 58; 1990, c. 7, s. 22; 2004, c. 25, s. 151; 2012, c. 19, s. 84.</p>	<p>(11) Le défaut de l'Office de se conformer au paragraphe (4) dans le délai fixé ne porte atteinte ni à sa compétence à l'égard de la demande en cause ni à son obligation de rendre l'ordonnance ou de rejeter la demande ni à la validité des actes posés à l'égard de la demande en cause.</p> <p>L.R. (1985), ch. N-7, art. 58; 1990, ch. 7, art. 22; 2004, ch. 25, art. 151; 2012, ch. 19, art. 84.</p>	Maintien de l'obligation et de la compétence