RECENT DEVELOPMENTS IN THE LAW OF INTEREST TO OIL AND GAS LAWYERS

ROBERT T. BOOTH, Esq.* and ROBERT P. DESBARATS, Esq.*

The purpose of this paper is to discuss recent developments in the law which are of interest to lawyers in the field of oil and gas. It deals with both statutory developments and judicial decisions, the bulk of the paper being devoted to a review of the cases reported in the last year. Many of the cases discussed do not pertain directly to the oil and gas industry. These cases have been included either because they involve situations analogous to those which occur frequently in the oil and gas business or because they apply principles of law which are applicable to this industry.

I. LAND TITLES

Many petroleum and natural gas leases are granted by fee simple mineral rights owners whose interests are subject to a Land Titles Act. Thus, cases dealing with Land Titles Acts are of interest to Canadian oil and gas lawyers. The cases of *Krautt* v. *Paine et al.*,[1] *The Public Trustee, Representative of the Estate of Lewis Marie Derval, Deceased* v. *The Estate of Alexander Bower Campbell*,[2] and *Manufacturers Life Insurance Company* v. *Registrar of North Alberta Land Registration District*[3] all deal with the effect of errors made by the Land Titles Office when issuing mineral certificates.

The *Krautt* v. *Paine* case and the case of *Holt, Renfrew & Co., Limited* v. *Henry Singer Ltd. et al.*[4] discuss the priorities of caveats over subsequent interests and discuss certain exceptions to the general rule of indefeasibility of title conferred by the Land Titles Act of Alberta.[5]

Dial Mortgage Corporation Ltd. v. *Werner F. Jansen*,[6] *Badger and Uhrig* v. *Megson*,[7] *Foale* v. *Young*[8] and *Carson et al.* v. *Fyfe*,[9] deal with the validity of caveats and the procedures required to remove invalid caveats.

A. *Krautt* v. *Paine et al.* [1980] 6 W.W.R. 717 (Alta. C.A.)

This case arises from corrections to certificates of title made by the Alberta Registrar of Land Titles following forfeiture of lands for failure to pay taxes. The original owner of the lands held title to both surface and mines and minerals in the same certificate of title. In 1931, the appropriate municipality commenced tax recovery proceedings pursuant to the Tax Recovery Act,[10] for arrears of taxes assessed against the surface of the lands. At that time, the municipality had the authority to levy taxes against the mineral rights but had not done so. In 1943, title to the lands was issued to the municipality pursuant to the Tax Recovery Act of

* Solicitors, Bennett Jones & Co., Calgary, Alberta

1. [1980] 6 W.W.R. 717 (Alta. C.A.).
2. Unreported, 18 November 1980 (Alta. C.A.).
3. (1980) 12 Alta. L.R. (2d) 289 (Alta. Q.B.).
4. [1981] 3 W.W.R. 9 (Alta. Q.B.).
5. R.S.A. 1970, c. 198, as am..
6. Unreported, 8 October 1980 (Alta. Q.B.).
7. (1980) 14 Alta. L.R. (2d) 49 (Alta. Q.B.).
8. [1981] 2 W.W.R. 653 (Sask. Q.B.).
9. [1981] 1 W.W.R. 691 (N.W.T. S.C.).
10. S.A. 1929, c. 39.

1938.[11] The title erroneously included minerals. In 1945, the municipality sold the lands by a private sale and a certificate of title which also included mines and minerals was issued to the purchaser. In 1946, the Registrar corrected the title of the municipality and the purchaser so as to reserve mines and minerals out of their titles and revived the title of the original owner as to mines and minerals only.

The original owner died and title to the mines and minerals was transmitted to her estate and then to her beneficiaries. The purchaser also died and title to the surface of the lands was transmitted to his estate and then to his beneficiaries.

In 1973, the Registrar of Land Titles filed a caveat pursuant to section 155 of the Land Titles Act[12] against the mineral title of the beneficiaries of the original owner claiming an interest in the mineral rights by virtue of the errors and corrections described above. In 1977, the beneficiaries of the original owners granted a natural gas lease to Trans-Canada Resources Limited who also registered a caveat.

The beneficiaries of the purchaser brought an action to have themselves declared the owner of the mineral rights and the Alberta Court of Queen's Bench[13] ruled that the beneficiaries of the purchaser were entitled to the mineral rights since the purchaser had been a *bona fide* purchaser for value but that their title was subject to the natural gas lease of Trans-Canada Resources since that company was also a *bona fide* purchaser for value. The beneficiaries of the purchaser, and the Registrar, appealed that decision.

The Alberta Court of Appeal also held that the beneficiaries of the purchaser were the lawful owners of the mineral rights but found that their interest had priority over Trans-Canada's natural gas lease.

The decision of Mr. Justice Laycraft on behalf of the Alberta Court of Appeal contains an excellent review of the tax recovery legislation of the Province of Alberta as it affects title to mines and minerals. In determining the lawful owner of the mines and minerals, he considered sections 21 and 23 of the Tax Recovery Act.[14] Section 21 of that Act was enacted in 1948 in order to correct situations in which municipalities were erroneously shown as being the owners of minerals as a consequence of mistakes made on tax recovery proceedings. That section provides that a municipality shall take title to mines and minerals as a consequence of tax recovery proceedings only if it was authorized to assess such mines and minerals at the time of its acquisition of title thereto. Section 21(4) states that the provisions of section 21: "do not affect any interest in minerals acquired prior to the 5th day of March, 1948, *bona fide* and for value by any person from a municipality".

Section 23(5) of that Act states that a certificate of title which is issued following a sale after tax recovery proceedings is indefeasible:

> except upon the following grounds, or any of them, and no other:
> (a) that the sale was not conducted in a fair, open and proper manner;
> (b) that there were no taxes whatever in arrears for which the parcel could be sold;
> (c) that the parcel was not liable to be assessed for tax.

11. S.A. 1938, c. 82.
12. *Supra* n. 5.
13. [1979] 3 W.W.R. 481.
14. R.S.A. 1970, c. 360, as am..

Mr. Justice Laycraft noted that section 23 constitutes an exception to the rule of indefeasibility of title provided by section 180 of the Land Titles Act and stated:[15]

> This exception to indefeasibility, of course, applies only to titles issued under section 23 of the Tax Recovery Act. Though a title issued under section 23 may itself be subject to attack, it could be a good root of title for a subsequent *bona fide* purchaser for value under the Land Titles Act.

Since the purchaser in this case was a *bona fide* purchaser for value, section 21(4) of the present Tax Recovery Act was applicable. Thus, the title of the purchaser could only be defeated if one of the three provisions of section 23(5) was applicable. No contention was made that the sale to the purchaser was not fair, open and proper. However, there were never arrears of taxes assessed against the mineral rights. Thus, the issue to be determined was whether or not the mineral rights and the surface constituted a "parcel" within the meaning of section 23(5)(b) or were separate "parcels". The term "parcel" is defined slightly differently in each of the 1929 and 1938 statutes but both definitions contain the following language: " 'parcel' shall mean every parcel of land, improvements or minerals separately assessed on the assessment roll of a municipality . . . ". The Court of Appeal found that under these definitions, the term "parcel" means the whole title to a quarter section or block or lot which is separately assessed and that a portion of the land, or an interest in the land, is not a parcel. Thus, the mines and minerals form part of the parcel against which the surface taxes were assessed with the result that the purchaser's title could not be defeated by the provisions of section 23(5)(b) or (c). It would appear that if the original owner's title to the surface and the mines and minerals had been contained in separate titles, then the purchaser's title could have been defeated under those subsections.

The Court of Appeal expressly stated that although the original owner did not have good title to the mines and minerals, her title could have been the root of a good title for a *bona fide* purchaser for value. Trans-Canada Resources acquired its interest from beneficiaries of the original owner. The Court of Appeal did not discuss whether or not Trans-Canada Resources was a *bona fide* purchaser for value but it appears to have assumed that fact.

In determining the effect of the Registrar's caveat, the Court of Appeal reviewed sections 142, 152 and 155 of the Land Titles Act. Section 155, which empowers the Registrar to file a caveat, provides as follows:

> The Registrar may file a caveat on behalf of Her Majesty, or on behalf of any person who may be under any disability, to prohibit the transfer or the dealing with any land belonging or supposed to belong to the Crown, or to any such person, and also to prohibit the dealing of any land in any case in which it appears to the Registrar that an error has been made in any certificate of title or other instrument, or for the prevention of any fraud or improper dealing.

Trans-Canada argued that the Registrar could only file a caveat on behalf of the Crown or a disabled person, and since the beneficiaries of the original owner were not disabled, the Registrar did not have authority to file a caveat under section 155 on this title. The Court of Appeal rejected that argument on the grounds that the words "and also to prohibit the dealing with any land in any case in which it appears to the Registrar that an error has been made" in section 155 are distinct from the earlier

15. *Supra* n. 1 at 726.

language of that section dealing with Crown rights and rights of disabled persons and, consequently, such language constitutes a third separate instance in which the Registrar can file a caveat.

Section 152 of the Land Titles Act states in part:

> Registration by way of caveat, whether by the Registrar or by any caveator, has the same effect as to priority as the registration of any instrument under this Act . . . .

Thus, the Court of Appeal held that the Registrar's caveat has priority over the interest claimed by Trans-Canada Resources.

Trans-Canada Resources also claimed that the caveat was invalid because it did not disclose any interest. The Court of Appeal stated that if a caveat does not disclose an interest then it grants no priority over subsequently registered instruments. However, the Court stated: "Some degree of precision is required in a caveat . . . . Nevertheless, the grounds of the claim need not be set forth with the precision of a legal brief,"[16] and continued:[17]

> In this caveat, the Registrar specified and described, by registered number, each instrument and certificate of title affected by the error. He specified the corrections involved, describing them by date and by reference to the titles on which they were made. The nature of the interest claimed, namely, that a person other than the title holder may, by reason of title errors, be entitled to be the registered owner, is thereby specified.

Thus, since the caveat specified that there may have been errors made by the Land Titles Office and referred to the certificates of title and transfers in which those errors could be found, the interest was sufficiently disclosed.

Trans-Canada finally argued that the Registrar's caveat was invalid because section 155 prescribed that the Registrar's caveat must "prohibit the dealing with any lands . . . " and the Registrar's caveat used the word "forbid". The Court of Appeal stated that the words "forbid" and "prohibit" were virtually synonymous and that the caveat complied with the provisions of section 155 and was valid.

The case clearly establishes that Registrars' caveats are valid and will have priority over subsequent caveats. The case implies, but does not establish, that a party registering a caveat claiming an interest under a petroleum and natural gas lease is a *bona fide* purchaser for value with the result that if the party from whom he acquires his interest is the registered holder of the mines and minerals title, even if by error, then, subject to the rules against indefeasibility prescribed by section 180 of the Land Titles Act and subject to prior registered instruments, the holder of such lease will have a good and valid interest having priority over all other interests.

B. *The Public Trustee, Representative of the Estate of Lewis Marie Derval, Deceased* v. *The Estate of Alexander Bower Campbell et al.*, unreported, 18 November 1980 (Alta. Q.B.)

This case also arose as a result of errors made by the Alberta Land Titles Office in mines and minerals titles. The facts which gave rise to the uncertainty as to the rightful owner of the mines and minerals titles can be summarized as follows:

---

16. *Id.* at 735.
17. *Id.*

1. A held title to mines and minerals and surface. A transferred his interest to B. The transfer was partially typed and partially handwritten. The typed portion of the transfer contained no mineral exception. The hand-written portion of the transfer contained a mineral exception which was struck out but not initialled. The certificate of title which issued to B excepted mines and minerals.
2. B transferred title back to A. The transfer specifically reserved that which was reserved in B's certificate of title (which was mines and minerals). The new certificate of title which issued to A excepted mines and minerals.
3. A died and title was transmitted to his executor. The transmission specifically excepted what was excepted in A's second certificate of title (which was mines and minerals). The certificate of title which issued to A's executor excepted mines and minerals.
4. The executor of A's estate transferred title to C. The transfer excepted mines and minerals. However, that exception was struck out but not initialled. The certificate of title which issued to C excepted mines and minerals.
5. C transferred to D. The transfer excepted mines and minerals. The exception was struck out but not initialled. The certificate of title which issued to D excepted mines and minerals.
6. The surface was then divided into two parcels which were transferred into new certificates of title, still in the name of D. The certificates of title excepted mines and minerals.
7. D transferred both parcels of land to separate purchasers, E and F, pursuant to two transfers, both typewritten and containing a typewritten reservation of mines and minerals. The reservation was crossed out on the transfer in pen and a note written at the side of the transfer as follows: "Mines and minerals should not have been reserved. Title corrected on instructions from solicitor." The certificates of title which issued as a consequence of such transfers excepted mines and minerals.
8. All of the transfers described above took place prior to 1930. On January 18, 1930, the Deputy Registrar corrected all of the certificates of title so as to delete the mineral exception and include mines and minerals in such titles with the result that E and F, the parties who acquired from D as described in paragraph 7, were the registered holders of the rights to the mines and minerals in the lands.
9. E died and his interest was transmitted to his estate and thereafter to the beneficiary of his estate, G. The transmission and the transfer to the beneficiary and the certificates of title issued as a consequence did not contain any mineral exceptions.
10. F's title was cancelled and a new title was issued to F which contained no material mineral exceptions.
11. In 1960, certain of the parties involved applied to the Court to be declared the rightful owners of the mines and minerals. Proceedings were held but no decision was rendered by the presiding judge. The presiding judge subsequently died and the current decision was made based upon the earlier proceedings.

Three issues were raised in the case:

1. Can any of the parties rely upon the corrections made by the

Deputy Registrar in 1930 as forming a good root of title for their interest?

2. Were minerals included or excepted from the transfers from B to A and subsequent transfers at the date of their execution? If minerals were excepted, then, in the absence of other evidence, the transferees under such transfers cannot claim to have acquired interests in mines and minerals.
3. Did any of the certificates of title, other than the first certificate of title issued to A, include mines and minerals at the time of the transfers by the holders of such titles to the next party in the chain of title? If such certificates of title did not include mines and minerals, then the transferees could not claim to have obtained title to mines and minerals.

None of the parties could rely upon the corrections made in 1930. The only parties acquiring interests after such corrections were made were estates and beneficiaries of estates. Since none of such parties paid any consideration for the interests acquired by them, they are not *bona fide* purchasers for value but are mere volunteers. It is established law that under the land titles system, a volunteer has no better rights than the party from whom he obtained his interest.

The Court found that each transfer, other than the transfer from A to B, excepted mines and minerals at the time that the transfer was executed by the transferor. This finding was based upon the principle that a party alleging an unauthorized alteration in a document must establish that such alteration was, in fact, made after execution. Each of the transfers contained a mineral exception. In some instances the exception was in a different script than the rest of the transfer. However, since no evidence was led to prove that the exceptions were not present when the transfers were executed, the Court must assume that they were present.

It would appear that the Court found that the deletion of the mineral exceptions does not constitute an alteration to the transfer since there is no indication that evidence was led to prove that the mineral exceptions were deleted after the transfers were executed. The Court found that the parties alleging that no mineral exceptions were present at the time of execution must show that the mineral exceptions were added after the transfers were executed. However, the mineral exceptions were deleted and it would seem that the parties relying upon the mineral exceptions having been present when the transfers were executed must establish that the deletions took place after execution. That point is not considered in the decision. The Court did state that it believed the deletions to the transfers were made at the time that the titles were corrected in 1930. Although there appears to be little evidence to establish that fact, it would certainly seem to be a logical explanation for the deletions.

The Court found that the certificates of title did not contain minerals at the time of each transfer in the chain of title, other than in the transfer from A to B. This finding was based on the fact that the mineral exceptions were deleted in 1930. Accordingly, none of the parties can claim to have relied upon the accuracy of the register. They cannot claim to have acquired mines and minerals since the party from whom the interest was acquired did not have title to the mines and minerals according to the register.

As a result, it was held that B was the rightful owner of the mines and minerals since the transfer from A to B clearly included mines and minerals and since the title issued to B should have included them.

As with most of this type of case, the ultimate decision may not reflect the intention of the parties involved. As was stated in the *Manufacturers Life Insurance Company* case,[18] prior to 1930, mines and minerals were considered to have relatively little value in Alberta and when surface rights were being transferred, mines and minerals were normally included.

C. *Manufacturers Life Insurance Company* v. *Registrar of North Alberta Land Registration District* (1980) 12 Alta. L.R. (2d) 289 (Q.B.)

This case is similar to the *Derval* case.[19] It too revolves around the principle that a party alleging that an alteration to a document was made after the document was signed, must establish that in fact the alteration was made after the document was signed. The facts of that case are as follows. The transferor held a certificate of title to lands in Alberta which excepted coal and petroleum. She transferred her interest to a party (referred to in this paper as the mortgagor) pursuant to a typed transfer. The typed transfer contained the words "excepting all mines and minerals". Those words were deleted and the following words were hand-written on the transfer in ink: "excepting all coal and petroleum". A certificate of title was issued to the mortgagor from which coal and petroleum were excepted. The mortgagor executed a typed mortgage in favour of Manufacturers Life Insurance Company in which the mortgaged property was described as: "excepting all mines and minerals". Those words were deleted and replaced in ink by the words: "excepting all coal and petroleum".

Subsequently, Manufacturers Life foreclosed on the mortgage. The foreclosure documents sometimes referred to the mortgaged lands as excluding all mines and minerals and sometimes referred to them as excluding coal and petroleum. The order for foreclosure excluded all mines and minerals but the certificate of title which was issued to Manufacturers Life excluded coal and petroleum. Subsequently, the Registrar refused to issue a mineral certificate to Manufacturers Life who commenced the present action for a declaration that it was the rightful owner of all mines and minerals except coal and petroleum.

The Court found in favour of Manufacturers Life applying the principle that a party relying upon a written document which appears to have been altered in any material part must explain the alteration so as to support the position which the document is intended to prove. In the present case, the Registrar contended that all mines and minerals were excepted from the transfer by the transferor to the mortgagor and that the alteration to the transfer was made after it had been executed by the transferor. The Court found that the Registrar had not satisfied the onus of establishing that fact, and therefore the mortgagor acquired title to mines and minerals excepting coal and petroleum. Also, at the time of the transfer to the mortgagor, the transferor executed an affidavit in respect of unearned income tax in which she stated that she owned no other property

18. (1980) 12 Alta. L.R. (2d) 289 (Alta. Q.B.), *infra* subheading C.

19. *Supra* n. 2.

in the Province of Alberta. From this the Court inferred that she intended to transfer all of her interest, including mines and minerals, to the mortgagor. Further, since the mortgagor's title included mines and minerals except coal and petroleum and since he was a *bona fide* purchaser for value, there must be strong convincing evidence to deprive him of that interest.

Similarly, the Registrar had the onus of proving that the mineral exception in the mortgage was altered after its execution by the mortgagor. If it was altered prior to its execution, the alteration forms part of the mortgage and the mines and minerals are subject to the mortgage. The Registrar did not discharge that onus and therefore the mortgage was found to cover the mines and minerals except coal and petroleum. The Court further found that Manufacturers Life always insisted upon taking a mortgage of mines and minerals as well as surface. The Court based its finding on the evidence of the plaintiff and its belief that it was only common sense for a mortgagee to include mines and minerals in a mortgage.

The Court did not rely upon the inconsistencies in the foreclosure documents to deprive the plaintiff of its interest in the mines and minerals. The Court found that the plaintiff must have intended to foreclose on the mines and minerals as well as the surface since the plaintiff testified that that was its common practice and since, in any event, it was only sensible for a mortgagee to do so.

D. *Holt, Renfrew & Co., Limited* v. *Henry Singer Ltd., Pekarsky and Thompson & Dynes Limited* [1981] 3 W.W.R. 9 (Alta. Q.B.)

This case involved the enforceability in Alberta of an unregistered instrument against a subsequent *bona fide* purchaser for value whose interest is registered. In 1950, Holt Renfrew entered into a lease for a term of ten years with an option to renew the lease for a further ten year period. A caveat was registered to protect its interest. In 1957, the lease was extended to 1973 and in 1976 it was extended until 1990. However, no caveats were registered in respect of such extensions. In 1978, the lessor began negotiations with Singer's agent for the sale of the leased lands. The lessor provided the agent with copies of the Holt Renfrew lease and the extensions. An agreement of purchase and sale was subsequently entered into which provided that title would be conveyed to Singer free and clear of all liens, claims and encumbrances. It would appear that the purchaser was never actually made aware of the Holt Renfrew lease by his agent prior to executing the agreement of purchase and sale. Upon execution of the sale agreement, a caveat in respect thereof was filed by the purchaser. Holt Renfrew subsequently filed a caveat in respect of the extensions to its lease.

The issue which arose in the case was stated by the Court as follows:[20]

> Is knowledge of the existence of an unregistered interest coupled with knowledge that the unregistered interest will be defeated by concluding the transaction sufficient to constitute fraud under section 203 of the Land Titles Act?

The Land Titles Act[21] specifically provides that, in the absence of fraud, a person having a registered interest in land has priority over a person

20. *Supra* n. 4 at 21.

21. *Supra* n. 5.

having an unregistered interest regardless of knowledge of that unregistered interest.

In the present case, the Court found that there was fraud within the meaning of section 203 of the Act, with the result that the purchaser acquired the land subject to the extensions to the Holt Renfrew lease. The Court found that since the agent was acting within the scope of his authority and since his actions were adopted by his principal, the knowledge of the agent was the knowledge of the principal. Moreover, the agent, a lawyer, testified that he knew at the time of registration of the caveat protecting the sale agreement and the transfer of land, that such transaction had the effect of defeating the Holt Renfrew lease.

It is submitted that this decision is incorrect. The appeal has been heard, but judgment was reserved.

E. *Dial Mortgage Corporation Ltd.* v. *Werner F. Jansen*, unreported, 11 September 1980, (Alta. Q.B. — Master)

In this case, the applicant brought an application pursuant to section 146 of the Land Titles Act[22] calling upon the respondent to show cause why a caveat should not be discharged. The respondent had originally been the registered holder of the land against which the caveat was filed. He had borrowed a sum of money from the applicant and, in order to secure repayment, he had conveyed the land in question to a corporation of which he was the sole shareholder which granted a mortgage of the land to the applicant and, as well, gave the applicant a quit-claim deed and a transfer of the land. The respondent defaulted on the mortgage and the applicant registered the transfer causing the lands to be registered in his name. The respondent then filed a caveat in which he stated that he claimed "an interest by way of an unpaid vendor's claim".

The issue in the case was the validity of the caveat. The Master was not required to and did not inquire into the merits of the applicant's claim to be the equitable owner of the land.

The Master ruled that the caveat was invalid and directed that it be removed from the title since, whatever the nature of the caveator's true claim, it is clear that he was not an unpaid vendor. Although an unpaid vendor's lien is an equitable interest in land and probably can be the subject of a caveat, here the caveator had not taken any proceedings to enforce that claim nor had he led any evidence to indicate that he had a claim as an unpaid vendor. The Master stated:

> The cases do not go so far as to establish the proposition that a caveat, regardless of what it claims, is sufficient to support any claim the caveator might wish to advance. Such a proposition would render the requirement of section 137 [of the Land Titles Act] that the nature of the interest claimed must be disclosed completely surplusage.

F. *Badger and Uhrig* v. *Megson* (1980) 14 Alta. L.R. (2d) 49 (Alta. Q.B.—Master)

Here, the Master determined that under Alberta law, a guarantee of a mortgage did not create an interest in land and therefore was not an interest which is capable of being protected by a caveat. The registered holder of lands had granted a mortgage and the caveator had given a guarantee to the mortgagee whereby he guaranteed repayment of the loan secured by the mortgage. The guarantor registered a caveat claim-

22. *Id.*

ing an interest in the lands under the guarantee. The applicant brought an application under section 146 of the Land Titles Act[23] requiring the caveator to show cause why his caveat should not be removed. The Master stated that in an application under section 146 the Court's function is first, to ensure that the caveator has been summoned, then to hear such evidence as it requires and last, to make such order as it deems fit. The Court's jurisdiction is only to decide whether the caveator had any right to file the caveat in question. If there is any *bona fide* question of law or equity as to the right of the caveator to the interest claimed, then the question should be determined in formal proceedings and the caveat should be allowed to continue. In this case, the caveator claimed an interest in the lands pursuant to the guarantee. However, until the guarantor pays the debt and steps into the shoes of the mortgagee he has no interest in the land. Accordingly, the Master directed that the caveat be discharged.

G. *Carson et al.* v. *Fyfe* [1981] 1 W.W.R. 691 (N.W.T.S.C.)

This case establishes that under the Federal Land Titles Act,[24] a withdrawal of caveat signed by an agent without a power of attorney is unregistrable notwithstanding that the caveat was executed by the same agent. The Court noted that the Alberta Land Titles Act[25] expressly provides for withdrawals of caveat by an agent for a caveator if such agent signed the original caveat. The Federal Act contains no such provision, although it does contain a provision permitting caveats to be executed by agents.

II. SALE OF LAND

Although no cases decided in the last year dealing with the sale of petroleum and natural gas rights were encountered in a review of reported decisions in Canada, there emerged a number of interesting cases dealing with sale of land. Since petroleum and natural gas rights are interests in land, cases dealing with the sale of non-oil and gas rights in land are relevant to those involved in the oil and gas business. None of the cases discussed below established any new principles of law, however they are of interest in that they indicate the applicability of established principles to particular fact situations. Two of the cases deal with the enforceability of letter agreements pertaining to land. Since letter agreements are too often encountered in the oil and gas business, those cases are of particular interest.

A. *Ford* v. *Keller* (1980) 104 D.L.R. (3d) 106 (Alta. S.C.)

The plaintiff had granted a farming lease of certain lands in Alberta to the defendant. Shortly before the expiry of the lease, the parties entered into the following letter agreement:

> I, Frank Keller, agree to sell to Frank Ford [legal description] for the sum of Eighteen Thousand ($18,000.00) Dollars. Rent to be paid by Frank Ford until payment is made. Taxes will be paid by Frank Keller until payment is made.

Both parties executed the letter agreement. A year later, the lease was renewed for a period of six years. On the expiry of the renewal, Ford's estate purported to purchase the lands pursuant to the letter agreement.

23. *Supra* n. 5.
24. R.S.C. 1970, c. L-4, as am..
25. *Supra* n. 5.

The Court found that the letter agreement satisfied the Statute of Frauds[26] since it identified the parties, the land and the price and was signed by the person to be charged. The Court then considered whether the letter agreement was enforceable. The Court first considered the enforceability on the basis that the letter agreement constituted an option and they found that it would be unenforceable for three reasons. First, there was no present consideration for the option. There was no evidence that funds had been paid for the option by the purchaser and the agreement to pay rent did not constitute present consideration since that was an existing obligation. Second, the agreement did not specify a time within which the option must be exercised. In certain instances, such time may be implied by the Court. However, if it were implied, the only logical time for exercise would have been upon expiry of the first lease and the option was not exercised at that time. Third, if the option was to be open for exercise indefinitely, then it offended the rule against perpetuities (The Perpetuities Act[27] not having been in effect at the time that the letter agreement was executed).

The Court then considered the enforceability of the letter agreement as an agreement of purchase and sale and found that it was unenforceable for two reasons. First, there was no consideration flowing from the purchaser. The agreement contained no promise by the purchaser to purchase the properties. The agreement to pay rent was not sufficient since it constituted past consideration as discussed above. Second, the agreement was too uncertain in many of its key terms. It did not specify when and how the purchase price was to be paid and if rent was to be applied to the purchase price. As regards this latter point, the Court did state, however, that it might have implied such terms if the agreement had otherwise been enforceable.

B. *Ulmer and Ulmer* v. *Ulmer* (1980) 5 Sask. R. 3 (Q.B.)

In this case, the parties had executed the following letter agreement dealing with land in Saskatchewan:

> I Dale Ulmer do hereby agree to purchase your land described as [description] for $115,000.00 deposit of $10 on account.
>
> Dale Ulmer
>
> I hereby agree to accept your offer as described above. Deposit of $10 on account.
>
> Werner C. Ulmer

The vendor subsequently sold a portion of the lands to a third party. Another portion of the lands constituted the vendor's homestead within the meaning of The Homestead Act.[28] The vendor's wife had not consented to the letter agreement.

The Court found that the agreement satisfied the Statute of Frauds[29] since it contained a description of the parties, the property and the price and since there was no evidence of other essential terms which had been agreed to by the parties but which had not been reduced to writing. It is interesting to note that in the *Ford* case,[30] the Alberta Supreme Court stated that the sale agreement needed to be executed by a party affected

26. 1677 (U.K.), 29 Car. 2, c. 3.
27. S.A. 1972, c. 121, as am..
28. R.S.S. 1978, c. H-5.
29. *Supra* n. 26.
30. *Supra* subheading A, Part II.

in order to satisfy the Statute of Frauds. In the *Ulmer* case, that prerequisite was not mentioned, although it would have been satisfied. A requirement described in the *Ulmer* decision, not referred to in the *Ford* case, was that there should be no material terms agreed to by the parties which had not been reduced to writing. The Court quoted the case of *Chapman* v. *Kopitoski*[31] as authority for that principle.

The Court then considered whether the lack of certain terms normally found in sale agreements rendered the letter agreement unenforceable. The Court referred to such terms as possession date, completion date, method of payment, clearing of title and adjustments as being terms normally found in sale agreements. The Court stated that lack of terms must be distinguished from ambiguity of terms. In the latter case, if the Court is unable to resolve the ambiguity, it will not imply a term in the contract but, rather, the contract will be unenforceable.

The contract in question was stated to fall into the category of "an open contract", being a type of contract in which the Court will imply terms to which the parties have not addressed their minds. However, the Court will only imply terms for purposes of carrying out the contract and not so as to alter or make the contract itself. In the present case, the Court found that the contract was sufficiently clear, certain and complete so as to be enforceable and further found that all necessary terms for carrying out the contract could be inferred.

The purchaser contended that the purchase price should be abated to account for the portion of the lands constituting the homestead and for the portion of the lands which had been sold to a third party. The Court stated that where a vendor sells more than that for which he can convey title, the purchaser can compel the vendor to convey what he is able to with an abatement of the purchase price as compensation for the deficiency if an abatement had been agreed upon. However, in this instance, the parties had never intended a sale of less than the whole of the lands and therefore no provision was made for pro-rating the purchase price. It would appear that the Court considered that to imply a term respecting pro-rating of the purchase price would be to alter the contract rather than to merely give it effect, and therefore any implication would be inappropriate.

C. *Gordon F. Dickson* v. *Gold Cup Resources Ltd.*, unreported, 20 October 1980 (B.C.S.C.)

The plaintiff and the defendant entered into an agreement whereby the defendant agreed to conduct exploration work on mineral claims in British Columbia owned by the plaintiff. Thereafter, the defendant had the right to purchase the mineral claims for a consideration composed partly of cash and partly of shares of the defendant. The agreement contained the following provision:

> This is an option only and the doing of any act or the making of any payment by the Optionees to the Optionor shall not obligate the Optionees to do any further act or make any further payment save and except . . . [the exploration work referred to above].

The option was expressly stated to be conditional upon the defendant obtaining approval of the Superintendent of Brokers for the Province of British Columbia for the issuance of its shares to the plaintiff.

31. [1972] 6 W.W.R. 525 (Sask. Q.B.).

The defendant conducted the work obligation and thereafter requested an extension of time for the payment of the money required to be paid upon exercise of the option. The plaintiff did not respond to that request. The defendant did obtain the approval of the Superintendent of Brokers for the issuance of shares. However, the defendant's solicitor then wrote to the plaintiff's solicitor advising that the defendant was terminating its interest in the option agreement. The plaintiff sued for specific performance of the option agreement.

The Court held that the agreement was clearly an option and that the request for an extension of time did not constitute an exercise of the option. In fact, when the request was not granted, the option expired and the defendant had no further rights thereunder. The obtaining of the approval of the Superintendent of Brokers and issuance of shares to third parties on the representation that the defendant would be acquiring the mineral claims did not constitute an exercise of the option or give the plaintiff any rights against the defendant. The plaintiff's action was dismissed.

D. *Mitchell* v. *MacMillan* (1980) 5 Sask. R. 160 (C.A.)

This case involved an option to purchase land in Saskatchewan contained in a lease. The term of the lease commenced on January 31, 1972. The lease provided that the option could be exercised at any time during the term of the lease. In a subsequent clause, the lease provided that the option could be "accepted" by notice on or before the 31st day of January, 1977 (being the day after the expiry of the lease). The lease also provided that time was of the essence. The lessee purported to exercise the option by notice given on January 31, 1977. The lessor contended that the option had not been validly exercised because the notice was not given during the term of the lease. The trial judge and the Court of Appeal decided that the specific provision in the option agreement should govern, notwithstanding the time of the essence clause, with the result that the option could be exercised on or before January 31, 1977 and it had therefore been validly exercised.

E. *Antifave* v. *Tisnic* (1981) 7 Sask. R. 169 (C.A.)

This case also considered the validity of the exercise of an option to purchase land in Saskatchewan contained in a lease. The lease provided that the option was exercisable by notice given on or before October 30 together with the deposit of a cheque with any solicitor qualified to practice law in the Province of Saskatchewan. On September 29, the optionee advised the optionor that it intended to exercise the option. On October 30, the optionee phoned the optionor requesting that he meet with the optionee to accept the cheque. The optionor advised that he was unable to meet with the optionee and said that he would speak to his solicitor the next day. On November 1, the optionee deposited the cheque with the optionor's wife.

The trial Court granted an application by the optionee for specific performance. The Court of Appeal overruled the Court of Queen's Bench since the optionee had not strictly complied with the terms of the option. The option could only have been validly exercised if strict compliance had been waived by the optionor. To establish the waiver of a condition to the exercise of an option, the onus is upon the one alleging the waiver to establish that there was a definite, clear and intentional waiver of the con-

dition. The words and conduct of the optionor in the present case did not go so far as to constitute a waiver.

F. *City of Kamloops* v. *Interland Investments Inc. et al.* (1979) 9 B.L.R. 130 (B.C.S.C.)

This case involved a determination as to whether an option to purchase land in British Columbia had been validly exercised. The agreement did not specify the manner in which the option was to be exercised. The City of Kamloops purported to exercise the option by sending a notice to the optionor by double registered mail. When the registered letter was delivered to the office of the optionor, there was no one present to accept it and, accordingly, the postman left a card advising the optionor that it could collect the registered letter at the local post-office. The optionor suspected that the letter pertained to the option agreement and therefore did not collect it from the post-office. The option period subsequently expired. The Court held that in the case of an option given under seal and for value, unlike that of a bare offer unsupported by consideration, equity will relieve the optionee from the obligation to show timely notification of the optionor where the conduct of the optionor renders it inequitable that the optionee be held to strict fulfillment of this condition precedent to the exercise of the option. Thus, despite the general rule that an optionee seeking to enforce specific performance of an option to purchase land must prove strict compliance with its terms, the Court granted an order of specific performance of the option.

G. *The City of Edmonton* v. *A & M Developments Ltd.*, unreported, 25 July 1980 (Alta. Q.B.)

In this case, the Court refused to grant relief from forfeiture in an instance where a purchaser of lands in Alberta had defaulted not only in its obligation to pay the purchase price but also in its obligation to perform work on the lands being sold. The case may be applicable to farmout arrangements since they also involve work commitments.

The plaintiff municipality had agreed to sell certain lands to the defendant for $771,000. The sale agreement provided for payment of $190,000 on account of the purchase price upon execution of the sale agreement and for subsequent payments by instalment. The agreement further provided that: "in consideration of the sale and as a condition of the sale", the defendant would construct a motor hotel on the lands. It also stated that if the purchaser failed to make timely payments of the purchase price then the City could cancel the agreement and re-enter the land and all instalments of the purchase price previously paid would be retained by the City as liquidated damages.

The only work which the plaintiff did in respect of the motor hotel was to install 418 pilings. It paid none of the instalments on the purchase price. More than a year later, the City notified the defendant that it was cancelling the agreement. The City then sought a declaration that the agreement had been cancelled or, in the alternative, that the agreement had been terminated by the failure of the defendant to pay the purchase price. The defendant requested relief from forfeiture. The declaration sought by the plaintiff was granted.

The Court refused to grant relief from forfeiture stating that it was an equitable remedy available when the Court could properly protect the purchaser without doing any injustice to the vendor and where the only

interest of the vendor under a sale agreement was to receive the purchase price so that the land constituted security for payment. Since the contract in question contained a covenant for the construction of a motor hotel which was for the benefit of the City, the Court concluded that it could not grant relief from forfeiture without injustice to the City since the City had not received the benefits for which it had contracted, over and above the purchase price. Although there may be cases where the Court will grant relief from forfeiture where there is a breach of a covenant other than the covenant to pay the purchase price, the Court would not grant the relief in this case.

The Court held that since the City had terminated the contract, the instalments of the purchase price previously paid by the defendant should be returned to it. The Court found that the provision relating to liquidated damages was not a pre-assessment of actual damages which the City might suffer but was a penalty clause against which relief was available to the purchaser.

The purchaser also sought reimbursement of funds expended for the work which it had done on the lands. The Court refused this claim on the basis that it could not be established that the City had obtained any benefit from such work. Presumably such claim was in the nature of a *quantum meruit* or unjust enrichment although it is not discussed as such in the reported decision.

III. FREEHOLD LEASE

A. *Gas Initiatives Venture Ltd., et al.* v. *Beck* [1981] 2 W.W.R. 603 (Alta. C.A.)

This case turned on the interpretation of a pooling clause contained in a freehold petroleum and natural gas lease. The lease covered the northwest quarter of Section 1. A gas well was drilled in the southeast quarter of Section 1 during the primary term of the lease. The well had a spacing unit of one section.

The various working interest owners in the section agreed to pool their respective interests. Such agreement was made during the primary term of the lease but the pooling agreement was not actually executed until after the end of the primary term. The lease contained a pooling clause of the kind normally encountered in freehold leases. It provided that a well drilled on lands with which the leased lands had been pooled to form a spacing unit, would be considered to have been drilled on the leased lands for purposes of extending the primary term of the lease. The lessor contended that since the pooling agreement was not executed until after the end of the primary term, the pooling clause could not be relied upon to extend the lease and the lease had terminated. The trial Court ruled in favour of the lessee and found that the agreement to pool constituted pooling for purposes of the pooling clause. The Court of Appeal reversed the trial decision with the consent of the applicants and without written reasons.

Since no reasons have been provided by the Court of Appeal, the current state of the law in this area is now uncertain. It would seem clear, however, that one cannot rely upon the decision of the Trial Division since it has been reversed and therefore, it is necessary to have a pooling agreement executed prior to the end of a primary term in order to rely upon the pooling clause in a freehold lease for extension beyond the primary term.

IV. MINES AND MINERALS

A. *Eliason* v. *Registrar, North Alberta Land Registration District and Alberta Energy and Natural Resources* [1980] 6 W.W.R. 361 (Alta. Q.B.)

The case involves a determination of the ownership of the mines and minerals underlying a dried-up lake in Alberta. The applicant had title to the surface and the mines and minerals in all of the northwest quarter of Section 35 not covered by the waters of a certain surveyed lake. The survey was made in 1895. The lake had been dry since the applicant took title and he had been farming the lands formerly covered by the lake. The Court found that the land formerly covered by the lake accreted to the applicant as the adjoining owner by virtue of the common law rule of accretion. Further, the Court found that accreted land takes on the legal characteristics of the land to which it has accreted. Thus, since the applicant held title to all mines and minerals except coal in the balance of the lands, he acquired title to all mines and minerals except coal in the accreted lands (the lake).

B. *Tener and Tener* v. *The Queen in Right of British Columbia* (1980) 23 B.C.L.R. 309 (B.C.S.C.)

In this case, the plaintiffs sought compensation for the fact that they were unable to exploit mineral claims in a British Columbia provincial park. The plaintiffs were the owners of mineral claims granted in 1937. In 1939, the lands to which the claims relate were included in Wells Gray Provincial Park. Apparently relatively little work was done in respect of the claims until 1973 when the predecessor in interest to the plaintiffs inquired as to the policy of the government regarding doing work on the claims. In 1978, the government finally advised the plaintiff that no new exploration or development work would be authorized within provincial parks.

The plaintiffs claimed that the denial of a permit to conduct work on the claims constituted an expropriation of the claims since it prevented them from exercising their rights thereunder and demanded compensation. In the alternative, the plaintiffs contended that if their interest had not been expropriated then they had been injuriously affected and they were entitled to compensation therefor. The Court concluded that there had been no expropriation of the mineral claims since the plaintiffs remained the owners thereof. The refusal of a permit to conduct further work did not constitute an expropriation since title remained vested in the plaintiffs. The Court noted that the policy of the government in respect of the exploitation of mineral claims in provincial parks could change in the future so as to allow the plaintiffs to develop their claims.

C. *Mastermet Cobalt Mines Ltd.* v. *Canadaka Mines Ltd.* (1980) 33 N.R. 186 (S.C.C.)

The issue which arose in this case was whether the surface owner or the mines and minerals owner is the owner of tailings deposited on the surface. The Supreme Court of Canada dismissed the appeal of this case, agreeing with the decision of the Ontario Court of Appeal.[32] The Court of Appeal decided that the mineral rights owner was the owner of the tailings.

32. (1980) 33 N.R. 188.

The tailings were deposited between 1905 and 1922 at a time when they were thought to have no value. As a consequence of the increase in the price of silver and improvements in technology, silver can now be economically extracted from the tailings.

The surface and mines and minerals were originally contained in one title. In 1936, the titles were split and "the mines, minerals and mining rights, in, upon and under that certain parcel of land . . . " were conveyed to the predecessor in interest to the respondent mining company. The Court of Appeal reviewed the definitions contained in the Conveyancing and Law of Property Act[33] and the Mining Act,[34] to determine what is usually included in mineral rights. The Court of Appeal emphasized that the conveyance of mineral rights in this case expressly included the rights to mines and minerals *on* the lands and noted that the definitions in the two statutes referred to contained similar language. The Court of Appeal also found that it had not been proved that it was the common practice of the mining industry to consider tailings as forming part of the surface of lands. Accordingly, the Court of Appeal found that the tailings were owned by the owner of the mineral rights.

V. FOREIGN INVESTMENT REVIEW ACT

Jurisprudence in respect of the Foreign Investment Review Act,[35] is relatively scarce. The case of *Dow Jones & Co. Inc.* v. *Attorney-General of Canada*[36] dealt with a motion by way of special case stated for an opinion of the Court as to the reviewability of a transaction under the Act. Irwin U.S., a United States corporation, had a wholly-owned subsidiary incorporated in Canada carrying on business in Canada. Irwin U.S. was merged with a subsidiary of Dow Jones, also a U.S. subsidiary, as part of a transaction whereby the former shareholders of Irwin U.S. acquired shares of Dow Jones and Irwin U.S. ceased to be a separate corporate entity. The transaction took place in the United States. Dow Jones, a non-eligible person within the meaning of the Act, sought the Court's opinion as to whether the transaction was reviewable pursuant to the Act as constituting the acquisition of control of the business conducted by the Canadian subsidiary of Irwin U.S..

Dow Jones contended that because the business of the subsidiary was foreign-controlled at the date that the Act came into effect, the transaction could not be said to have changed the fact that the subsidiary was controlled by foreigners and therefore it was not reviewable. The Federal Court rejected that argument, stating that the Act makes no distinction between an acquisition by non-eligibles of Canadian-owned businesses and acquisitions of businesses owned by non-eligible persons. Rather, the Act applies to any acquisition of control by a non-eligible person of a Canadian business enterprise.

Dow Jones also submitted that acquisition of control by a foreign corporation from another foreign corporation is not an acquisition within the meaning of the Act. The Court also rejected that argument, stating that such an interpretation would thwart the purpose and intent of the Act.

---

33. R.S.O. 1970, c. 85, as am..
34. R.S.O. 1970, c. 274 as am..
35. S.C. 1973-74, c. 46, as am..
36. (1980) 113 D.L.R. (3d) 395 (F.C. T.D.).

The Court stated that the Act does not seek to affect extra-territorial activities since it would not seek to regulate the merger of Irwin U.S. into the Dow Jones subsidiary but would only have force in relation to the Canadian business. The Federal Court stated that the provisions of the Act do not apply extra-territorially although Parliament has the power to enact legislation which would have such effect.

Dow Jones also contended that the merger did not amount to an acquisition of control within the meaning of the Act. The Court rejected that argument, stating merely that the merger did constitute an acquisition of control since Irwin U.S. controlled the subsidiary prior to the merger and Dow Jones controlled it after the merger.

VI. SECURITY TRANSACTIONS

A. *Canada Trust Company* v. *Cenex Limited* [1981] 2 W.W.R. 296 (Sask. Q.B.)

The defendant granted a debenture to the plaintiff in which it mortgaged all of its right, title and interest in mineral claims and mining leases to and in favour of the plaintiff. The defendant's principal asset consisted of a uranium lease in respect of lands in the northern part of Saskatchewan. The land was unpatented and unsurveyed and therefore it was not possible to describe the land for purposes of registering an encumbrance under the Land Titles Act.[37] After the debenture was granted, several mechanics' liens arose and the holders of those liens claimed priority over the plaintiff debenture holder.

The mechanics' lien holders argued that section 12(2) of the Mechanics' Lien Act[38] provided them with priority as a consequence of the following provision:

> Where work is done, services are rendered or materials are furnished ... in connection with ... the recovery of a mineral, then, notwithstanding that a person holding a particular estate or interest in the mineral concern has not requested the work to be done ... the lien given by subsection (1) attaches to all the estates and interests in the mineral concerned ...

Subsection 12(2) contained an exception for the interest of the fee simple owner if the fee simple owner had not requested the work to be done. The mechanics' lien holders contended that the words "the lien ... attaches to all the estates and interests in the mineral ..." are sufficiently wide to include the interest of an encumbrancer, including that of the debenture holder. The Court rejected that contention on the basis that, although the interpretation suggested by them was a possible construction of the Act, it did not reflect the true intention of the legislation as gathered from a review of the whole of the Statute. Further, the concept of a mechanics' lien upon a security interest is unique and if the legislature had intended such a consequence it would clearly have said so and would not have left the matter to judicial inference. In the absence of a specific statutory provision, legislation should not be construed in a manner which would deprive third parties of their pre-existing property rights. The purpose of section 12 was not to establish priorities, since section 25 of the Act accomplished that.

It was also contended by the mechanics' lien holders that the debenture should have been registered under the Land Titles Act and the Mineral

37. R.S.S. 1978, c. L-5, as am..

38. R.S.S. 1978, c. M-7, as am..

Disposition Regulations, 1961, under the Mineral Resources Act.[39] The Court found that the fact that the debenture could not be registered did not lessen its effectiveness as a mortgage and held that it continued to "enjoy priority over subsequent liens".

Clause 76(1) of the Mineral Disposition Regulations[40] stated as follows:

> An assignment or a transfer of a disposition or of the rights, privileges or obligations under a disposition may be submitted to the Department for registration;

The Court held that the provisions of this section were permissive and not mandatory, and that in any event the debenture constitutes a security and not an assignment or transfer. Therefore, failure to register under that Regulation did not render the debenture ineffective.

B. *Central and Eastern Trust Company* v. *Irving Oil Limited and Stonehouse Motel and Restaurant Limited* (1980) 31 N.R. 593 (S.C.C.)

In this case, a mortgage granted by a Nova Scotia company to secure repayment of a loan used to purchase shares in the company was ruled to be invalid. Section 96(5) of the Nova Scotia Companies Act[41] provides as follows:

> Subject to this Section, it shall not be lawful for a company to give, whether directly or indirectly, whether by means of a loan, guarantee, the provision of security or otherwise, any financial assistance for the purpose of or in connection with a purchase made or to be made by any person of any shares in the company.

The Court found as a matter of fact that the loan in the amount of $315,000 secured by a mortgage granted by the company on its assets was in fact a loan made to certain individuals for purposes of assisting them in purchasing the shares of the company from former shareholders. The Supreme Court of Canada upheld the decision of the Nova Scotia Appeal Court and ruled that the mortgage was invalid.

It was contended that a portion of the mortgage was valid because the former shareholders used a portion of the purchase price paid to them for the shares to discharge liabilities of the company. The Court rejected that contention on grounds that the loan was used to purchase the shares and it was only after the shares had been purchased that the former shareholders discharged such liabilities. Therefore, the whole of the loan fell within the provisions of section 96(5) of the Act.

Section 14(1) of the Companies Act of Alberta,[42] and section 42(1) of the Canada Business Corporations Act,[43] also contain provisions prohibiting a company from granting financial assistance to a party purchasing shares in the company. The provisions of the Alberta Companies Act apply only to public companies. Although the writers of this paper have not researched the point, it is submitted that the common law prohibits such transactions by private companies, and that although section 14(1) of the Alberta Companies Act does not speak to private companies, the common law remains applicable and therefore such transactions by private companies are also prohibited.[44] The problem has been circumvented in some

39. R.S.S. 1978, c. M-16.
40. Mineral Disposition Regulations, Sask. Reg. 24 March 1961.
41. R.S.N.S. 1967, c. 42, as am..
42. R.S.A. 1970, c. 60, as am..
43. S.C. 1974-75-76, c. 33 as am..
44. *See* Fraser & Stewart, *Company Law of Canada* (1962) 45-97.

instances by the use of a bridging loan to purchase the shares and then the grant of a mortgage by the company as a guarantee after the shares have been safely purchased.[45]

VII. ROYALTIES

In *Western Oil Consultants* v. *Great Northern Oils Ltd.*[46] and *Masai Minerals Limited et al.* v. *Heritage Resources Ltd. et al.*,[47] the Courts were given an opportunity to consider surrender clauses contained in royalty agreements. In both of these cases, the Courts concluded that a surrender clause is not an interest in land.

A. *Western Oil Consultants* v. *Great Northern Oils Ltd.*, unreported, 12 March 1981 (Alta. Q.B.)

The plaintiff was granted a gross overriding royalty by the predecessor in interest to the defendant in consideration of services provided by the sole shareholder of the plaintiff in securing a farm-in agreement for such predecessor. The agreement contained the following provision:

> In the event the Group desires to surrender the said lands, or any portion thereof or any leases selected therefrom, that, thirty (30) days prior to any rental date, the Group shall notify W.O.C. Ltd. of its intention to make such surrender setting forth the lands to be surrendered. Within thirty (30) days of receipt of such surrender notice, W.O.C. Ltd. shall notify the Group as to whether they desire to take an assignment of any or all of the lands set forth in the said surrender notice. If, within the said thirty (30) day period, W.O.C. Ltd. elects to acquire any of the lands to be so surrendered, then the Group shall forthwith assign all its right, title and interest in and to such lands to W.O.C. Ltd. . . .

Certain lands which were subject to the royalty agreement were surrendered in three separate instances, the first in January of 1972, the second in February of 1972 and the third in November of 1972. In October, 1978, the plaintiff brought an action alleging breach of the provisions of the surrender clause quoted above.

The defendant raised four issues. First, that a notice of surrender was given to the plaintiff in respect of the surrender in January of 1972. Second, that the surrenders occurring in January and February of 1972 were barred by the provisions of the Limitations of Actions Act.[48] Third, that the claim cannot be prosecuted because the plaintiff was not licensed under the Real Estate Agents' Licensing Act.[49] Fourth, that the damages claimed were excessive.

The trial judge found that no notice of the three surrenders was given to the plaintiff. It was noted that the records concerning the lands in question maintained by the defendant's predecessor in interest were in an unsatisfactory state. Presumably, the trial judge inferred from that fact that the defendant was unaware of its obligation to give the surrender notice. He further noted that the plaintiff considered the property to be valuable but had no recollection of receiving any surrender notice. The trial judge specifically stated that he was impressed with the evidence of the plaintiff.

---

45. *See* L.C.B. Gower, *Principles of Modern Company Law* (4th ed. 1979) 227.
46. Unreported, 12 March 1981 (Alta. Q.B.).
47. [1981] 2 W.W.R. 140 (Sask. C.A.).
48. R.S.A. 1970, c. 209, as am..
49. R.S.A. 1970, c. 311, as am..

The trial judge found that the surrender notice required to be given pursuant to the clause quoted above must be in writing. Although the clause did not specifically refer to written notice, the Court noted that the words "setting forth the lands to be surrendered" and "lands set forth in the surrender notice" must contemplate a written notice. Further, evidence led at trial indicated that it is standard practice in the oil and gas industry that surrender notices are given in writing. It would seem, although it is not specifically stated, that the Court held that the absence of proof of a written surrender notice is evidence that no surrender notice was given. This implies that the onus is on the defendant to prove that he gave the surrender notice rather than on the plaintiff to prove that it was not given. The matter is unimportant in this decision since the Court found on the evidence of the witnesses that the surrender notices were not given.

The defendant claimed that the plaintiff's action was barred by the Limitation of Actions Act. The relevant provisions of that Statute are as follows:

> 5(1) The following actions shall be commenced within and not after the times respectively hereinafter mentioned:
>
> (c) actions . . . on a simple contract . . . within six years after the cause of action arose;
>
> (e) actions grounded on accident, mistake or other equitable ground of relief not hereinbefore specifically dealt with, within six years from the discovery of the cause of action;
>
> 18. No person shall take proceedings to recover land except:
>
> (a) within ten years next after the right to do so first accrued . . .

The defendant argued that the current claim constituted an action on a simple contract and that the cause of action in respect of the first two instances of surrender arose more than six years prior to the commencement of the action and were therefore statute-barred.

The plaintiff submitted that he was taking proceedings to recover land and that therefore the limitation period was ten years. In the alternative, he argued that his action fell within the provisions of section 5(1)(e) and that, in that case, the time period did not commence to run until the cause of action was discovered by him.

In considering whether the action was a proceeding to recover land, the Court noted that the issue was not whether the royalty interest constituted an interest in land but whether the covenant to give notice of surrender and thereafter provide an assignment constitutes an interest in land. The Court referred to the case of *Irving Industries Ltd. et al.* v. *Canadian Long Island Petroleums Ltd. and Sadim Oil & Gas Co. Ltd.*[50] in which a right of first refusal clause was held not to be an interest in land and therefore did not violate the rule against perpetuities. The Court stated that the key in determining whether the covenant constituted an interest in land was whether the plaintiff's right to an interest in the land accrued only by his own choice or was first dependent upon the action of another party. Since the plaintiff's right to land was dependent upon the defendant's decision to surrender, the surrender clause did not constitute an interest in land.

The Court ruled that the plaintiff's claim was an action on a simple contract and therefore fell within the provision of section 5(1)(c) of the Limitation of Actions Act and not within section 5(1)(e) thereof. Accordingly, the

50. (1974) 3 N.R. 430 (S.C.C.).

plaintiff's claim in respect of the first two instances of surrender was statute-barred since the cause of action in respect of them arose more than six years prior to the action being commenced.

The defendant contended that the plaintiff could not prosecute his claim because he was not a licensed agent under the Real Estate Agents' Licensing Act. The Court found that the plaintiff's contribution to the defendant's predecessor in interest's negotiations for the farm-in agreement were geological in concept and any agency services provided by him were purely incidental. Accordingly, the royalty was not granted to the plaintiff as consideration for his contributing agency services but as consideration for geological services. In this regard, the Court followed the decision in *Russ Burn's Petroleum Consultant Ltd.* v. *Union Oil Company of Canada Limited et al.*[51]

In assessing damages, the Court stated that the date of trial is a proper date for determining damages where the remedy of specific performance would have been appropriate if it had been available. It was contended by the defendant that the damages should be determined as of the date that the breach of contract occurred. The significance of this argument was due to the increase in the value of oil and gas.

The Court referred to the expert evidence of a petroleum engineer as to the valuation of the properties. In order to determine the value of the property which had been lost, namely the property surrendered in November of 1972, the expert divided the lands into three categories: those lands which contained proven reserves established by drilling; those lands which contained probable reserves and those lands which contained possible reserves. He then determined the probable proceeds from the sale of production from each category of lands, deducted the capital investment required to make such production and applied a discount rate of 10.8 percent on the estimated production proceeds. The discount rate was the current interest rate on Canada Savings Bonds. In order to account for the risk involved in the development of the probable and possible reserves, the expert applied a factor of 0.8 to the discounted net proceeds of production from the proven reserves, 0.4 from the probable reserves and 0.2 to those from the possible reserves. The valuation was done on a pre-tax basis since it was assumed that the plaintiff was an active company having tax deductions available to it which could be used to avoid paying tax.

B. *Masai Minerals Ltd. et al.* v. *Heritage Resources Ltd. et al.* (1981) 2 W.W.R. 140 (Sask. C.A.)

This case also involved an allegation of a breach of a surrender clause contained in a royalty agreement. The royalty clause obligated the grantor of the royalty to notify the royalty owner if it proposed to surrender any of the leases subject to the royalty and in that event, the royalty owner had the right to require the grantor to assign to it the lease proposed to be surrendered. The original grantor of the royalty had assigned its interest in the leases subject to the royalty to the defendant. The royalty agreement contained an assignment provision requiring that any grantor of the royalty be bound by the provisions of the royalty agreement.

---

51. Unreported (Alta. S.C. T.D.), referred to in L.D. Rae and R.P. Desbarats, "Recent Cases of Interest to Oil and Gas Lawyers" (1980) 18 *Alta. L.R.* 119 at 131.

The defendant did not argue that it did not have notice of or that it was not bound by the royalty agreement.

The defendant surrendered one of the leases subject to the royalty without giving notice to the plaintiff, the royalty owner, as required by the surrender clause in the royalty agreement. Subsequently, the defendant acquired a new lease covering the lands which had been subject to the surrendered lease, and acknowledged to the plaintiff that its royalty applied to the new lease.

The plaintiff claimed, however, that it was entitled to an assignment of the new lease since if it had received notice of the surrender it would have requested an assignment of the surrendered lease and would have owned the whole of the lease rather than a royalty interest in it.

The trial Court found that the surrender clause had been breached but that the plaintiff had suffered no damage since its royalty had been restored by the defendant.[52] The plaintiff appealed that finding. The Court of Appeal sustained the decision of the Trial Court. The Court stated that the defendant had breached the royalty agreement by surrendering without giving notice to the royalty owner. However, the defendant remedied that breach by restoring themselves to a position to carry out their obligation to offer to assign before surrendering. The Court stated:[53]

> This is an example of a contract which does not have a specific time for performance but which involves a continuing ability to perform. Under such a contract, the promisee can treat it as ended and sue any time after the promisor has breached it by making himself incapable of performing. The promisee by delaying action risks losing his right to sue if the promisor regains the ability to perform in the interval.

The Court of Appeal quoted the trial decision wherein it was stated:[54]

> Although the subject contract does require a reassignment in the stated circumstances, the main aim and purpose of it was, as I have said, to create the royalty which, having been revived, exists. Therefore, specific performance as a cause of action has lost its purpose.

The Court of Appeal also stated that the surrender clause did not constitute an interest in land and therefore no interest in land accrued to the plaintiff by reason of the improper surrender. It was also stated that since the original grantor had the right to assign its interest in the leases subject to the royalty, provided its assignee agreed to pay the royalty, the fact situation is distinguishable from the facts in *Irving Industries (Irving Wire Products Division) Ltd. et al.* v. *Canadian Long Island Petroleums Ltd. et al.*[55] The writers of this paper were unable to determine the significance of those findings. They do not seem to affect the Court's reasoning in any way.

C. *American Eagle Petroleums Limited* v. *Oriole Oil & Gas Limited*, unreported, 12 January 1981 (Alta. C.A.)

This is an appeal from a decision concerning a net profits interest agreement. The dispute between the parties was as to whether the holder of the net profits interest was entitled to 7 percent of 100 percent of the net profits from production or 7 percent of 50 percent of the net profits from production. The language used in the net profits agreement was the

52. [1971] 2 W.W.R. 352, referred to *id.* at 140.

53. *Supra* n. 47 at 145.

54. *Supra* n. 52 at 360.

55. *Supra* n. 50.

following: "A 7 percent share out of the assignor's share of the net profits derived from production." The assignor held a 50 percent working interest in the lands in question and therefore, a strict interpretation of the language in the agreement would result in the net profits holder being entitled to only 3.5 percent of the net profits from production. Based upon the evidence of negotiations between the parties in connection with the making of the net profits agreement, the Trial Court found that the parties had actually agreed that the net profits would be 7 percent of 100 percent of production and ordered rectification of the agreement. The Court of Appeal upheld the finding of the Trial Court. The case revolves solely around the evidence of the negotiations between the parties.

VIII. GAS PURCHASE CONTRACTS – ARBITRATION

A. *Shell Canada Resources Limited* v. *Canadian Western Natural Gas Company Limited* (1980) 13 Alta. L.R. (2d) 176 (C.A.)

This case is an appeal from a Trial Court decision concerning the effect of the Arbitration Amendment Act.[56] The relevant provisions of that Act deal with arbitrations for the redetermination of prices to be paid under gas purchase contracts. As such, they are of extreme relevance to the industry. However, for so long as the price of natural gas in inter-provincial and export markets is regulated, the provisions of that Act are only relevant to natural gas which is both produced and sold within the Province of Alberta.

Section 16.1(1) of that Act provides that when an arbitration is held with respect to the redetermination of gas prices under gas purchase contracts, the arbitrators shall use the "field value" of the gas in redetermining the price. The "field value" is defined as being the "commodity value of gas" less cost of service. "Commodity value" of gas is defined as being the "thermal value of gas determined by reference to the volume-weighted average prices of substitutable energy sources . . . " plus "the premium value of gas determined by reference to its inherent special qualities when compared with competing energy sources".

The issue which was presented before the Court of Appeal was whether the arbitrators are bound to use only the field value, as defined in the Act, in redetermining the purchase price or if they are entitled to consider prices paid for gas sold under other gas purchase contracts in Alberta. At the trial level, it was held that the arbitrators could consider prices paid under other gas purchase contracts in such redeterminations. The trial judge found that the Act required the arbitrators to determine the field value, without reference to prices paid under other gas contracts, so as to ensure that the arbitrators take the field value into consideration but that the Act does not compel the arbitrators to redetermine the price as being the field value. The Court of Appeal reversed the decision of the trial judge, stating that the provisions of section 16.1 (3)(b) which stated that the arbitrators shall "use the field value so determined in fixing the redetermined price of the gas" compelled the arbitrators to redetermine the price as being the field value.

Thus, this case appears to stand for the principle that in redetermining prices payable under gas purchase contracts for gas produced and sold in Alberta, the price shall be redetermined on the basis of comparison with

56. S.A. 1973, c. 88.

fuels other than gas and that the price paid under other gas purchase contracts shall not be considered in the arbitration. It should be noted that the Act specifically provides that parties cannot contract out of the provisions of the Act so that a provision in a gas purchase contract providing that a redetermined price shall be the price paid under other gas purchase contracts will not circumvent the Act.

IX. CONFIDENTIAL INFORMATION – EMPLOYEES

A. *Chevron Standard Limited* v. *Home Oil Company Limited and Leeson* [1980] 5 W.W.R. 624 (Alta. Q.B.)

This case involved an allegation by Chevron that its former employee, Leeson, had divulged confidential information to Home. Leeson was employed by Chevron as a geologist from 1953 to 1977. In 1977, he resigned and took a position with Home. Chevron alleged that Leeson provided Home with confidential information obtained during his employment with Chevron concerning a deep oil play in the West Pembina area of Alberta. Chevron had begun to work up the play in April of 1975 and drilled their first well in the play at approximately the same time as Leeson left Chevron's employment.

Chevron's claim was dismissed on the basis of the Court's finding that Leeson did not possess the confidential information alleged by Chevron and did not dispose of any confidential information to Home to the detriment of Chevron. The Court reviewed the law concerning obligations of employees to keep information confidential. It stated that an employee is under a duty not to disclose confidential information obtained in the course of his employment and that such duty continues to apply after he has left that employment. However, an employee is entitled to engage in business in competition with a former employer after quitting his service and to use his skill and knowledge in his trade or profession and his knowledge as to business matters.

The distinction is that in order for Chevron to succeed in its claim, it would have had to have shown not just that Leeson was employed by a business competing with Chevron, but that Leeson had disclosed confidential information to his new employers. The Court stated that in order for information to be confidential, it must have a quality of confidence about it and not be something which is public property or public knowledge. All factors in each case must be examined to determine if confidential information has been disclosed. Some factors relevant to that point are the nature of the information, the employee's relation to it, the amount of knowledge possessed and the circumstances in which it was obtained.

The Court found that in the present case, based upon the evidence, Leeson did not have detailed specific information as to Chevron's play in the West Pembina field. Leeson was a production geologist while employed by Chevron and the West Pembina field was an exploration play. Although Leeson was generally aware of the geological and geographical location of the play, he did not have specific information with respect to it. Although Home had become active in the same play after engaging Leeson, other companies also became involved in the play from information available through various sources. It was reasonable to assume that Home learned of the play without the assistance of confidential information disclosed to it by Leeson.

Leeson did disclose to Home that Nairb Petroleum was acting as a nominee for Chevron in drilling wells in the area so as to keep Chevron's interest confidential. The Court found that disclosure of that fact was a disclosure of confidential information but since no damage was suffered by Chevron as a result, no action lay against Leeson.

It was contended by Chevron that the possibility of misuse of confidential information will fasten a party with liability. The Court labelled that suggestion as being "astounding". It stated that to apply such a doctrine would make it extremely difficult for employees to move from one company to another. It is essential that individuals always be entitled to improve their position by changing jobs so long as they do not, in the process, divulge confidential information to their new employer. Accordingly, the Court declined to apply any "possibility of misuse doctrine".

X. CONTRACTS

The cases discussed under this heading involve fact situations outside of the oil and gas industry. However, the cases apply general principles of contract law and thus are of interest to lawyers in the oil and gas industry.

A. *Valli* v. *Mills*, unreported, 9 October 1980 (Alta. Q.B.)

This case involved a right of first refusal. The defendant had granted an "exclusive option" to the plaintiff "to lease or to buy the said premises" on the same terms as the defendant would be prepared to lease or sell to third parties. In 1974, the defendant wrote to the plaintiff stating that he had received a cash offer of $19,500 for the land. The plaintiff replied through his solicitor, electing to exercise his "option" to purchase and requesting that an executed copy of the cash offer received by the defendant be forwarded to him. The plaintiff's solicitor wrote to the defendant several times thereafter requesting that he be provided with the terms of the cash offer which had been received by the defendant or with a copy of the offer. In one instance, the solicitor advised that the terms of the offer were required so that the plaintiff could decide whether he wished to exercise his option. The defendant subsequently advised the plaintiff that the third party offer was a verbal offer which had been withdrawn and he further advised that he did not wish to sell the lands.

The Court found that the requests for a copy of the third party offer constituted a conditional exercise of the "option" and was thus a conditional acceptance. In order for there to have been a contract between the plaintiff and the defendant, the plaintiff would have had to communicate an unconditional acceptance of the offer to sell which had not occurred.

The defendant counter-claimed, requesting that caveats filed by the plaintiff be removed. The Court ruled that the "option" constituted a right of first refusal notwithstanding the use of the word "option" and that "it is settled law that a right of first refusal is not an interest in land." The Court referred to *Irving Industries (Irving Wire Products Division) Ltd. et al.* v. *Canadian Long Island Petroleum Ltd. et al.*[57] for that principle. Accordingly, since a caveat cannot be registered if it does not claim an interest in land, the Court ordered that the caveat be removed.

---

57. *Supra* n. 50.

B. *Gaumont* v. *Luz* (1981) 24 A.R. 609 (Alta. C.A.)

This case involved a gravel lease pertaining to lands in Alberta and an application by the lessor thereunder for possession of the lands which had been leased pursuant thereto. The gravel lease had been assigned to the defendant by the original lessee. Further, it contained an option for renewal. The issues raised in the case are as follows:

1. Was the option to renew the lease also assigned to the defendant?
2. Was the assignment perfected in the absence of notice thereof having been given to the lessor?
3. Was the option to renew validly exercised?

There had been a number of assignments of the lessee's interest in the lease. The first assignment was entitled "Assignment of Lease". In its recitals it referred to the option to renew. The assigning clause of the lease provided that the assignor: "does hereby irrevocably and unconditionally assign all his right, title and interest in the aforesaid lease to . . .".

The second assignment referred to the assignor thereunder (being the assignee under the first assignment) as being a "sublessee by an assignment of lease". The lease was fully described in the second assignment. The operative words of the second assignment were as follows:

> The lessor hereby subleases to _____, all of the said lands to be held by _____ until the 31st day of March, 1979, and for the extended term of five years until the 31st day of March, 1984, under a modification to the April 4, 1974 lease agreement dated March 4, 1975 . . .

The modification referred to was the amendment to the original lease which granted the option to renew, such option not having been included in the original document.

The third assignment of the lease was entitled "Assignment of Sublease". It recited the existence of the lease and the March 4 amendment granting the option to renew. The assignment provided that the assignor thereunder: "does hereby irrevocably and unconditionally assign all their right, title and interest in the aforesaid sublease and lease . . .".

It was contended that the assignments were subleases and therefore not effective to assign the option to renew. The Court of Appeal quoted the case of *Jameson* v. *London and Canadian Loan Agency Co.*[58] as establishing the rule for differentiating between an assignment and a sublease. The distinction between the two is that a sublease is for a period of time less than the term of the lease. That is, the sublessor must have retained a reversionary interest in the lease in order for there to be a sublease. Each of the three assignments in this case was an absolute assignment of the lease and, since each of the assignments specifically referred to the amending agreement, an assignment of the option to renew as well. There was no reservation in any of the assignments of any of the term reserved in the original lease. The second assignment used the word "sublease" in its operative provision; however, since it expressly assigned the extended term of the lease, which did not then exist since the option had not then been exercised, there was no reservation by the assignor and the document constituted an assignment notwithstanding the use of the word "sublease". Accordingly, the option to renew was validly assigned by all three assignments.

---

58. (1897) 27 S.C.R. 435.

The lessors argued that the assignments were not effective until express notice in writing had been given to them. In that regard, they relied upon section 34(15) of the Judicature Act.[59] Although it is clear that the lessors had knowledge of the assignments, it is equally clear that no express notice was given to them. The Court noted that the failure to give notice of an assignment of a chose in action resulted in the assignment being an equitable assignment rather than a legal assignment. The effects are merely procedural, however. If there had been an absolute legal assignment, that is an unconditional assignment, notice of which had been given to the lessor, the assignee would have been able to commence an action in its own name to enforce its rights. If there had been an unconditional assignment or an equitable assignment, where no notice was given, then the assignee would have been required to join the assignor in any action to enforce its rights under the lease. Since the action was brought by the lessor for possession and not by the lessee to enforce its rights, it is irrelevant whether the assignment was a legal or equitable assignment. Thus, the Court did not have to decide whether the actual knowledge of the lessor of the assignment was sufficient to make the assignment a legal one, notwithstanding that no actual notice had been given by the assignor or the assignee to the lessor.

The option to renew the lease expressly provided that it was to be exercised by giving notice to one of the lessors at a stated address. In fact, the notice was given to one of the other lessors at a different address. The lessor delivered the notice to the lessor to whom the notice should have been given prior to the expiration of the period within which the option was to be renewed. The Court of Appeal stated that the renewal clause did not specify who must send the notice nor did it specify any particular mode by which the notice must be sent. It merely provided that the lessor must be notified in writing at a particular address. The fact that the notification was transmitted by one of the lessors and not by the lessee is irrelevant. Accordingly, the Court of Appeal dismissed the lessors' application for possession.

The discussion in the case that the assignment of the lease without notice to the lessor may constitute an equitable assignment of a chose in action with the result that the assignee cannot enforce the terms of the lease against the lessor without joining the assignor in such action is of some interest. Freehold petroleum and natural gas leases do not differ significantly from the gravel lease involved in this case. Thus, it is important to note that an assignee of a freehold petroleum and natural gas lease should cause express notice of the assignment to be given to the lessor named thereunder to ensure that the assignee can enforce its rights under the lease without the necessity of having to find the assignor and join it in the action.

C. *Carman Constructions Ltd.* v. *Canadian Pacific Railway Co. et al.* (1980) 28 O.R. (2d) 232 (Ont. H.C.)

This is a case involving a negligent misrepresentation prior to the making of a contract. The applicability of the principles in *Hedley Byrne & Co. Ltd.* v. *Heller & Partners Ltd.*,[60] and the effect of an exclusion clause con-

59. R.S.A. 1970, c. 193, as am..

60. [1964] A.C. 465.

tained in the contract on liability for negligent misrepresentation were considered, along with liability under the principles of the *Hedley Byrne* case.

The defendant had requested bids on a contract for the removal of rock so that it could widen a railway siding. The plaintiff's bid was accepted by the defendant and a contract for the work was entered into. Prior to making its bid, the plaintiff had requested advice from the defendant as to the quantity of rock which needed to be removed and was advised that approximately 7,500 cubic yards was involved. In fact, it was necessary to remove 11,000 cubic yards.

The plaintiff's action involved two claims. First, that it was an implied term of the contract that there were only 7,500 cubic yards of rock to be removed and that that implied term had been breached by the defendant. Second, the plaintiff claimed damages for a negligent misrepresentation either on principles of contract law or on the principles enunciated in the *Hedley Byrne* case.

However, the Court found that the time alloted for tendering bids by the defendant was so short that it was impossible for any contractor to conduct an adequate investigation to ascertain accurately the quantity of rock to be excavated. Accordingly, it was reasonable for the plaintiff to inquire and to rely upon the advice of the defendant on that matter. The defendant knew or ought to have known that the plaintiff would rely on the defendant for the accuracy of such information and therefore owed a duty to the plaintiff either to convey accurate information or to advise the plaintiff that the information was not necessarily accurate.

The Court rejected the first claim of the plaintiff on the basis that the contract clearly and expressly provided that the plaintiff was obligated to remove the rock in a certain specified area. That term being so clear, an implied term having the effect suggested by the plaintiff could not be inferred by the Court.

As noted above, the Court found that the defendant owed a duty to the plaintiff regarding the accuracy of the information given to it prior to the plaintiff making its bid. The information conveyed to the plaintiff at that time constituted an innocent misrepresentation since there was no intention to defraud the plaintiff. An innocent misrepresentation does not generally entitle the victim to relief unless it constitutes a term of the contract. In this case it was clearly not a term of the written contract.

The Court did find that there was a collateral contract whereby the plaintiff agreed to enter into the written agreement in consideration of the defendant providing the information concerning the quantity of rock involved. Since the defendant provided incorrect information, the collateral contract had been breached and, on that basis, the plaintiff would have an action for damages.

The Court also reviewed the principles laid down in the *Hedley Byrne* case as clarified by the case of *Esso Petroleum Co. Ltd.* v. *Mardon*.[61] The Court stated that:[62]

> Where a representation is made by a person purporting to have superior knowledge for the purpose of inducing another to enter a contract, that is sufficient to create a duty of care in the circumstances. . . . Here, the C.P.R. knew, or ought to have known, that it had the only information as

61. [1976] 2 All E.R. 5 (C.A.).

62. (1980) 28 O.R. (2d) 232 at 245-246.

> to the quantity of rock, and it owed a duty to see that any representations made thereon were accurate.

Accordingly, under the *Hedley Byrne* principles, the plaintiff would have an action for damages against the defendant in tort.

However, the written agreement contained a number of exclusion clauses which are as follows:

> 3.1 It is hereby declared . . . by the contractor that this agreement had been entered into by him on his own knowledge respecting the nature and conformation of the ground upon which the work is to be done, the location, character, quality and quantities of the material to be removed, the characteristics of the equipment and facilities needed, the general and local conditions and all other matters which can in any way affect the work under this agreement, and the contractor does not rely upon any information given or statement made to him in relation to the work by the Company.
>
> 5.1.3 The contractor hereby guarantees that the cost of the work plus the fees shall not exceed . . .

The Court stated that there is no doubt that as a general rule, the parties to a contract may agree to except one party or another from the consequences of tortious conduct. The exclusion clauses contained in the written agreement are such as to preclude the plaintiff from subsequently claiming damages for a misrepresentation. Accordingly, the Court "reluctantly" concluded that the plaintiff's action must fail.

D. *Russelsteel Ltd.* v. *Consolidated Northern Drilling & Exploration Ltd. and Dale Burrows* v. *Harold Kitchen and Consolidated Land & Investments Ltd.*, unreported, 27 February 1981 (Alta. Q.B.)

This case repeats the principles of agency law that a third party cannot sue an agent whom he knows is acting for a principal and that when a principal holds out to a third party that an agent has been authorized to act on his behalf, the principal is bound by the agent's acts although the agent may have exceeded his actual authority if the third party has not been advised of the limits on the agent's actual authority. In such instances, the agent has ostensible or apparent authority. In this case, the agent, Burrows, had authority to borrow funds from the plaintiff on a line of credit established by the defendant Consolidated Northern Drilling. Consolidated Northern Drilling, the principal, subsequently restricted the agent's authority to borrow on the line of credit to $500. The principal did not notify the plaintiff of the limitation. The plaintiff sued both the principal and the agent for the outstanding balance of the line of credit. The principal had become insolvent. The Court held that the principal was liable for the full amount of the line of credit notwithstanding that the agent had exceeded his authority. However, the plaintiff did not have an action against the agent for the outstanding balance. There was no contractual relationship between the plaintiff and the agent. Rather, there was a contract between the plaintiff and the principal and a contract between the principal and the agent. The result was that although the principal was liable for the full amount of the indebtedness, since the principal was insolvent and since the plaintiff had no claim against the agent, the plaintiff was unable to collect the debt.

E. *Lozcal Holdings Ltd.* v. *Brassos Development Ltd.* (1980) 12 Alta. L.R. (2d) 227 (Alta. C.A.)

This case involved an interpretation of the phrase "as liquidated damages" in a contract for the sale of land. The plaintiff and defendant had entered into an agreement for the sale of land pursuant to which a

$2,500 deposit was placed with the vendor. The purchaser subsequently repudiated the contract. The vendor kept the deposit, subsequently selling the property for less than the purchase price stipulated in the original sale agreement. The sale agreement provided in part: " . . . if my offer is accepted and I fail to comply with the terms as hereinbefore agreed, the deposit shall be subsequently forfeited as liquidated damages . . . ".

The Court stated that normally a vendor is entitled to retain a deposit on accepting a purchaser's repudiation of a sale agreement and, if he subsequently sold the land at a loss, the vendor would be entitled to recover that loss less the amount of the deposit. A genuine deposit ordinarily has nothing to do with damages, except that credit must be given for that amount in calculating damages. On the other hand, liquidated damages are a genuine pre-estimate of damages for breach of contract agreed upon by the parties at the time that the contract is made. Liquidated damages must be a genuine pre-estimate of damages. Thus, if the amount which is stated in a contract to constitute liquidated damages is so large as to constitute a severe penalty for breach of contract, then it will not constitute liquidated damages and the clause providing for same will be unenforceable.

In this case, the question which arose was whether the plaintiff was entitled to damages in excess of the deposit since his loss on the sale exceeded the amount of the deposit.

The Court stated that the question needed to be determined on the basis of the parties' intention at the time that the contract was made. It stated that if their intention was to limit the purchaser's liability to the amount of the deposit then they could have easily said so expressly and such a provision should not be imported into the words "as liquidated damages", particularly in a printed form contract, in the absence of any other evidence of such intention. In the current case, there was no reason for deviating from the ordinary rule that actual damages suffered by a vendor are recoverable.

XI. INDIAN LANDS

A. *Marcel Piche et al.* v. *Cold Lake Transmission Limited and Worldwide Energy Company Ltd.* [1980] 2 F.C. 369 (T.D.)

This case involved an application by the plaintiffs for an injunction restraining the defendants from entering an Indian reserve to construct a pipeline. The defendant entered a conditional appearance in the action contending that the Federal Court had no jurisdiction. The defendant contended that since the application involved a right-of-way over land in the Province of Alberta, it fell within the jurisdiction of the Provincial Courts. The plaintiff argued that since surface rights across Indian reserves must be acquired pursuant to the Indian Oil and Gas Act,[63] and since, according to the submission of the plaintiffs, the Crown in Right of the Federal Government has possession of the lands in question, the Federal Court had jurisdiction. The Federal Court accepted the defendant's contention and ruled that it did not have jurisdiction to grant the injunction.

63. S.C. 1974-75-76, c. 47, as am..

XII. ADMINISTRATIVE REGULATION

A. *ATCO Ltd. et al.* v. *Calgary Power Ltd. et al.* (1981) 14 Alta. L.R. (2d) 106 (Alta. C.A.)

Pursuant to a public hearing convened by the Public Utilities Board (PUB) with respect to ATCO's take-over bid for 50.1 per cent of Calgary Power's shares, the PUB ordered ATCO not to take up and pay for any Calgary Power shares until the PUB heard the matter.

Calgary Power argued, as an interested party pursuant to section 51 of the Public Utilities Board Act (PUB Act),[64] that ATCO was about to unlawfully do something relating to a matter over which the PUB has jurisdiction. Calgary Power raised section 98 of the PUB Act which requires PUB consent to the uniting of one owner of a public utility with another owner of a public utility.

Pursuant to section 79 of the PUB Act, the PUB purported to exercise its authority to investigate and obtain information from ATCO as an owner of a public utility. ATCO argued that it was not an owner of a public utility and therefore was not subject to the jurisdiction of the PUB.

The relevant companies' structures can be summarized as follows: Calgary Power is a regulated public utility; ATCO is the owner of 58.1 per cent of the voting shares of Canadian Utilities Ltd.; Canadian Utilities Ltd., though not a regulated utility, owns over 90 per cent of the voting shares of three regulated public utilities — Northwestern Utilities Ltd.; Canadian Western Natural Gas Company Limited, and Alberta Power Ltd..

"Owner of a public utility" is defined in the PUB Act, in part, as "a person owning, operating, managing, or *controlling* a public utility . . . ".[65] [emphasis added] "Public utility" is defined in the PUB Act as "any system, works, plant, equipment or service for the production, transmission, delivery or furnishing of water, heat, light or power, either directly or indirectly, to or for the public . . . ".[66]

The Court interpreted the word "control" within the definition of "owner of a public utility" and found that both Canadian Utilities Ltd. and ATCO were "owners of a public utility". The Court held that "control" for purposes of the definition can exist through indirect shareholding of a company which directly owns a public utility in circumstances where the shareholding is exercised to determine the operations and management of the public utility. Thus in applying the result of this case to determine whether shareholding control is sufficient to establish a person as an "owner of a public utility" it is not enough to determine whether control of the management and operations is possible, but in addition, whether the control is exercised in fact over the operation and management of the public utility.

Definitions in the Gas Utilities Act,[67] of "owner of a gas utility" and "gas utility" are similar to the PUB Act's definitions of "owner of a public utility" and "public utility". Thus, the principles discussed in this case are applicable to the Gas Utilities Act which requires certain persons who

64. R.S.A. 1970, c. 302, as am..
65. *Id.* s. (2) (i) (i).
66. *Id.* s. (2) (j) (iii).
67. R.S.A. 1970, c. 158, as am..

control gas utilities through direct or indirect shareholding to obtain the approval of the PUB or an exemption from the provisions of the Gas Utilities Act when engaging in various activities referred to in the Act.

B. *Saskatchewan Power Corporation et al.* v. *TransCanada Pipelines Limited et al.* [1980] 4 W.W.R. 174 (F.C.A.)

This case considers the authority of the National Energy Board (NEB) when fixing just and reasonable transportation tolls and rates under Part IV of the National Energy Board Act (NEB Act)[68] for an interprovincial gas pipeline company which owns the gas it transports. The case considers whether the NEB's authority extends to prescribing the price at which gas owned by the pipeline company may be sold. Although in this case the Federal Court of Appeal unanimously upheld NEB Order TG-1-76 ordering the rates and tolls to be charged by TransCanada Pipelines Limited (TCPL) for gas it sold to the Saskatchewan Power Corporation (SPC), significantly different reasons were given by each member of the Court. The authority of the NEB under Part IV of the NEB Act to prescribe the inter-provincial price at which gas is sold by a pipeline company therefore remains unclear.

In 1976 TCPL was contractually obligated to sell gas purchased by TCPL in Alberta to SPC in Saskatchewan at a price which was lower than the price prescribed in 1975 by the Natural Gas Price Regulations made under the Petroleum Administration Act.[69] TCPL applied to the NEB to have its rates and tolls fixed with respect to the gas sold to SPC, and in Order TG-1-76 the NEB made the "Imputed Alberta Border Price" which was fixed under the Natural Gas Price Regulations, a benchmark for the rates and tolls which it fixed. The section of the NEB Act, Part IV, under consideration was section 61 which states:

> Where the gas transmitted by a company through its pipeline is the property of the company, the differential between the cost to the company of the gas at the point where it enters its pipeline and the amount for which the gas is sold by the company shall, for the purposes of this Part, be deemed to be a toll charged by the company to the purchaser for the transmission thereof.

In *Saskatchewan Power Corporation* v. *TransCanada Pipelines Limited*[70] the Supreme Court of Canada determined that TCPL's present contract to sell gas to SPC was a contract for the sale of gas required by section 51(2) of the NEB Act to be filed by TCPL with the NEB. Once filed such contract was deemed by section 51(2) to constitute a tariff subject to NEB regulation.

In the present case, SPC argued that:[71]

> (a) the National Energy Board Act does not confer upon the Board any jurisdiction to alter the terms of a contract, in the instant case, the price which the appellants under the contract should pay for gas to be redelivered by TransCanada under the contract as distinguished from a toll which is to be paid for the carriage of gas;
>
> (b) sections 50, 53, and 61 of the National Energy Board Act, if interpreted as the statutory basis for the Board's jurisdiction over the price in the contract, are *ultra vires* the Parliament of Canada.

Thurlow C.J.F.C. held that the NEB could disallow the SPC/TCPL contract to the extent that it was a tariff setting transportation tolls and the NEB could replace it by prescribing appropriate tolls. However, section

68. R.S.C. 1970, c. N-6, as am..
69. S.C. 1974-75-76, c. 47, as am..
70. [1980] 4 W.W.R. 174, *see supra* n. 51 at 120.
71. *Id.* at 178.

61, in conjunction with the statutory authority of the NEB to make orders respecting tariffs and tolls, does not enable the NEB to require that the price charged for gas sold by TransCanada be high enough to recover the acquisition cost of the gas plus the transportation tolls so that the difference between the selling price and the cost of the gas would be deemed to be a toll. "If [including the Imputed Alberta Border Price in the NEB order] it was intended thereby to prescribe the price at which the gas was to be sold it would, I think, be beyond the authority of the board under the NEB Act."[72] Nevertheless, reference to the Imputed Alberta Border Price in the NEB's order was permitted since it was only included as information as to an element of price which was prescribed by the Natural Gas Price Regulations and not by the NEB.

Pratte J. reasoned that since by section 61 the "differential" between the gas pipeline's cost of acquiring the gas and its sales price is deemed to be a toll charged by the pipeline to the purchaser for gas transmission, the NEB has authority to prescribe the "differential" and thus prescribe the price at which gas may be sold by a pipeline company. It was therefore necessary for Pratte J. to consider the constitutional argument that section 61 is *ultra vires* the federal parliament since altering the price agreed upon in the contract for the sale of gas was legislation in relation to property and civil rights. He held that section 92(10)(a) of the British North America Act[73] granting federal legislative authority over interprovincial undertakings, like pipelines which are subject to the NEB Act, included the jurisdiction to regulate the conditions of contracts respecting both transportation and sale.

Kerr D.J. found that NEB Order TG-1-76 was not fixing a selling price of gas, but was only having regard to a selling price lawfully fixed pursuant to the Petroleum Administration Act. However, included in the factors to be considered by the NEB in fixing a pipeline company's transportation toll, is the company's costs of acquiring gas, and thus the Imputed Alberta Border Price could be included in the prescribed tariff. His *obiter dicta* does however refer to section 63 of the Petroleum Administration Act as implying an authority of the NEB under Part IV of the NEB Act to prescribe gas prices.

It seems therefore, that in the absence of specific federal legislation prescribing the price at which gas may be sold in the interprovincial market, the NEB has legislative authority and jurisdiction to prescribe such prices.

C. *Gladstone Petroleum Ltd.* v. *Husky Oil (Alberta) Ltd.* [1980] 3 W.W.R. 728 (Sask. Q.B.)

The Oil and Gas Conservation Act,[74] provides for compulsory unitization where, after a hearing before the Oil and Gas Conservation Board into a proposed plan of unitization, the Lieutenant Governor in Council orders that a field or a portion thereof be operated as a unit.

There is no appeal from a decision of the Lieutenant Governor in Council passing an Order in Council approving a scheme of unitization. Gladstone Petroleum Ltd. sought to quash the Order in Council which

72. *Id.* at 181.
73. (U.K.) 30 & 31 Vict., c. 3.
74. R.S.S. 1978, c. O-2.

created the Gleneath Unit in the Dodsland field. Gladstone considered that it had not been granted an equitable share of production under the unit and challenged the validity of the unitization on various technical and procedural bases.

These challenges raised a number of administrative and constitutional law arguments which were dealt with and dismissed by the Court but which illustrate that numerous procedural and administrative pitfalls may exist for applicants and tribunals considering compulsory unitization.

In this case the Court did not hear the trial and render its decision until 14 years after Gladstone originally objected to the unitization at the Board's hearing on the grounds that the plaintiff would suffer economic loss if its wells were unitized. Reviewing the intervening years of production from the unit, the Court found that the plaintiff had suffered loss and that unitization had proven to be inequitable to the plaintiff.

However, the Court cited and followed *Anisminic Ltd.* v. *Foreign Compensation Commission*[75] respecting the right of an administrative tribunal, in the present case the Cabinet, to be wrong and the immunity of its decision from judicial review provided that it properly exercised its discretion and followed proper procedures.

D. *Lamco Gas Co-op Ltd.* v. *Grinde*, unreported, 22 December 1980 (Alta. Q.B.).

This case, on appeal from Small Claims Court, dealt with the interpretation of a contract between a member-owned gas co-operative incorporated under the Co-operatives Association Act[76] and franchised under the Rural Gas Act,[77] and a member of the Co-op who contracted to purchase gas from the Co-op. The Court interpreted the price revision terms of the contract in favour of the Co-op by finding that the monthly minimum charge for gas was part of the "rates" payable under the contract and therefore subject to revision.

However, with respect to the purchaser's second argument that the contract was unenforceable because it was discriminatory in favour of purchasers having a large monthly consumption, the Court held that such a rate structure, even if discriminatory, is not illegal or contrary to public policy so as to render the contract unenforceable.

The Court referred however to the Rural Gas Act, section 41(1), which gives the PUB jurisdiction to alter the rates charged by rural gas co-operatives if the rates are discriminatory and the Court stated that this jurisdiction is not given to the Courts.

XIII. CONSTITUTIONAL LAW

A. *Reference Re: Natural Gas and Gas Liquids Tax* [1981] 3 W.W.R. 408 (Alta. C.A.)

This reference under the Constitutional Questions Act[78] concluded that the Natural Gas and Gas Liquids Tax as proposed by the National Energy Program and introduced by Bill C-57 as an amendment to the Excise Tax

75. [1969] 2 A.C. 147 (H.L.).
76. R.S.A. 1970, c. 67, as am..
77. S.A. 1973, c. 83, as am..
78. R.S.A. 1970, c. 63, as am..

Act,[79] is *ultra vires* the federal parliament to the extent that it purports to tax certain natural gas which is owned, *in situ*, by the Province of Alberta and produced by the Province through a pipeline owned by the Province and exported and sold by the Province to purchasers in Montana pursuant to the export regulatory requirements of the National Energy Board Act.[80]

Bill C-57 states that the tax is to be imposed, levied and collected on the receipt of marketable pipeline gas by a distributor and deems an exporter of gas who has not paid tax to be a distributor and to have received the gas at the time of export. The Bill also states that the tax is binding on Canada or any Province.

The Court held that section 125 of the British North America Act[81] applied to the particular gas in question such that the tax was *ultra vires*. Section 125 states "No lands or property belonging to Canada or any Province shall be liable to taxation."

Although of limited applicability because of the particular facts of the case, the arguments raised may apply more generally as federal-provincial constitutional issues continue to arise in the energy field.

The federal government argued that the proposed legislation was under the trade and commerce power because the tax was to raise money to fund the National Energy Program. The Court rejected this argument because a purpose for which money raised by a tax is spent, being an object under the trade and commerce power, does not by itself characterize the tax as a tax under the trade and commerce power. Bill C-57 is not aimed at regulating trade and commerce but aims to raise revenue by taxation under the federal power to tax by any means and this is true notwithstanding that the tax in this case was on exports.

Having failed to show that the tax was under the trade and commerce power the federal government sought to show that section 125 of the British North America Act did not apply. It was argued that the tax was not a tax on the property of a province but was a tax on a transaction or on the movement of gas or on the consumption of gas. To this argument the Court stated that "the practical effect of a tax on the transaction by which a government disposes of its property or a tax on the person or the proprietor of that property, differs little from a tax on the property itself"[82] and that with respect to the deeming provision which makes the Province a distributor: "Canada has thus created an artificial and non-existent situation, applied it to the property of a Province and has purported to base its tax on the result."[83]

The federal government admitted that provincial gas *in situ* or the sale of gas *in situ* was immune from federal taxing but argued that immunity did not extend to provincial property which becomes the subject of an ordinary commercial venture, or in other words, by applying industry to its property the province has lost immunity from tax. This argument that "any industrial effort by a province in relation to its assets makes those

79. R.S.C. 1970, c. E-13, as am..
80. *Supra* n. 68.
81. *Supra* n. 73.
82. [1981] 3 W.W.R. 408 at 421.
83. *Id.* at 426.

assets liable to federal taxation"[84] was twofold.

Firstly, the novel argument was put forward which asserted that the Province's dealings with its natural gas in this fashion were beyond the usual ambit of governmental action and were not contemplated by the British North America Act in 1867. The Court dismissed this argument following a number of cases showing it to be not in keeping with the tradition of progressive interpretation of the B.N.A. Act.

Secondly, it was argued that "if property which has been subjected to provincial industrial effort continues to be immune from federal taxation, a province could destroy the federal tax base by nationalizing all business activity within its boundaries".[85]

In response the Court referred to both provincial and federal commercial activities including those proposed in the National Energy Program as now being commonplace but stated that nationalism, if taken to an extreme to impair the powers of the other level of government, could be colourable. However, in the present case the Province's activities were limited to primary production and the simple capture and sale of a resource owned by the Province.

B. *Fulton, Friesz and Wheeler* v. *Energy Resources Conservation Board and Calgary Power Ltd.*, unreported, 27 January 1981 (S.C.C.)

The decision of the Alberta Court of Appeal in this case was rendered last year.[85a] The following is a summary of the Supreme Court of Canada's reasons for dismissing the appeal. The constitutional question before the Court was:

> Does the Province of Alberta have constitutional power to authorize its Energy Resources Conservation Board to entertain an application authorizing the construction and operation of transmission lines intended to interconnect or tie in with electrical facilities operated in another Province and to serve any or all of the following purposes, as set out in the Agreed Statement of Facts:
>
> (I) to provide generation capacity reserve;
>
> (II) to provide mutual assistance for emergencies in either system;
>
> (III) to provide mutual overall operating economies by energy-capacity interchange;
>
> (IV) to allow sale or exchange of surplus power or energy between Alberta and British Columbia;
>
> (V) to provide mutual assistance in meeting reserve and reliability requirements;
>
> (VI) to provide 500 KV back-up transmission in Alberta and British Columbia;
>
> (VII) to allow for the export of electrical power to the United States of America; and
>
> (VIII) to form part of a 500 KV Transmission Network within Alberta.

The argument before the Court was limited to whether, in light of section 92(10)(a) of the British North America Act,[86] the Hydro and Electric

84. *Id.* at 427.

85. *Id.* at 428.

85a. [1980] 3 W.W.R. 176.

86. *Supra* n. 73.

Energy Act[87] could give the E.R.C.B. jurisdiction to grant a licence to construct and operate a power line extending to the British Columbia border. The power line was intended to be interconnected with a British Columbia line at that point. Laskin C.J.C. summarizes that:

> Section 92(10)(a) of the B.N.A. Act exempts from exclusive provincial legislative authority in relation to local works and undertakings such as are in the class of "lines of steam or other ships, railways, canals, telegraphs and other works and undertakings connecting the Province with any other or others of the Provinces or extending beyond the limits of the Province".

In discussing the appeal and holding in favor of the E.R.C.B.'s jurisdiction, the Court relied on the fact that:

1. there was no existing federal regulatory authority with respect to the construction and operation of such a line;
2. Calgary Power acknowledged the federal competence to regulate at the point of interconnection;
3. the E.R.C.B. did not purport to exercise regulatory control over the agreement between Calgary Power and B.C. Hydro;
4. at the construction and operation stage of the line, which the E.R.C.B. was regulating, Calgary Power was not operating as an inter-provincial undertaking and even if there were an intention to so operate or steps had been taken to operate the line inter-provincially, the interconnected line would not be in the hands of a single person (Calgary Power) but would be owned only by Calgary Power in Alberta.

The case is most important for its reaffirmation of the principle that there is a constitutional difference (when considering the validity of provincial legislation) between circumstances where affirmative federal legislation exists and circumstances where no affirmative federal legislation exists and the field is open for valid provincial legislation.

C. *Reference Re Mining and Mineral Rights Tax Act* (1980) 115 D.L.R. (3d) 482 (Nfld. C.A.)

The Mining and Mineral Rights Taxation Act[88] provides for two taxes. The Mining Tax under Part II of the Act is an annual tax of 15 per cent of the taxable income from mining operations of an operator or contractor, with the Lieutenant Governor in Council having discretion to determine whether taxable income is computed on individual mines or groups of mines. The Mineral Rights Tax under Part III of the Act is levied in two parts; firstly, against every operator and contractor as to 20 per cent of the amount by which 20 per cent of the operator's or contractor's net income exceeds non-Crown royalties and rentals. Secondly, the Mineral Rights Tax is levied against a recipient of royalty, rental and other payments made to such recipient for his granting to an operator or contractor of a right to mine. This second part of the Mineral Rights Tax is 20 per cent of net revenue received in consideration of the grant of the rights.

The issue before the Court was whether either the Mining Tax or the Mineral Rights Tax was an indirect tax and thus *ultra vires* the Provincial Legislature.

In determining taxable income for purposes of the Mining Tax and the first part of the Mineral Rights Tax and for purposes of determining net

87. S.A. 1971, c. 49, as am..
88. S.N. 1975, c. 68, as am..

revenue pursuant to the second part of the Mineral Rights Tax, the Act prescribed certain deductions from gross income and from gross revenue with discretion in the Minister and the Lieutenant Governor in Council to determine the permitted deductions.

Intervenors argued that the second part of the Mineral Rights Tax was a sales tax on an individual commodity (iron ore); that it was a tax on gross revenues because deductions are discretionary with the Minister; and that the tax was a royalty surcharge and not levied on other sources of income of the taxpayer.

The Court found that since the tax was levied on net income and net revenue it was an income tax. The fact that in calculating net income or revenue, deductible expenses must be approved by the Minister and that the tax is imposed only on a particular component of a taxpayer's income does not affect the nature of the tax as being an income tax.

D. *Henuset Bros. Ltd.* v. *Syncrude Canada Ltd. et al.* [1980] 6 W.W.R. 218 (Alta. Q.B.)

The plaintiff brought an action for damages pursuant to section 31.1 of the Combines Investigation Act[89] respecting the rejection by the defendants of the plaintiff's lowest bids on pipeline construction projects. The plaintiff alleged that the defendants conspired, combined, agreed or arranged to restrain or injure competition contrary to the Combines Investigation Act. Section 31.1 of the Combines Investigation Act provides a civil cause of action in damages for any person who suffers loss or damage as a result of conduct contrary to any provision of Part V of the Act.

On a pre-trial motion the defendant Alberta Energy Company challenged the constitutional validity of section 31.1 and the Court found that this section was within the scope of the federal trade and commerce power as it forms an integral part of the overall scheme for general regulation of trade and commerce throughout Canada.

Since the trial of this case two other decisions have determined that section 31.1 of the Combines Investigation Act is *ultra vires* and therefore puts the *Henuset* decision in doubt. In *Rocois Construction Inc.* v. *Quebec Ready Mix Inc.*,[90] the Federal Court of Appeal rejected the argument that the section was within either the criminal law power, the trade and commerce power or made with respect to the peace, order and good government of Canada. The *Rocois* decision was followed in *Seiko Time Canada Ltd.* v. *Consumers Distributing Co. Ltd.*[91]. The *Henuset* case is being appealed.

E. *Henuset Rentals Ltd.* v. *United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry, Local Union 488* (1981) 6 Sask. R. 172 (Sask. C.A.)

Cochin Pipe Lines Ltd. obtained certificates from the National Energy Board granting it leave to construct a pipeline from Fort Saskatchewan to a point on the Saskatchewan-United States border and from there ultimately to Sarnia, Ontario. Henuset Rentals Ltd. was contracted by Cochin for construction of that part of Cochin's pipeline from Fort Sas-

89. R.S.C. 1970, c. C-23, as am..
90. (1980) 105 D.L.R. (3d) 15 (F.C.A.).
91. (1981) 29 O.R. (2d) 221 (Ont. H.C.).

katchewan, Alberta, to Kerrobert, Saskatchewan.

The defendant, Local 488, obtained certification as the bargaining agent for Henuset's employees from the Saskatchewan Labour Relations Board under the Trade Union Act,[92] and Henuset applied to have the certification quashed on the basis that its employees were engaged in operations on a federal work, undertaking or business and therefore subject to the Canada Labour Code, and accordingly the Saskatchewan Labour Relations Board had no jurisdiction.

The Saskatchewan Court of Appeal found that construction of the pipeline *per se* did not form an integral part of, nor was it necessarily incidental to, the operation and control of the pipeline, and following the decisions of the Supreme Court of Canada in the *Stevedoring* case[93] and *Construction Montcalm Inc.* v. *The Minimum Wage Commission et al.*,[94] held that the Saskatchewan Trade Union Act applied.

XIV. CANADA LANDS

A. *B.P. Exploration Company (Libya) Limited* v. *Hunt* [1981] 1 W.W.R. 209 (N.W.T.S.C.)

The plaintiff, B.P., was granted judgment in an English action against the defendant, Nelson Bunker Hunt, for over $39,000,000. Hunt held legal title to federal oil and gas exploratory permits covering subsea lands in the Beaufort Sea in trust for a Texas partnership, Hunt International Petroleum Company of Canada (HIPCO) of which the defendant beneficially owned a 50 per cent partnership interest. The plaintiff commenced an action in the Northwest Territories Supreme Court to sue on the English judgment and the plaintiff also obtained from this Court a Mareva type injunction which is an *ex parte* interlocutory injunction restraining the defendant from removing or otherwise disposing of any assets within the Northwest Territories. This case considered the defendant's application to set aside the injunction.

Amongst other issues raised by the defendant it was argued that the defendant did not own assets in the Northwest Territories because either:

a. the exploratory permits were beneficially owned by HIPCO, the partnership, and only registered in the defendant's name because the Canada Oil and Gas Land Regulations[95] do not permit a partnership to be the registered holder of an exploratory permit, or;
b. the exploratory permits cover lands under the Beaufort Sea, a distance of 40 to 50 miles offshore at a depth of at least 100 feet and the lands under the territorial sea are not part of the Northwest Territories.

With respect to the first issue, the Court held that the defendant's partnership interest in HIPCO constituted an asset within the Northwest Territories since the Partnership Ordinance,[96] s. 25(2) provides that partnership property is subject to a charging order or the appointment of a receiver on the application of a judgment creditor of one of the partners.

92. R.S.S. 1978, c. T-17.
93. [1955] S.C.R. 529.
94. [1979] 1 S.C.R. 759.
95. SOR Cons. 1978, 1518.
96. R.O.N.W.T. 1979, c. P-1.

It is unclear on what basis the Court found the Northwest Territories Partnership Ordinance to apply since HIPCO is a Texas partnership, however, the *ex parte* application would not have been argued on this point.

With respect to the second issue, the Court referred to the boundaries of the Northwest Territories as set forth in the Northwest Territories Act,[97] s. 2 which in part includes:

> all that part of Canada north of the Sixtieth Parallel of North Latitude, except the portions thereof that are within the Yukon Territory, the Province of Quebec or the Province of Newfoundland.

The Court found the subsea lands in question to be clearly within this statutory definition.

B. *Baker Lake et al.* v. *Minister of Indian Affairs and Northern Development et al.* [1980] 5 W.W.R. 193 (F.C.T.D.)

The Inuit of the Baker Lake area of the Northwest Territories commenced this action against the federal government seeking injunctive and declaratory relief based on aboriginal title to lands in the area. Certain mining companies having interests in the area were joined as co-defendants.

The orders sought by the Inuit included:

1. an order restraining the government from issuing land use permits;
2. an order restraining the mining company defendants from carrying on activities there;
3. a declaration that the lands were neither "territorial" nor "public lands'" as defined in the Territorial Lands Act,[98] the Public Lands Grants Act,[99] and the Canada Mining Regulations,[100] and
4. a declaration that the Inuit's aboriginal title constituted "rights previously acquired" and that the Inuit were "holders of surface rights" within the Canada Mining Regulations.

The decision followed previous Supreme Court of Canada decisions including *Calder* v. *Attorney General of British Columbia*,[101] which acknowledge the existence of aboriginal title under Canadian common law. However, when considered in conjunction with the aforementioned statutes legislating with respect to the lands in question, the aboriginal rights arising at common law are significantly diminished. The result of the operation of the statutes is that the aboriginal title in issue extends only to the Inuit's right to hunt and fish on the lands and the other declaratory and injunctive relief sought by the Inuit was not granted.

XV. PARTNERSHIP

In different contexts the issue as to the nature of an interest in a partnership arises. For example, is a partnership interest a personal property interest and as such to be treated as a separate asset in its own right or is a partnership interest an undivided interest in the specific assets of the partnership? This question may be important when considering the applicability of rights of first refusal under a standard industry operating

97. R.S.C. 1970, c. N-22.
98. R.S.C. 1970, c. T-6, as am..
99. R.S.C. 1970, c. P-29.
100. SOR Cons. 1978, 1516.
101. [1973] S.C.R. 313.

agreement where one or all of the partners in a partnership which is a party to the agreement sells their partnership interests.

A. *Seven Mile Dam Contractors* v. *The Queen in Right of B.C.* (1981) 25 B.C.L.R. 183 (B.C.C.A.)

This case involves principles of partnership law which arise in the context of a sales tax. The Social Services Tax Act,[102] section 3(1), requires the purchaser of tangible personal property to pay a social services tax of 7 per cent of the value of a purchased asset.

The vendor of certain heavy equipment was a partnership consisting of G.F.A., as to a 70 per cent partnership interest, and C.C., as to a 30 per cent partnership interest. The purchaser of the equipment was a partnership having partnership interests of G.F.A. as to 40 per cent, C.C. as to 10 per cent, H.B.Z. as to 30 per cent, and A.J. as to 20 per cent. Since the partners comprising the vendor were also partners comprising a 50 per cent partnership interest of the purchaser, the purchasing partnership paid tax on the full value of the purchased equipment and then claimed a refund of 50 per cent of the tax paid.

The Consumer Taxation Branch refused to refund any tax arguing that individual partners have no interest in the specific assets of the partnership and consequently in this case the parties to the transaction were the two partnerships and not the individual partners. In support of its argument, the Consumer Taxation Branch pointed out that the Interpretation Act[103] defines "person" to include a partnership.

The Court held in favor of the taxpayers by stating that the sale by partners of a partnership asset is a sale by the partners of their individual interests in a specific asset. The Court cited Duff J. in *Boyd* v. *Attorney General of British Columbia*[104] for the proposition that each partner has a property interest in the specific assets of the partnership. The Court further stated that the general law of partnership is not displaced in relation to the Social Services Tax Act by a definition in the Interpretation Act.

In reaching its conclusion, the Court referred to *Lindley on Partnership* for the proposition:[105]

> Nevertheless, if, for any purpose, it is necessary to consider the nature of a share [of a partner] apart from the realization of all of the assets, such share is regarded as a proportionate interest in the specific items of property which together constitute the partnership property.

The result is consistent with the conclusion in *B.P. Exploration Company (Libya) Limited* v. *Hunt*[106] where, for the purposes of determining the rights of a creditor of a partner, the partner's interest was considered to be an undivided interest in the partnership's assets and subject to a charging order or the appointment of a receiver.

However, in another recent case *A.E. LePage Ltd.* v. *Kamex Developments Ltd. et al.*[107] in which the Ontario Court of Appeal was considering whether co-ownership of property in itself constituted a partner-

102. R.S.B.C. 1960, c. 361, as am..
103. R.S.B.C. 1979, c. 206.
104. [1917] 54 S.C.R. 532.
105. (13th ed. 1971) 367.
106. [1981] 1 W.W.R. 209 (N.W.T. S.C.).
107. (1980) 105 D.L.R. (3d) 84 (S.C.C.) *affg.* (1977) 78 D.L.R. (3d) 223 (Ont. C.A.).

ship among the co-owners, the following passage was quoted from Duff J. in *Robert Porter & Sons Ltd.* v. *Armstrong et al.*:[108]

> English law does not regard a partnership as a *persona* in the legal sense. Nevertheless, the property of a partnership is not divisible among the partners *in specie*. The partner's right is to a division of profits according to the special arrangement, and as regards the *corpus*, to a sale and division of the proceeds on dissolution after the discharge of liabilities. This right, a partner may assign, but he cannot transfer to another an undivided interest in the partnership property *in specie*.

It seems therefore, that the nature of a partnership interest may depend upon whether the question is raised with respect to third parties' rights or the rights as between the partners.

XVI. MISCELLANEOUS

A. *Wooster* v. *Saskatchewan Oil and Gas Corporation* (1980) 5 Sask. R. 313 (Sask. Q.B.)

The defendant was the operator of a well which was drilled on the plaintiff's lands and subsequently abandoned. At the time of abandonment, drilling mud which remained in a drilling pit was displaced onto the adjacent land, allowed to dry out, and then returned to the pit and levelled. Upon completion of this operation in the fall of 1975, the fence surrounding the drill site was removed by the defendant. In the spring of the following year a number of the plaintiff's cattle in the pasture of the drill site died. The drilling mud which is salty and attractive to cattle included caustic soda and lime which is injurious to cattle when ingested.

The Court found the defendant negligent in permitting drilling mud to remain around the well site when it knew or should have known that ingestion of the substance could be injurious to cattle. Damages awarded against the defendant included the value of the cattle which were lost.

B. *McLachlin* v. *Colonial Petroleums Limited*, unreported, 11 April 1980 (Ont. S.C.)

The Gas and Oil Leases Act,[109] section 2, provides that a judge under that Act can make declarations with respect to a default under a gas or oil lease. The lease in issue was for 5 years and so long thereafter as any of the leased substances were produced in paying quantities. It was held that since the lease contained no affirmative covenant by the lessee to obtain production, termination of production may be an event upon which the lease can terminate but it is not a default and therefore a judge has no jurisdiction in such circumstances to make an order.

APPENDIX A

A. *Alberta*

1. *Second Session, 19th Legislature, 1980*

The Mines and Minerals Amendment Act, 1980 (No. 3), S.A. 1980, c. 76 (Bill 92) In force November 27, 1980

In addition to numerous housekeeping matters, this amendment to the Mines and Minerals Act provides:

Subsection 120(4.2) is added to enable the Minister to grant an additional 90-day extension to leases which are being continued by the

108. [1926] S.C.R. 328.
109. R.S.O. 1970, c. 188.

existing 90-day drilling period under subsection 120(4) or 120(4.1) if additional time is required to evaluate a drilled well.

Section 123 is re-enacted to permit the Minister to provide extensions of up to 5 years to the deeper rights reversion dates of leases where it is in the public interest to do so.

The Natural Gas Price Administration Amendment Act, 1980, S.A. 1980, c. 78 (Bill 63) In force December 12, 1980

The Natural Gas Price Administration Amendment Act was proclaimed in force December 12, 1980 in order to replace the Natural Gas Pricing Agreement Act upon the failure of the Provincial and Federal governments to reach a gas pricing agreement. Bill 63 brings the Act up to date with the Pricing Agreement Act, including, Subsection 1(a), which was re-enacted to provide a new definition of "Alberta cost of service", now providing for inclusion of costs and charges prescribed by regulation.

The Natural Gas Rebates Amendment Act, 1980, S.A. 1980, c. 79 (Bill 71) In force October 1, 1980 except Section 8.1 which is in force January 1, 1981

Section 3 is amended to allow rebates to be made in respect of heating oil or propane in addition to gas, and to provide that no rebate shall be paid in respect of gas delivered after March 31, 1985.

Section 8.1 is added to provide for establishing the Natural Gas Rebates Fund to be comprised of non-renewable resource revenues transferred from the General Revenue Fund and to be used to pay all rebates under the Act.

The Petroleum Marketing Amendment Act, 1980, S.A. 1980, c. 81 (Bill 62) In force November 27, 1980

Section 13 is amended to add to the definition of petroleum "products derived from oil sands" for purposes of the Alberta Petroleum Marketing Commission's authority to acquire, exchange, sell and store such products.

2. *Third Session, 19th Legislature, 1981*

The Pipeline Amendment Act, 1981, Bill 27, 2nd Reading, May 21, 1981

This Bill establishes "controlled areas" around pipelines and introduces the concept of "ground disturbances" which includes any activity which disburbs earth except disturbances to a depth of less than 30 centimetres and cultivation to a depth of less than 45 centimetres. Any person undertaking a ground disturbance will be required to take precautions to ascertain the existence of pipelines and to communicate with the permittee or licensee operating a pipeline.

The Mines and Minerals Amendment Act, 1981, Bill 56

Section 44.2 entitles the Minister to require tenders respecting the purchase of Crown agreements at public land sales to set forth the amount of refundable work deposits tendered.

New sections 53.1(1) and 53.2 entitle the Minister to require written returns from lessees setting forth production information and requiring lessees to keep in Alberta for five years all records used in preparing royalty calculation.

Other amendments permit the deep rights reversion to operate with respect to leases which are being continued as to unproven areas.

Certain provisions of Bill 56 respecting registering security interests against Crown agreements were withdrawn from the Bill prior to its receiving royal assent and will be reintroduced in a later session.

The Public Utilities Board Amendment Act, 1981, Bill 40

The definition of "public utility" is extended to include "telecommunication" which means:

> Any transmission, emission or reception of signs, signals, writings, images, sounds, data, message or intelligence of any nature by wire, radiocommunication, cable, waves or any electronic, electromagnetic or optical means but does not include the transmission, emission or reception of broadcasting that is a radiocommunication in which the transmissions are intended for direct reception by the general public.

This amendment will include cable television in the definition of a public utility.

Section 86.1 provides for regulations with respect to licensing of public utilities by the Public Utilities Board.

The Partnership Amendment Act, 1981, Bill 53

Under the Limited Partnership provisions, Section 50 is amended to specifically provide that limited partnerships may themselves be limited partners in a limited partnership.

Section 51 is amended to provide for extra-provincial registration in Alberta of limited partnerships formed in other jurisdictions designated by the Lieutenant Governor in Council. This can be done either by filing and recording in the Alberta Central Registry a certificate in the form of an Alberta certificate of limited partnership; or by refiling in Alberta a notarized copy of the certificate and other documents filed in the original jurisdictions.

This will remove the possible problem of extending liability over the originally limited amount for limited partnerships coming into Alberta.

3. *Alberta Regulations*

Natural Gas Price Administration Regulation, Alta. Reg. 307/80 pursuant to the Natural Gas Price Administration Act

This regulation is similar to the Natural Gas Pricing Agreement Regulations Alta. Reg. 127/77 as amended by Alta. Reg. 194/79 and sets forth the procedures relating to export price adjustment payments, appeals to the PUB, and other matters respecting the operation of this Act which is in replacement of the Natural Gas Pricing Agreement Act.

Ministerial Order, Alta. Reg. 308/80 pursuant to the Natural Gas Price Administration Act

This regulation delegates to the A.P.M.C. all the powers of the Minister of Energy and Natural Resources under s. 9(1) of the Act to prescribe the contract delivery point price of gas.

Maximum Petroleum Production Regulation, Alta. Reg. 325/80, pursuant to the Mines and Minerals Act

This regulation prescribes the maximum petroleum production from Crown Lands commencing March, 1981. By its terms the regulation is deemed to be repealed if the A.P.M.C. advises the Minister that Canadian requirements cannot be met.

Crown Petroleum Production (March, 1981) Regulation, Alta. Reg. 89/81, pursuant to the Mines and Minerals Act

This regulation prescribes the maximum petroleum production from Crown Lands from specified pools to give effect to the production limits provided for by section 135.1(1) of the Act.

Order Prescribing Forms and Establishing a Tariff of Fees Amendment Regulation, Alta. Reg. 45/81, pursuant to the Pipeline Act, 1975

This regulation establishes a new tariff of fees respecting the application for and transferring of various permits and licenses.

Crude Oil Par Price, Select Price and Royalty Factor, 1979 Amendment Regulation, Alta. Reg. 49/81, pursuant to the Mines and Minerals Act

This regulation establishes a new par price and royalty factor for Petroleum Royalty Regulations effective January, 1981 thus altering effective royalty rates.

B. *Federal*

1. *First Session, 32nd Parliament*

Canada Oil and Gas Act, Bill C-48, 2nd Reading January 15, 1981

This Bill will replace the Canada Oil and Gas Land Regulations and deals with all aspects of land tenure on Federal Lands.

Excise Tax Amendment Act, Bill C-57, 2nd Reading February 13, 1981

Part IV.1 is added to the Act to provide for the Natural Gas and Gas Liquids Tax as set out in the National Energy Program. Part IV of Bill C-57 contains the Petroleum and Gas Revenue Tax Act as set out in the National Energy Program.

National Energy Board Amendment Act, Bill C-60, 3rd Reading March 6, 1981

This Bill primarily provides new procedures for establishing pipeline routes and for expropriating and compensating land owners.

2. *Federal Regulations*

Crude Oil Pricing Regulations, SOR/80-822, pursuant to the Petroleum Administration Act, S.C. 1974-75-76, c. 47

Pursuant to section 22 of the Act, and in the absence of a federal-provincial oil pricing agreement, this regulation prescribes the prices for various kinds of crude oil consumed outside the province of its production, pursuant to section 36 of the Act.

Natural Gas Prices Regulations, 1980, SOR/80-823, pursuant to the Petroleum Administration Act

Following the termination of the federal-provincial agreement on gas pricing, this regulation prescribes the price of natural gas consumed outside the province of its production pursuant to section 52(1) of the Act.

Natural Gas Prices Regulations, 1980, Amendment SOR/81-104, pursuant to the Petroleum Administration Act

This regulation enacts the excise tax proposed under Bill C-57 and includes a deduction of the excise tax along with the deduction for Canadian cost of service from the international border price in order to determine the prescribed price.

APPENDIX B

1. *Land Titles*
   1. *Krautt* v. *Paine et al.* [1980] 6 W.W.R. 717 (Alta. C.A.).
   2. *The Public Trustee, Representative of the Estate of Lewis Marie Derval, Deceased* v. *The Estate of Alexander Bower Campbell et al.*, unreported, 18 November 1980 (Alta. Q.B.).
   3. *Manufacturers Land Insurance Company* v. *Registrar of North Alberta Land Registration District* (1980) 12 Alta. L.R. (2d) 289 (Q.B.).
   4. *Holt, Renfrew & Co. Limited* v. *Henry Singer Ltd., Pekarsky and Thompson & Dynes Limited* [1981] 3 W.W.R. 9 (Alta. Q.B.).
   5. *Dial Mortgage Corporation Ltd.* v. *Werner F. Jansen*, unreported, 8 October 1980 (Alta. Q.B. — Master).
   6. *Badger and Uhrig* v. *Megson* (1980) 14 Alta. L.R. (2d) 49 (Master).
   7. *Carson et al.* v. *Fyfe* [1981] 1 W.W.R. 691 (N.W.T.S.C.).
2. *Sale of Land*
   1. *Ford* v. *Keller* (1980) 104 D.L.R. (3d) 106 (Alta. S.C.).
   2. *Ulmer and Ulmer* v. *Ulmer* (1980) 5 Sask. R. 3 (Q.B.).
   3. *Gordon F. Dickson* v. *Gold Cup Resources Ltd.*, unreported, 20 October 1980 (B.C.S.C.).
   4. *Mitchell* v. *MacMillan* (1980) 5 Sask. R. 160 (C.A.).
   5. *Antifave* v. *Tisnic* (1981) 7 Sask. R. 169 (C.A.).
   6. *City of Kamloops* v. *Interland Investments Inc. et al.* (1979) 9 B.L.R. 130 (B.C.S.C.).
   7. *The City of Edmonton* v. *A & M Developments Ltd.*, unreported, 25 July 1980 (Alta. Q.B.).
3. *Freehold Oil and Gas Leases*
   1. *Gas Initiatives Venture Ltd. et al.* v. *Beck* [1981] 2 W.W.R. 603 (Alta. C.A.).
4. *Mines and Minerals*
   1. *Eliason* v. *Registrar, North Alberta Land Registration District and Alberta Energy and Natural Resources* [1980] 6 W.W.R. 361 (Alta. Q.B.).
   2. *Tener and Tener* v. *R. in Right of British Columbia* (1981) 23 B.C.L.R. 309 (B.C.S.C.).
   3. *Mastermet Cobalt Mines Ltd.* v. *Canadaka Mines Ltd.* (1980) 33 N.R. 186 (S.C.C.).
5. *Foreign Investment Review Act*
   1. *Dow Jones & Co., Inc.* v. *Attorney-General of Canada* (1981) 113 D.L.R. (3d) 395 (F.C.T.D.).
6. *Security Transactions*
   1. *Canada Trust Company* v. *Cenex Limited* [1981] 2 W.W.R. 296 (Sask. Q.B.).
   2. *Central and Eastern Trust Company* v. *Irving Oil Limited and Stonehouse Motel and Restaurant Limited* (1980) 31 N.R. 593 (S.C.C.).

7. *Royalties*
   1. *Western Oil Consultants* v. *Great Northern Oils Ltd.*, unreported, 12 March 1981 (Alta. Q.B.).
   2. *Masai Minerals Ltd. et al.* v. *Heritage Resources Ltd. et al.* (1981) 2 W.W.R. 140 (Sask. C.A.).
   3. *American Eagle Petroleums Limited* v. *Oriole Oil & Gas Limited*, unreported, 12 January 1981 (Alta. C.A.).
8. *Gas Purchase Contracts — Arbitration*
   1. *Shell Canada Resources Limited* v. *Canadian Western Natural Gas Company Limited* (1980) 13 Alta. L.R. (2d) 176 (C.A.).
9. *Confidential Information — Employees*
   1. *Chevron Standard Limited* v. *Home Oil Company Limited and Leeson* [1980] 5 W.W.R. 624 (Alta. Q.B.).
10. *Contracts*
   1. *Valli* v. *Mills*, unreported, 9 October 1980 (Alta. Q.B.).
   2. *Gaumont* v. *Luz* (1981) 24 A.R. 609 (Alta. C.A.).
   3. *Carman Construction Ltd.* v. *Canadian Pacific Railway Co. et al.* (1980) 28 O.R. (2d) 232 (Ont. H.C.).
   4. *Russelsteel Ltd.* v. *Consolidated Northern Drilling & Exploration Ltd. and Dale Burrows* v. *Harold Kitchen and Consolidated Land & Investments Ltd.*, unreported, 27 February 1981 (Alta. Q.B.).
   5. *Lozcal Holdings Ltd.* v. *Brassos Development Ltd.* (1980) 12 Alta. L.R. (2d) 227 (Alta. C.A.).
11. *Indian Lands*
   1. *Marcel Piche et al.* v. *Cold Lake Transmission Limited and Worldwide Energy Company Ltd.* [1980] 2 F.C. 369 (T.D.).
12. *Administrative Regulation*
   1. *ATCO Ltd. et al.* v. *Calgary Power Ltd. et al.* (1981) 14 Alta. L.R. (2d) 106 (Alta. C.A.).
   2. *Saskatchewan Power Corporation et al.* v. *TransCanada Pipelines Limited et al.* [1980] 4 W.W.R. 174 (F.C.A.).
   3. *Gladstone Petroleum Ltd.* v. *Husky Oil (Alberta) Ltd.* [1980] 3 W.W.R. 728 (Sask. Q.B.).
   4. *Lamco Gas Co-op Ltd.* v. *Grinde*, unreported, 22 December 1980 (Alta. Q.B.).
13. *Constitutional Law*
   1. *Reference Re: Natural Gas and Gas Liquids Tax* [1981] 3 W.W.R. 408 (Alta. C.A.).
   2. *Fulton, Friesz and Wheeler* v. *Alberta Energy Resources Conservation Board and Calgary Power Ltd.*, unreported, 27 January 1981 (S.C.C.).
   3. *Reference Re: Mining and Mineral Rights Tax Act* (1980) 115 D.L.R. (3d) 482 (Nfld. C.A.).
   4. *Henuset Bros. Ltd.* v. *Syncrude Canada Ltd. et al.* [1980] 6 W.W.R. 218 (Alta. Q.B.).
   5. *Henuset Rentals Ltd.* v. *United Assoc. Local 488* (1981) 6 Sask. R. 172 (Sask. C.A.).

14. *Canada Lands*
    1. *B.P. Exploration Company (Libya) Limited* v. *Hunt* [1981] 1 W.W.R. 209 (N.W.T.S.C.).
    2. *Baker Lake et al.* v. *Minister of Indian Affairs and Northern Development et al.* [1980] 5 W.W.R. 193 (F.C.T.D.).
15. *Partnership*
    1. *Seven Mile Dam Contractors* v. *Queen in Right of B.C.* (1981) 25 B.C.L.R. 183 (B.C.C.A.).
    2. *A.E. LePage Ltd.* v. *Kamex Developments Ltd. et al.* (1980) 105 D.L.R. (3d) 84 (S.C.C.).
16. *Miscellaneous Cases*
    1. *Wooster* v. *Saskatchewan Oil and Gas Corporation* (1980) 5 Sask. R. 313 (Sask. Q.B.).
    2. *McLachlin* v. *Colonial Petroleums Ltd.*, unreported, 11 April 1980 (Ont. S.C.).