REGULATORY AND POLICY DEVELOPMENTS

ENVIRONMENTAL REVIEW LEGISLATION INTRODUCED

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On June 18, 1990, the federal government tabled in Parliament its long awaited environmental assessment legislation - the Canadian *Environmental Assessment Act*. This legislation would replace the Environmental Assessment and Review Process Guidelines Order of June 19, 1984.

To appreciate the changes in focus and process that would be brought about by the enactment of this legislation, it would be useful first to summarize the scope of the Guidelines Order as developed by recent court decisions.

The Guidelines Order applies to any initiative, undertaking, or activity for which the Government of Canada has decision making responsibility. It is therefore not limited to specific physical activities which the federal government initiates or is responsible for authorizing. Proposals subject to the Order are caught if they may have an environmental effect on any area of federal responsibility for which the federal government makes a financial commitment where the proposal is located on lands administered by the federal government, in addition to areas of federal regulatory responsibility.

Under the Guidelines Order all proposals must be subjected to an initial screening or assessment process guidance which is provided to responsible federal authorities by the Federal Environmental Assessment Review Office (FEARO), an element of the federal Department of the Environment. Proposals identified as having significant environmental impacts as a result of the initial screening or assessment, or otherwise specified as requiring an environmental review, must then be subjected to a public review by an Environmental Assessment Panel appointed by the Minister of the Environment. Panels are generally expected to conduct public hearings in accordance with procedural guidelines issues by FEARO.

Under the Guidelines Order both the initiating department and the proposals proponent have responsibilities to develop the record of the review. The Review Panel, however, has only a reporting function. Nevertheless, proposals may not be implemented until a review, where applicable, is completed. Review conclusions are not enforceable other than through the general political accountability of the responsible Minister.

Recent Federal Court decisions (see March 1990 *CCPR*, page 14) confirmed that the Guidelines Order is a requirement of general application establishing duties on ministers and departments additional to any other distinct statutory responsibilities involving environmental considerations. In fact the Guidelines Order must be applied even where no specific federal approval is required for a project to proceed. It is sufficient that the project simply affects an area of federal jurisdiction or land ownership, and the federal government has the capacity to intervene in the matter even on a discretionary basis. The fact that federal environmental assessment would duplicate provincial environmental assessment has been found by the federal Court of Appeal not to be a sufficient reason for the courts not to order federal ministers to comply with the Guidelines Order.

The principal differences between the *Canadian Environmental Assessment Act* and the Guidelines Order are:

1. The legislation will apply only to "projects" which have been defined principally as physical works in the exercise of statutory powers to authorize or permit physical works from being carried out. Projects include works receiving federal financial assistance or implemented on lands provided by the federal government,

directly implemented by the federal government.
2. There is a greater variety of procedural mechanisms under the legislation and a more precise guidance for ministers on the procedural choices to be taken.
3. The powers of the Minister of the Environment are expanded and more precisely defined.

The new assessment process involves three stages:

1. screening or mandatory study and preparation of a report;
2. mediation or assessment by a review panel and preparation of a report; and,
3. where applicable, design and implementation of a follow-up program.

The first two elements of the process must include consideration of the following factors:

1. The environmental effects of the project, including the environmental effects of malfunctions or accidents that may occur in connection with the project, and any cumulative environmental effects that are likely to result from the project in combination with other projects. (An environmental effect is defined in the *Act* to include not only changes to the physical environment within or outside Canada, but also any effect of such changes on health and socio-economic conditions.)
2. The significance, and in certain specified cases, the seriousness of these effects.
3. Comments concerning these effects received from the public.
4. Measures that are technically and economically feasible that would mitigate any "significant" (or in some instances "serious") adverse environmental effects of the project.

Additional factors that must be considered in a mandatory study or a mediation or review panel assessment situation include consideration of:

1. The purpose of the project.
2. Alternative means of carrying out the project that are technically and economically feasible and the environmental effects of such alternatives.
3. The need for and requirements of any follow-up program in respect of the project.
4. Short-term or long-term capacity for regeneration of renewable resources that are likely to be significantly (or in some instances, seriously) affected by the project.
5. Any other matter specified by the responsible government authority or the Minister of the Environment.

The scope of certain of these considerations however is left to be defined either by the responsible government authority or, where mediation or review is involved, by the Minister of the Environment.

The responsible government authority may delegate the initial study phase of any element of the process but it may not delegate any of the specified courses of action in the *Act*. These alternative courses of action are:

1. To proceed with the project if no significant adverse effect on the environment is detected at either the first or second stages of the process;
2. To adopt a mitigation program to avoid adverse effects;
3. To move from the screening to the mediation or review panel stage; or
4. Ultimately, not to proceed with the project.

Environmental screening of all projects is to be conducted unless the project has been set out on a mandatory study list published by regulation under the *Act*, or unless the project is covered by an exclusion list (again established by regulation). Projects may be excluded from the process where the Governor-in-Council (i.e. the federal Cabinet) has determined that they would have negligible environmental effects, that the contribution to the project by the responsible authorities is minimal, that national security reasons justify exclusion, or where the project involves certain specified physical activities for which environmental assessments are not considered to be appropriate.

The screening function can be expected to follow much the same informal and internal lines as screening functions currently applied under the Guidelines Order. Class screening reports will be permitted under the *Act*.

Mandatory study reports must be submitted to the Canadian Environmental Assessment Agency (the successor to FEARO) and must conform to the parameters to be established by regulation.

The Canadian Environmental Assessment Agency will be responsible for issuing public notices inviting comments on each mandatory study report. No ministerial action on the project in question may be taken until this public process is concluded.

The federal authority has been given the discretion to skip Stage 1 of the process and proceed directly either to mediation or to review panel if the project is likely to cause significant adverse environmental effects or public concern warrants such study. Mediation or review is required if, in the opinion of the responsible authority, the project is likely to cause significant adverse environmental effects that may not be mitigable or where public concerns warrant a Stage 2 study.

Environmental mediation is an innovation of the legislation.

The Minister of the Environment is responsible for choosing between mediation or review. The Minister may choose mediation if he or she is satisfied that:

1. The parties who are directly affected by or have a direct interest in the project have been identified and are willing to participate in the mediation through representatives.
2. The mediation is likely to produce a result that is satisfactory to all of the parties.

If these conditions are not met, the Minister must establish a review panel.

The responsibilities of the mediator appointed by the Minister are to:

1. Help the participants reach a consensus on environmental effects, mitigation measures, and an appropriate follow-up program for the project.
2. Prepare a report setting out the conclusions and recommendations of the participants.
3. Submit the report to the Minister and the responsible authority.

Under the legislation, review panels are expected to function much the same way as a review panel under the Guidelines Order, although the *Act* does establish tighter controls to ensure that public access to relevant information and a public hearing process will be held during the review stage.

Review panels will have the specific power to compel the attendance of witnesses. The *Act* requires that review panel hearings shall be public unless the panel is satisfied after a presentation is made by a witness specific harm would be caused to the witness by disclosure of its evidence.

Public access to information on each stage of the review process is to be facilitated by the establishment of a public registry for each review maintained by the responsible government authority, and if the matter goes to mediation or a review panel, by the agency itself. The *Act* specifies certain documents that must form part of the registry and provides a disclosure code which replaces the provisions of the *Access to Information Act* (although the standards for non-disclosure are very similar to those of the *Access Act*).

Follow-up measures are to be implemented if the responsible authority concludes that the project would not have adverse environmental consequences or where mitigation measures are adopted. The follow-up procedures will be specified by regulations established by the Governor-in-Council.

In order to avoid jurisdictional duplication, the *Act* authorizes joint federal review panels involving other jurisdictions as long as such panels are effectively controlled by federal government interest and meet the *Act*'s participation policy requirements. The Minister of the Environment may approve a substitute federal or provincial review process if one is available under a specific regime but, again, only if that substitute process will conform to procedures and criteria of this *Act*.

The power of the Minister of the Environment will be enhanced through the power to select the mediation option, to appoint review panels and to select alternative review processes. Additionally the Minister will be given the power to issue guidelines and codes of practice for application of the *Act* as a whole, to establish research advisory bodies under the *Act*, to enter into jurisdictional agreements with respect to joint assessment processes to recommend members for land claims settlement bodies, to establish criteria for appointment of mediators, and finally to establish criteria for approval of substitute assessment processes within the federal government.

It should be noted that a number of the key parameters of this scheme are to be implemented

by way of regulation. These measures can be expected to enhance the role of the Department of the Environment since this Department will be the primary source of advice to the Governor-in-Council in these implementation regulations. Regulations may be made to define assessment procedures, to identify projects exempted from the assessment process, projects requiring mandatory study, respecting examination of information on projects, maintenance of information programs on the process, and finally, on varying the assessment process appropriate to requirements of certain projects and statutory functions specified in the *Act* (for example, projects carried out on Indian reservations and projects in respect of petroleum resource development off-shore from Newfoundland and Nova Scotia).

CRTC DENIES NEWFOUNDLAND TELEPHONE RATE INCREASE

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On July 12, 1990, the Canadian Radio-television and Telecommunications Commission (CRTC) issued its first decision with respect to a general rate increase application from one of the four Atlantic provinces telephone companies which became subject to CRTC jurisdiction as a result of a 1989 AGT decision of the Supreme Court of Canada (see September 1989 *CCPR*).

The total revenues in 1990-1991 that would have been generated by the increased rates sought by Newfoundland Telephone were approximately $25 million. The CRTC denied the requested monopoly service rate increases and ordered the reduction of certain message toll rates. However, the Commission did find that the company needed to generate $1 million more in 1991 through higher rates (principally service and equipment charges). The 123-page decision is one of the longest ever issued by the CRTC in a general rate application and it covers a significant number of competition and regulatory policy issues.

The two principal issues examined in the decision are:

1. regulatory treatment of the acquisition cost of the assets of TerraNova telephones which were acquired by Newfoundland Tel on January 1, 1989; and
2. the regulatory framework for Newfoundland Tel's offering of competitive terminal and network services.

TerraNova Tel was acquired by Newfoundland Tel on January 1, 1989 for approximately $160 million. Prior to closing, the value of TerraNova Tel's assets was approximately $100 million. At closing, net book values of certain assets were written up to accord with the purchase price. A number of intervenors contended that the premium paid by Newfoundland Tel for TerraNova Tel of approximately $60 million should not be included in Newfoundland Tel's rate base for the purposes of determining the company's revenue requirement in the two test years, 1990 and 1991. The arguments against inclusion of the premium paid for TerraNova Tel make reference to the fact that TerraNova Tel had been regulated by the CRTC prior to it being acquired by Newfoundland Tel and that, accordingly, prior to closing, the asset values of the company should have been viewed as reasonable for regulatory purposes. It was suggested that to allow Newfoundland Tel to increase the net book value of depreciable assets as a result of the above book acquisition cost of TerraNova Tel would be to permit Newfoundland Tel to double recover depreciation costs from its monopoly subscribers during the 1990/91 test period. The third principal argument was that acquisition in reality amounted to an attempt by Newfoundland Tel's investors to capture virtually the entire additional earnings flowing to Newfoundland Tel as a result of the inclusion of the TerraNova Tel assets in the value of Newfoundland Tel assets used in the Revenue Settlement Plan of Telecom Canada for distribution of inter-provincial revenues among Telecom Canada members. It was suggested that this increase in settled revenues should accrue to the benefit of Newfoundland subscribers as it would in the event that TerraNova Tel absent the amalgamation with Newfoundland Tel had become a member of Telecom Canada.

Newfoundland Tel argued that as a result of the amalgamation of the companies, net benefits had accrued to Newfoundland telephone subscribers as a whole. Newfoundland Tel focussed on both increases and settled revenues and some decreases in operating and capital costs owing from this acquisition as causing no adverse impact on the company's 1989 performance notwithstanding increased capital and depreciation costs caused by the write-up on closing. The company also suggested that it would be inappropriate for the CRTC to second guess the conclusion of the Newfoundland Public Utilities Board made prior to the AGT decision which found that the acquisition created net benefits for the amount of subscribers and which approved a 1989 rate base for the amalgamated company which included the premium paid over book for TerraNova Tel.

The CRTC's approach to this issue is significant with respect to the transfers of ownership of telecommunication carriers, the acquisition of independent telephone companies by Telecom Canada members, and the privatization of carriers. The CRTC applied a broad public interest test to determine whether the written value of TerraNova Tel's assets, as included in the Newfoundland Tel ongoing regulatory rate base was a reasonable figure. Five factors were presented by the Commission as relevant to assessing the public interest test:

1. Whether the purchase and sale was negotiated on an arm's length basis.
2. Whether the productivity gains and efficiency improvements will be realized and operating expenses reduced.
3. Whether tangible benefits will accrue to subscribers, for example, improved service or lower rates.
4. The basis on which the company acquired was regulated up to the time of the purchase and sale and whether the rates they were charging were just and reasonable.
5. Whether there are unique circumstances that warrant special consideration.

The Commission recognized that the inclusion of TerraNova's costs and investments in the settlement was the primary reason for the calculation of net benefits from the transaction, but it also observed that this increased RSP revenue to Newfoundland Tel had come about at the expense of other Telecom Canada members. The scales in favour of including some of the premium over book in Newfoundland Tel's rate base would appear to have been tipped by the following consideration:

> ...the Commission is persuaded that the inclusion of what was TerraNova in the RSP process is of benefit to the further development of the public switched telephone network (PSTN) in Canada.

Thus, implicitly, Newfoundland Tel's owners were rewarded for achieving inclusion of TerraNova Tel in Telecom Canada, through an assured return on the portion of their investment associated with the premium paid for the TerraNova Tel assets. It is perhaps worth noting that the controlling shareholder of Newfoundland Tel is BCE which possesses a controlling position in five of the nine Telecom Canada member companies.

However, the CRTC did conclude that the substantial portion of the write-up should nevertheless be disallowed. The CRTC noted that as part of the adjustment at closing, Newfoundland Tel acquired approximately $172 million in undepreciated capital costs (in effect, a tax shield) related to TerraNova Tel's plant and service. The $72 million difference between this figure and the net book value of TerraNova Tel at the time of closing gave rise to a future tax benefit to Newfoundland Tel of approximately $35 million. However, this tax benefit to Newfoundland Tel had already been paid for by TerraNova Tel subscribers because TerraNova's expense for income tax regulatory purposes had been accounted for under the normalized method of tax treatment by the CRTC. Therefore, to include this $35 million tax benefit in the rate base would amount to full recovery from some subscribers in the CRTC's view. As the value of this asset is derived from future tax deductions in the normal course, it would have been consumed as Newfoundland Tel's claim capital cost allowance for income tax purposes. However, since this item was subsumed at the time of closing in the revalued assets of Newfoundland Tel, the Commission was obliged to establish an estimate of the remaining value of this tax benefit starting in April 1990. This estimate has been reflected for

regulatory purposes as a deferred credit to be amortized at the average depreciation rate of the company. This amortization of the credit helps to offset some double counting of depreciation charges. As well, the Commission ordered that the unamortized balance of this deferred credit for regulatory purposes should be treated as having a cost of capital of zero. The effect of this is to reduce Newfoundland Tel's rate base for regulatory purposes in future test years by the remaining unamortized balance of the deferred credit. Over all the effect of the regulatory adjustments has been to disallow for regulatory purposes more than one half of the write-up of TerraNova Tel's assets.

This rate base disallowance and associated depreciation expense disallowance is the principal reason why the CRTC has refused to grant extra rate increases requested by Newfoundland Telephone in this application.

The approach taken by the CRTC in addressing the asset write-up issue may send confusing signals to telephone companies and financial markets in respect to the extent the CRTC may in future cases limit the rate base to exceed book value. This question is particularly germane with respect to privatization of Alberta government telephones (see related article in this issue) which will come under CRTC jurisdiction, as well as the plan of the federal government to sell its shares in Telesat Canada. It would appear that the CRTC is saying that, where the company has previously been subject to the regulation involving assessments of the reasonableness of the balance sheet of the regulated company, there is a heavy onus on the telephone company to establish that the increase rate base arising from the reevaluation of assets is consistent with broader public objectives of regulating monopoly telephone companies. It would also appear that the fact that an acquisition occurs as a result of an arm's length transaction by itself will not support a write-up in the rate ban. Rather, the telephone company should demonstrate that if the write-up would lead to some double recovery of costs that such double recovery will be offset either by productivity or service improvements and/or general benefits to the operation of the national telecommunication system.

In Newfoundland Tel's case, national benefits to the telecommunications' system were perceived by the CRTC to flow from the western half of Newfoundland finally being included in the national facilities planning and service development of Telecom Canada as well as benefiting from the Revenue Settlement Plan, an event which may not have even occurred absent this acquisition. This approach may potentially support the revaluation of independent telephone companies upon their being acquired by Telecom Canada member companies. However, it is more difficult to see how either the national benefits or the efficiency/service quality improvement standards might be supported in the case of a straightforward privatization.

With respect to the provision of competitive products, the CRTC essentially brought Newfoundland Tel into the same policy framework with respect to multi-line terminal equipment and cellular service provision as other federally regulated companies. However, after reviewing the evidence, the Commission decided that multi-line terminal rate increases ranging between 7% and 10% higher than those proposed by Newfoundland Telephone were required having regard to the competitive circumstances of the company in the absence of adequate costing information. Sales of terminal equipment at cost based prices will be monitored by the floor pricing of the dollar as has been applied with respect to other federally regulated carriers. Newfoundland Tel had been directed to file floor pricing proposals by mid-October.

With respect to the provision of cellular service, the CRTC concluded that assets associated with this service, as long as it is provided by Newfoundland Tel, will be excluded from the regulated balance sheet and income statement of the company for the purpose of general rate setting. If in the future, Newfoundland Tel wishes to include cellular costs and revenues within its rate base and income statement, the company will have to provide a detailed economic evaluation study of the service and a rationale as to why subscribers, rather than shareholders, should assume the risks associated with this service. The CRTC would also require detailed costing information to isolate the cellular costs from

those of monopoly operations. Finally, Newfoundland Tel has been directed to submit a proposed regulatory treatment for cellular service which addresses in particular whether that service should be provided through a separate affiliate company of Newfoundland Telephone.

Newfoundland Telephone has applied to the Federal Court of Appeal for leave to appeal those parts of the decision relating to the disallowance of the portion of the debt of the TerraNova Tel assets. At the time of writing, this application for leave had not yet been decided by the federal court.

OIL UNDER THE ICE: INUVIALUIT RECOMMEND AGAINST GULF CANADA'S 1990-92 BEAUFORT SEA DRILLING PLANS

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In a June 1990 report of an Environmental Impact Review Board established under the Inuvialuit Final Agreement, one finds echoes of concerns raised fourteen years ago by the Canadian Arctic Resources Committee (CARC) in its book *Oil under the Ice: Offshore Drilling in the Canadian Arctic.* As a result, those with an interest in Arctic affairs may be well-advised, as some degree of regulatory authority is devolved upon Native organizations under land claims agreements, to review the historical concerns of Native groups and those of their allies concerned about northern development.

Oil under the Ice was highly critical of the industry/government cooperation which CARC perceived as characterizing northern development decisions. CARC also expressed the view that government approval for offshore drilling in the Arctic was based upon an inadequate assessment of the risks of this activity and inadequate preparedness of government and industry to respond to an oil spill should that risk materialize. Those themes run through the Inuvialuit Environmental Impact Review Board's (EIRB) recommendation against approval of Gulf Canada Resources Limited's Kulluk drilling program for 1990 - 1992 in the Beaufort Sea.

The EIRB was established under the Inuvialuit Final Agreement (IFA) of June 5, 1984 which was given effect by the *Western Arctic (Inuvialuit) Claims Settlement Act.* Developments such as Gulf's drilling program are subject to screening by an Environmental Impact Screening Committee (EISC) established under the IFA. The EISC referred Gulf's drilling program to the EIRB for a public review and environmental impact assessment. The EIRB has the authority under s-s. 11(24) of the IFA to recommend whether or not the development should proceed and, if it should, on what terms and conditions, including mitigative and remedial measures. The authority of the EIRB is further elaborated in s-s. 13(11) which provides in paragraph (a) for the recommending of terms and conditions and in paragraph (b) the recommending of an estimate of the potential liability of the developer, in this case Gulf, determined on a worst case scenario, taking into consideration the balance between economic factors, including the ability of the developer to pay, and environmental factors.

The EIRB took the position that its first responsibility was to assess whether or not the impacts of a development on wildlife and its habitat are within acceptable limits of risk. A conclusion that the risks are not acceptable would lead to the rejection of the proposal. The Board noted that with respect to the estimation of potential liability under paragraph 13(11)(b), liability was to be measured against a worst case scenario. However, the IFA was silent as to what test should be applied to the question of the approval or rejection of the proposal. The silence of the IFA in this regard led the Board to conclude that the appropriate test was not the worst case scenario but the more probable scenario. This was a less stringent test that the worst case scenario. The more probable scenario would be arrived at by the Board taking the worst case scenario and then applying probability analysis along with the Board's assessment of the effectiveness of mitigative and remedial measures.

After reviewing all the evidence and information before it, the Board decided that it had no responsible option but to recommend strongly

against approval of Gulf's drilling program. There were two principal reasons for this decision. First, the Board found that there was a "startling lack of preparedness" on the part of government and Gulf to deal effectively with a major oil well blow out in the Beaufort Sea during the open water season. Second, the Board was not able on the information and evidence before it to "make any sensible recommendation" dealing with Gulf's potential liability in the event of a worst case blow out.

The Board stated that the fact that such a situation existed after years of drilling in the Beaufort was a

> ... sad reflection of a complacency which seems to have developed on the part of Gulf and the government authorities, driven by an ultimate belief that a blow out is so unlikely to occur that preparing to meet it is largely an academic exercise. That complacency has led to a failure to amass information, a failure to develop essential planning, and a failure to test in realistic conditions, equipment and responses.

The Board expressed the belief that, given presently low drilling activity levels in the Beaufort, government and industry should use this quiet time to put in place improvements in a number of areas. The Board recommended that government responsibility for oil spill clean-up be assigned to a single government agency which would also have approval authority for oil spill contingency plans; development by government of comprehensive wildlife compensation agreements; the creation of a task force to develop an information data base to facilitate environmental impact assessment of and contingency planning for offshore oil drilling in the Beaufort; development by government in consultation with the Canadian Petroleum Association and the Inuvialuit of an appropriate assessment methodology for offshore drilling proposals; the development of more appropriate criteria to establish the safe operating season for each drill system operated in the offshore where the cutoff date is based upon the length of time required to drill a relief well before the end of the season; and formal annual meetings among the Government of Canada, the Government of the United States and the Inuvialuit to discuss current and future activities in the Beaufort.

The Board notes that Gulf was unable to provide any estimate or idea of the range of their potential liability for wildlife impact and onshore clean-up in the event of a worst case scenario blow out. At present, the Minister of Indian and Northern Affairs has set a limit of $40 Million on the absolute liability obligation arising from an oil spill. The Board noted that this amount would be woefully inadequate. Gulf's inability to provide such an estimate derived from the fact that, as stated by the Board, Gulf's evidence was that there does not exist a reliable body of information to enable it to provide the Board with any estimates, assumptions, models, or data on the crucial areas of shoreline impacts, shoreline response and clean-up standards. The Board expressed some skepticism with respect to this evidence and commented that "Gulf's refusal or professed inability to project the actual on-shore impacts anticipated from a major blow out" led to its failure to provide an estimate of liability.

The Board found that the fault for this situation was not only that of Gulf but also to a large degree that of government.

With respect to Gulf's ability to pay under a worst case scenario, Gulf's evidence was that "even on the basis of the partially inaccurate and partially unsubstantiated picture presented, the costs of a worst case blow out might be beyond Gulf's ability to pay". The implication of the liability provisions of the IFA was viewed by the Board to be of fundamental importance to the people of the region and, given Gulf's inability to provide sufficient information to the Board to permit an estimate of liability to be made, the Board was unable to discharge its responsibility under paragraph 13(11)(b) to provide an estimate of potential liability on a worst case scenario. The Board considered that this by itself was sufficient to justify a recommendation that Gulf's proposal not be approved.

The Board's decision on the Gulf drilling program was the second decision of the Board. The first dealt with a proposal by Esso for a well to be drilled in the Beaufort in 1989. That well was to be drilled within the land-fast ice zone and so involved work from a firm ice platform. The Gulf program was for three years using the floating Kulluk drilling system. The Board characterized

exploratory drilling from a floating vessel as presenting the greatest risk of environmental damage from drilling operations in the Beaufort Sea.

On August 30, 1990, Maurice Taschereau, Administrator of the Canada Oil and Gas Lands Administration (COGLA), wrote to Mr. Livingstone, the Chairman of the EIRB, to provide COGLA's observations on the recommendations and concerns contained in the EIRB Report. COGLA's response indicates that a decision on Gulf's drilling proposal will not be made until the end of the year. That is to permit an extensive consultation process with other government agencies to be completed. In addition, COGLA wishes to receive the views of "other members of the Beaufort stakeholder community" before coming to a decision. COGLA proposes to obtain those views through the working groups which have been established to follow up on the recommendations of the March 1990 Inuvik Workshop on Wildlife Compensation. It is not clear that the approach taken by COGLA and the time involved in coming to a decision on the EIRB Report is acceptable to the EIRB.

COGLA's observations which have been included with its letter to the EIRB are, for the most part, a rejection of the specific recommendations made by the EIRB. The twenty-one pages of COGLA observations explain why in COGLA's view existing governmental structures, arrangements for oil spill prevention and clean-up, and compensation are adequate. The observations contain significant additional information not found in the EIRB Report with respect to existing governmental structures, policies and operations.

The publication by COGLA of its observations on the EIRB Report prior to a decision by the Minister on the drilling proposal and the invitation for comments from other interested parties is interesting from a procedural perspective. A decision on the drilling proposal might simply have been taken on the basis of the EIRB Report and, if government officials in Ottawa took a very different view of the preparedness of industry and government to respond to an oil spill, that could simply have been reflected in the ultimate decision. Instead, the EIRB Report is being treated like a discussion document with the views of COGLA being placed on the table for discussion along with the EIRB recommendations.

The COGLA observations are interesting in that one of the major reasons for the EIRB recommending against Gulf's drilling proposal was the EIRB's inability to estimate the financial liability that would result in the event of a worst case oil well blow out. The EIRB recommended a study to define the assessment methodology that should be used in determining the impacts that might be associated with a major oil spill incident in the Beaufort. The ability to determine these impacts underlies the question of estimating financial liability. COGLA and the other government departments involved, the Departments of Fisheries and Oceans and the Environment, are looking to the working groups which are following up on the Inuvik Workshop on Wildlife Compensation to provide recommendations in this regard. It would appear that the government is looking to the development of a consensus through the working group process to break at least this part of the log jam.

In conclusion, the approach taken by the Board was foreshadowed by the concluding observations of an article by G.D. Greene and D. Mackay of the University of Toronto in an article reprinted by CARC in *Oil under the Ice*. Greene and Mackay concluded as follows:

> To proceed to drill without adequate background knowledge of the environment or an adequate clean-up capability is to accept the risk of a substantial uncontrolable incident which could have severe environmental and social impacts.

The Board's Report underscores the fact that when northern Native groups speak in favourable terms about appropriate development of northern petroleum resources, what they consider to be appropriate may be significantly different from what industry and governments have heretofore considered appropriate. Comprehensive land claims agreements which are devolving a degree of regulatory authority on northern Native societies provide a significant legal framework within which northern Natives may achieve objectives which have been beyond their reach in the past.

ALBERTA GOVERNMENT TELEPHONES TO BE PRIVATIZED

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On May 31, 1990, the Alberta government billed legislation in the Legislature (the *Alberta Government Telephones Reorganization Act*, Bill 37) to provide for the sale of common equity in Alberta government telephones. The bill received Royal Assent on July 5. The Alberta government has elected to market 60% of the equity of the company, now known as Telus Inc. However, the government intends to retain a so-called "golden share", a special class having voting control over certain long range business policy matters, to be identified by the government and that relate to fundamental business changes identified in the legislation. The "golden share" concept has been borrowed from British privatizations.

Individual shareholders will be limited to a 5% total stake in the company. Canadian ownership will be limited to no more than 10% of total common equity. Two thirds of the company's board will be required to be Alberta residents. The province will have the right to appoint four members to the company's Board.

Significantly, upon the sale of shares, the telephone company will cease to be a crown agent and will thereby be subject to the regulatory jurisdiction of the Canadian Radio-television and Telecommunications Commission.

In order to emphasize the privatization, the company is to be renamed Telus Corp. Telus will own a number of subsidiaries including AGT Ltd., the supplier of regulated telecommunication services. The subsidiaries will include NovaTel Communications Ltd., a manufacturer of cellular phones and systems; AGT Cellular, a cellular network operator; AGT Directory, which markets yellow pages advertising and publishes white pages directories; Alta Telecom International Limited, provider of international consulting services; Alta Telecom Inc., supplier of network services; and Alta - Can Telecom, a venture capital firm.