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Heavy Oil Processing in Peace River, Alberta: a Case Study on the Scope of Section 7 of the Charter in the Environmental Realm

- Avnish Nanda

In 2013, the Alberta Energy Regulator (AER) conducted a public inquiry into whether odours and emissions from heavy oil facilities in the Peace River region were responsible for adverse health symptoms reported by area residents. Drawing on the inquiry's findings, this article explores the role s. 7 of the Charter of Rights and Freedoms can play in environmental litigation. This is first done by reviewing the impact heavy oil development is having on residents of Peace River and the findings of fact made by the AER inquiry. Next, relevant Charter jurisprudence is outlined to identify the elements of a s. 7 claim. These elements are then assessed in relation to the facts established by the AER inquiry. The article closes with a discussion on how the court's approach to causation under s. 7 of the Charter can be used to impose the pre-cautionary principle on governments in Canada.

Treaty-Based Investor-State Arbitration and Canadian Environmental Governance

- Kyra Bell-Pasht

This paper examines the nature and extent of the impact of investor-state arbitration provisions within investment treaties on environmental governance in Canada. It argues that Canada's experience supports the view that there is a fundamentally conflicting relationship between the investment protection principles enshrined within investment treaties and applied through investor-state arbitration and public interest environmental measures. It posits that this conflicting relationship results in direct and indirect limitations on the sustainable development of developed nations. In order to ensure this aspect of state sovereignty, this paper argues that increased legitimacy -- by way of transparency, public participation, accountability, and the rule of law -- are necessary in the investment treaty negotiation and arbitration processes. The paper concludes with an overview of policy reforms undertaken to date to address this need, and additionally proposes how the Canadian strategic environmental assessment (SEA) process could further reduce the democratic deficit presented by investor-state arbitration pursuant to investment treaties.

Book Review: The Canadian Law of Toxic Torts By Lynda Collins & Heather McLeod-Kilmurray

- Reviewed by John Swaigen

Elements of an Effective Environmental Bill of Rights

- David Boyd

The goal of an Environmental Bill of Rights ("EBR") is to ensure that the right of every person to a healthy environment is respected and protected. An EBR prioritizes the values of sustainability, transparency, accountability, and democracy. Canadians could be empowered, through EBRs, to play a stronger role in shaping the government decisions that affect the environments in which they live, work, study, and play. An EBR would also facilitate improved implementation and enforcement of existing environmental laws and regulations, leading to cleaner air, safer water, and healthier people and ecosystems. While lacking at the federal level,

five provinces and territories have some modest form of environmental rights legislation. However existing environmental rights laws in Quebec, Ontario, the Yukon, the Northwest Territories, and Nunavut have significant weaknesses that undermine their effectiveness. Drawing on Canadian and international experiences, this article identifies key elements that should be included in a legislated Environmental Bill of Rights in order to ensure that it achieves the fundamental objective of fulfilling the right of all persons to live in a healthy environment.

Navigating the Jungle: Private Nuisance and Renewable Energy Projects

- Shane Rayman and Janet Lunau

The expansion of wind and solar energy projects in Canada has created changes in the use of land that at times adversely affect neighbouring properties. Property owners located close to such projects may harbour concerns about noise and light effects, aesthetic impacts, potential health risks, and the diminution in the value of their properties. The law of private nuisance considers what impacts a property owner should reasonably be expected to tolerate and when these adverse effects may warrant compensation. This paper concludes that the vast majority of wind and solar energy projects will not attract liability in claims based on private nuisance. An exception to this will arise in situations where the works have a severe and disproportionate impact on a neighbouring property or when the works render the impacted property no longer suitable for its existing use. This paper also reviews the law of private nuisance and endeavours to simplify its application in relation to public projects.

The Sydney Tar Ponds Case: Shutting the door on Environmental Class Action Suits in Nova Scotia?

- Meinhard Doelle

With the recent refusal of the SCC to grant leave to review the decision of the Nova Scotia Court of Appeal (NSCA), the Sydney Tar Ponds class action suit has now completed its journey through the court system. The case had been making its way through the courts for a decade against the backdrop of close to 100 years of steel making in Sydney, NS, leading to one of the most notorious contaminated sites in Canada. The ultimate claim was largely about airborne emissions from plant that the plaintiffs claim contaminated their properties and pose a risk to their health. The plaintiffs sought leave to appeal to the SCC. In January, 2015, the SCC denied leave to appeal the NSCA decision. In this case comment, the implications of the NSCA Sydney Tar Ponds decision for the application of key tort law principles to environmental contamination, and its implications for the future of environmental class action suits in Nova Scotia are explored.