

Recent ruling in Alberta shows non-harmonization minefield

By PAUL CASSIDY

The lack of “harmonization” of provincial and federal environmental assessments of industrial projects has been an ongoing source of frustration for the past several decades. To be sure, there have been efforts made to reduce duplication and overlap among the processes, with many co-operative agreements signed among governments, and there have been some successes. Moreover, new government initiatives continue to seek ways to address the problem.

But almost every project requiring an assessment by both levels of government faces complications with competing or dueling regulatory demands, at additional cost and with questionable added value for environmental protection. For example, one governmental authority will chart a path for its approval process in isolation of the other, rendering public consultation efforts undertaken in that process potentially unusable for both assessments. Field studies scoped to be undertaken in a timely, weather dependent fashion end up without adequate input from both levels, leaving data gaps in vital areas.

Even more troubling about the lack of harmonization in Canada is the threshold question of what each level of government gets to assess. Even though the federal assessment process has been around a long time, there is still a lack of direction in its legislation about what the federal responsible authorities must or can review in a project. As a result of this basic uncertainty, it’s no small wonder that harmonizing the processes has proven elusive.

And in true North American fashion, with any regulatory uncertainty, the issue of who gets to review what and how that is done leads parties to turn to the courts.

A recent example of the courts being led into the minefield of environmental assessment uncertainty occurred in Alberta, where the court (in [2004] F.C.J. 1518) had to decide the limits of the federal assessment power in relation to a project to develop an oil sands extraction mine. A fish bearing stream ran through the area, so an authorization to destroy fish habitat was required under the *Fisheries Act*. This requirement triggered the need for a federal assessment, which then left the question – what do they assess?

The court ruled that the federal authority was correct to limit its review to elements of the project for which the federal government could validly assert authority. The court rejected the project opponent’s view that once a federal assessment was required, it could assess every aspect of the project.

The courts, in the absence of clear direction in either government policy or regulation on the relationship between the two levels of assessment, have stepped in to help define the respective roles and obligations. One would have thought that with all the experience we now have in Canada with environmental assessments, such fundamental questions as who does and what and how would not have to be put to the courts. But that still appears to be a necessity, given the lack of clear rules that clarify and harmonize the two processes.

Paul Cassidy practices environmental law at Blakes, LLP in Vancouver.

Governments must implement water demand management

By OLIVER M. BRANDES and ELLEN REYNOLDS

“Water will become Canada’s foremost ecological crisis early in this century,” says David Schindler, Canada’s leading water expert and internationally recognized ecologist.

It’s indisputable: water is in ever-mounting demand and diminishing supply. Yet, Canadians are some of the most gluttonous water users in the world. Many believe it’s a limitless resource and that the proverbial well will never run dry. But water availability, in a form suitable for humans and ecosystem functioning, is under pressure from increasing consumption and shrinking supplies through pollution, climate change and poor management.

Tomorrow’s arid reality may not be so distant. On average, Canadian city dwellers use 326 litres of water per day, twice what the average European urbanite uses.

But when we start talking about this profligate water use or seek practical sustainable solutions, things begin to get murky. Some Canadian municipalities don’t believe in the need for water conservation, simply clinging to an outdated “myth of abundance.” Canada may not be running out of water but, increasingly, many regions face seasonal drought and a reality formerly unheard of in Canadian cities – water scarcity!

The issues of water conservation are often oversimplified, with opponents arguing that spending millions on water metering or other conservation measures is unnecessary when we can use bigger reservoirs, longer pipes and deeper pumps. This “supply-side management” addresses future growth by seeking out new sources of water through expanded infrastructure. However, this approach rarely considers the full economic and ecological consequences of not conserving water, or the broader sustainability imperative. Politicians and water managers alike are missing a major opportunity. Conservation is the next best and cheapest source of “new” water for most of Canada.

Demand management is innovative, but not new. Many provinces have conservation plans, and even in the federal water policy, developed in 1987, conservation and demand management are key. The problem is that, for the most part, these plans and policies are not implemented and little progress has been made.

To overcome the current inaction, government priorities must, at a minimum, include improved data collection, universal metering, infrastructure grants linked to effective demand management programs, provincial plumbing codes that reflect the latest innovative technologies, water allocations that protect ecological function and basic human needs, sufficient capacity for demand management at all levels of government, and meaningful stakeholder participation.

The shift towards a Canadian “water ethic” and onto a sustainable path for water management will only happen with leadership and concerted action by all levels of government. To avoid the realization of Schindler’s dire prediction, Canada must become a world leader in how it uses water; not in how much is used.

Oliver M. Brandes is a research associate and director of the Urban Water Demand Project at the University of Victoria. Ellen Reynolds is the project’s communications coordinator.