

October 4, 2010

## **B.C. *Oil and Gas Activities Act* in Force**

On October 4, 2010, the British Columbia *Oil and Gas Activities Act*<sup>1</sup> (“*OGAA*”) came into force. The *OGAA* represents a significant change to the legal regime for oil and gas activities in British Columbia, and will have immediate consequences for conventional oil and gas producers, shale gas producers, and other operators of oil and gas facilities in the province. The new legal regime consists of *OGAA* itself, and eleven new regulations passed to date under *OGAA*. This newsletter provides a brief overview of key aspects of the new *OGAA* regime.

### **Commission Continued**

The B.C. Oil and Gas Commission is continued under *OGAA*. The Commission will have greatly expanded powers under *OGAA*, particularly with respect to compliance and enforcement and the setting of technical safety and operational standards for oil and gas activities. The Commission will continue to have the power to grant approvals under designated provincial statutes, including the *Environmental Management Act*, the *Forest Act*, the *Heritage Conservation Act*, the *Land Act* and the *Water Act*. The Commission will have the power to impose administrative penalties for specified violations under *OGAA*.

The Board of the Commission has the power to make regulations under *OGAA*, primarily of a technical nature, and has exercised that power to make regulations related to pre-application consultation and notification requirements, geophysical exploration (seismic) activities, drilling and production activities, pipeline and liquified natural gas facilities, and fees, levies and security. The Provincial Cabinet also has extensive regulation-making powers under *OGAA*, and has made the *Oil and Gas Activities Act General Regulation*, the *Petroleum and Natural Gas General Regulation*, the *Environmental Protection and Management Regulation*, and other regulations. The regulations made by the Board and Provincial Cabinet are all in force as of October 4, 2010.

### **Expanded Consultation and Notification Requirements**

*OGAA*, and the *Consultation and Notification Regulation* made by the Board, set out who must be consulted by applicants before the submission of the application. Notification and consultation distances are set out in the regulation for various oil and gas activities, including

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<sup>1</sup> S.B.C. 2008, c. 36, as amended by the *Energy, Mines and Resources Statutes Amendment Act*, S.B.C. 2010, c. 9.

seismic activities, wells, pipelines, facilities and roads. The *Consultation and Notification Regulation* also sets out the required form of notices and invitations to consult that are to be given under the *Consultation and Notification Regulation*.

The notification and consultation requirements under *OGAA* do not replace the established processes for consultation by the Commission with First Nations. The Memoranda of Understanding and Consultation Process Agreements with Treaty 8 First Nations will continue to guide consultations between the Commission and those First Nations.

### **Review and Appeal Processes**

*OGAA* also provides for new administrative appeal and review processes. Under section 70, specified eligible persons have the ability to request a review of specified administrative decisions under *OGAA*, including permitting decisions, Commission orders in relation to protection of the environment, mitigation of risks to public safety and conservation of petroleum and natural gas resources, decisions to impose administrative penalties, and other prescribed decisions under *OGAA*. Requests for review must be made within 30 days of the decision or other determination in question. Reviews are carried out by designated officials within the Commission.

*OGAA* also provides for an appeal process for appeals of decisions to a new Oil and Gas Appeal Tribunal. The Tribunal, which will be independent of the Commission, will have the power to hear appeals of Commission decisions, including appeals of review decisions by Commission officials.

### **Environmental Performance**

*OGAA* and the *Environmental Protection and Management Regulation* passed by the Provincial Cabinet establish new environmental standards for oil and gas activities. This includes environmental standards for water quality, protection of aquifers, crossings of streams, wetlands and lakes, operations within wetlands, soil conservation, forest health, and restoration of areas affected by oil and gas activities.

In addition, under the *Environmental Protection and Management Regulation* the Provincial Cabinet has established “government’s environmental objectives” for water, riparian habitats, wildlife and wildlife habitat, old-growth forests and cultural heritage resources. Under section 25(1) of *OGAA*, the Commission is required to consider the government’s environmental objectives in deciding whether or not to authorize an oil and gas activity. The Provincial Cabinet has the power to issue directions to the Commission, with which the Commission must comply in exercising its powers under section 25(1).

*OGAA* also contains enhanced provisions with respect to orphan sites. The Commission will continue to have the power to restore orphan sites, and for that purpose can access funds held by the Commission in a dedicated orphan sites fund. The fund is maintained through an “orphan site restoration tax” on oil and gas production, at rates specified in *OGAA*.

## Compliance and Enforcement

The Commission will have substantially expanded compliance and enforcement powers under *OGAA*. This includes the power to make orders that the Commission deems necessary to mitigate public safety risks, to protect the environment or to promote conservation of oil and gas resources and the power to make technical orders related to designation and pooling of fields. The Commission will have powers of inspection and audit of activities, and the ability to take emergency measures in response to spills and other concerns.

*OGAA* also confers on the Commission the power to make determinations as to whether a contravention has occurred, and to impose administrative penalties for contraventions. These administrative penalties supplement remedies available through the courts under *OGAA*. In that respect, the monetary penalties that courts can impose for contraventions have been significantly enhanced, as has the range of other remedial measures available to the courts for convictions for offences under *OGAA* and the *Regulations*. As with most other modern environmental statutes, *OGAA* provides for vicarious liability for corporations for offences committed by employees, agents and contractors, and also provides for liability of directors and officers of corporations who authorized, permitted or acquiesced in the commission of an offence by the corporation. *OGAA* states that due diligence, mistake of fact and officially induced error are defences to prosecutions for contraventions of the Act.

For more information about *OGAA*, the *Regulations*, and how they may apply to your operations, please contact one of the lawyers listed below.

## Key Contacts

- **Chris W. Sanderson, Q.C.**  
P: 604.631.9183  
E: [csanderson@lawsonlundell.com](mailto:csanderson@lawsonlundell.com)
- **Lewis L. Manning**  
P: 403.781.9458  
E: [lmanning@lawsonlundell.com](mailto:lmanning@lawsonlundell.com)
- **Jeff Christian**  
P: 604.631.9115  
E: [jchristian@lawsonlundell.com](mailto:jchristian@lawsonlundell.com)
- **John Olynyk**  
P: 403.781.9472  
E: [jolynyk@lawsonlundell.com](mailto:jolynyk@lawsonlundell.com)