
COVER STORY

DISPATCHES THE ENERGY



By: Jill Rutherford

FROM INDUS^TTRY

UAlberta Law professors and alumni on the
challenges and opportunities facing the industry



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David Percy, Q.C. is no stranger to the boom-and-bust cycle in the oil and gas industry. Professor Percy, the Borden Ladner Gervais (BLG) Chair of Energy Law and Policy, has taught oil and gas law for almost 30 years at the University of Alberta Faculty of Law.



DAVID PERCY, Q.C.

"The current downturn has been deep and rapid and has caused more widespread job losses than its predecessors," he says. "That is partly because the Alberta energy industry is so much bigger than in the past."

While a challenging time for the industry, Percy reminds us that things are not as bad as in the 1980s, when the collapse of energy prices combined to cause huge economic dislocation for a decade. Like any cyclical industry, the present decline in investment will ultimately result in rising prices.

"World demand for oil is about 95 million barrels a day and still increasing, even in a sluggish international economy," he says.

So how does a law school prepare students for a legal career in such a volatile industry? Percy says that understanding the history and international context of the oil and gas industry, and the role played by Alberta and Canada, is crucial.

"As the downturn shows, we are just one component in a worldwide industry that is shaped by politics as well as economics. Students need to understand the most reliable projections of future demand and the role that will be played both by carbon-based fuels and renewables, which will shape the future of the energy industry."

The oil and gas curriculum at the Faculty of Law involves the application of principles from contracts, torts, property, and administrative law to a specialized environment with a specialized vocabulary.

"My objective is to ensure that students leave my Oil & Gas Law class with a firm understanding of this legal framework and a sufficient grasp of the terminology to understand what participants in the industry, regulators, and NGOs are talking about," says Percy.

What do our alumni say about their education in this area of the law?

"The Oil & Gas Law and Advanced Oil & Gas courses I took provided exceptional grounding in the core legal principles governing energy," says **Randall Block, Q.C. (LLB '84)**, a partner in the Commercial Litigation and Regulatory Law Group in BLG's



RANDALL BLOCK, Q.C.

Calgary office. "In addition, the U of A's focus on core legal principles provided the bedrock to be applied to different types of cases. BLG endowed the Chair of Energy Law and Policy in part to continually assess and comment on not only energy law, but the confluence of politics and policy that shape Albertans' energy future."

ENVIRONMENT & SUSTAINABILITY

Block also adds that energy legal issues cannot be decoupled from environmental law, one of **Dr. Cameron Jefferies' (LLB '09)** specialties. Jefferies teaches environmental and sustainability law at the Faculty, where he has been appointed Assistant Professor, effective July 1, 2016.

"The development of our energy resources is necessary," says Jefferies, "but we need to ensure that we develop those resources in a way that helps us transition to a more sustainable society. Achieving that balance is the key."

Jefferies recently developed a sustainability law course for JD students examining theoretical perspectives and exploring how domestic laws can be used to achieve balance in the development of resources vis a vis protecting the environment. He is keen to communicate that sustainability is more than a buzzword.

"Sustainability as a legal term came out of the Rio Declaration in 1992, but the concept of sustainability in the context of natural resource management goes back to the 1500s," he says. "The use of forests for timber for the ship-building industry, for example, needed to be managed and controlled in many areas of the world."

Jefferies notes that sustainability as it was framed in the 1980s and 90s was about balancing economic, social,



DR. CAMERON JEFFERIES

and environmental priorities, but the environment side often came up short.

"It's the role of a regulatory or legislative body to make sure the environment piece of the puzzle is properly accounted for," he says.

Recent regulatory changes and the release of Alberta's Climate Leadership Plan have definitely altered the playing field for those in the energy industry. Jefferies argues that hopefully these changes will help the industry continue to innovate.

"We are already a leader in oil sands extraction techniques," he says, "and we are just scratching the surface of what can be achieved if we apply our brainpower and penchant for innovation to the renewable energy sector, because we need both renewable energy and fossil fuels to power our modern world."

Fortunately, University of Alberta Faculty of Law graduates are there to help the energy industry navigate current challenges and opportunities.

CORPORATE SOCIAL RESPONSIBILITY & COMMUNITY ENGAGEMENT

Roxanna Benoit (LLB '85) has been Vice President, Public & Government Affairs for Enbridge since 2013. She is responsible for managing the company's relationships with



ROXANNA BENOIT

local, provincial/state and federal governments; developing strong relationships in the communities in which Enbridge operates and in which Enbridge is proposing and constructing new projects; and fostering relationships with Indigenous communities.

Enbridge is well known for its commitment to corporate social responsibility (CSR); the company has been named to multiple CSR rankings, including seven straight appearances on the Corporate Knights' *Global 100 Most Sustainable Corporations* list (2010 through 2016) and numerous inclusions on the Dow Jones Sustainability Indices over the past decade. What people may not know is that Enbridge is also one of Canada's largest renewable energy companies, with \$5 billion in renewable assets. One of these assets is Alberta's newest wind farm, the 300-megawatt (MW) Blacksprings Ridge project, just outside the town of Carmangay.

"Enbridge takes our commitment to sustainability very seriously," says Benoit. "Because we deliver various forms of energy, including renewables, natural gas, and crude

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“A lot of brilliant people have to put in a lot of effort before these projects can be brought into operation in a safe, economic, and environmentally responsible way,” Ignasiak says.



MARTIN IGNASIAK

oil, we’re uniquely positioned to help bridge society’s transition to a lower-carbon future – playing a leadership role in climate change issues, while also meeting growing global energy demands. That includes reducing the environmental footprint of our pipeline business. We’ve taken steps to enhance the efficiency of our system, reduce emissions, and publicly disclose our progress. We are always reviewing and monitoring our programs to make sure we’re getting the best results that we can.”

An important aspect of operating sustainably is also building and nurturing good relationships with the communities along the right-of-way.

“We are in regular communication with all the communities we operate in,” says Benoit. “At Enbridge, we take a shared values approach. We share the same values as our neighbours because many of our employees live in the same communities where they work. We have a vested interest in operating responsibly, and through ongoing community engagement, we can work through any issues together before they become a challenge.”

Enbridge also has a unique approach to working with Indigenous peoples living along its rights-of-way.

For the Northern Gateway pipeline, as an example, the company offered Indigenous communities equity ownership in the project.

“If we benefit from a project, so should communities,” says Benoit. “We work very closely with our communities along the right-of-way, with existing equity partners and with others, to develop a partnership and a good working relationship.”

How is Enbridge navigating the current challenges in the energy industry?

“We believe it’s important to strike the right balance between society’s collective need for energy and the importance of environmental protection,” she says. “We work to understand and reflect on our customers’ challenges. There are a number of issues at play at the moment – broader, more public issues, such as confidence in the regulatory system and ongoing changes to project approval processes – and we’re trying to address this unpredictability as best we can.”

REGULATORY ENVIRONMENT & ABORIGINAL RELATIONS

A few downtown Calgary streets away, Randall Block and

Martin Ignasiak (LLB ’98), a partner at Osler and the national co-chair of the firm’s Regulatory, Environmental, Aboriginal and Land Group, are also helping their clients navigate the current challenges.

“We actively look to partner with our clients to ride out the storm,” says Block. “This ranges from creative fee arrangements to manage legal costs, to helping with insolvency and work outs, to litigation to protect rights.”

The current regulatory environment poses complicated challenges, notes Ignasiak, especially regulatory regimes associated with major resource infrastructure projects.

Block adds: “Projects are now subject to much greater scrutiny and this leads to complexities in managing efficient litigated regulatory processes. Often, sustainability, Aboriginal relations, and social license issues underlay these disputes that must be resolved or adjudicated.”

On the subject of Aboriginal relations, how does Ignasiak counsel his clients?

“Aboriginal groups present both challenges and opportunities for project proponents,” he says. “The key to identifying opportunities is to engage in consultation early and at the appropriate levels.”

There's been a lot of talk lately about the challenge of getting large-scale industrial projects approved in Canada in a timely manner. Ignasiak's prescription is as follows.

"Consult early and often with everyone: Aboriginal groups, stakeholders, and regulators," he says. "Proponents need to listen to concerns. I've worked on major projects where proponents have made major changes to their projects to address a community's concern. This can involve moving a water intake, providing access to traditional land users, or changing the route of a water diversion. Consultation can often lead to a community's legitimate concerns being addressed."

And as for an overall game plan to guide clients through the regulatory process?

"We set out the most efficient plan while at the same time ensuring that the outcome at the end of the day is a set of approvals and permits that allow for the development of a project to proceed on an economic basis and in an acceptable timeframe," says Ignasiak.

He is quick to point out how Alberta and Canada benefit from resource development projects.

"A lot of brilliant people have to put in a lot of effort before these projects can be brought into operation in a safe, economic, and environmentally responsible way," he says. "Significant technical and engineering innovation was required to make the oil sands viable. These projects employ a lot of people and provide for a lot of families. Many of the social programs and government services provided in Alberta and across Canada are funded in part by the incredible wealth that these projects have created. I'm very proud to have been a part of that, if even just a small part."

INTERNATIONAL LEADERSHIP

Faculty of Law graduates such as Block, Benoit, and Ignasiak are making their mark on the energy industry at home, but also abroad.

Andrew Haynes (LLB '96) is a partner at Norton Rose Fulbright, and the current co-head of the firm's Brazil office. Andrew embarked on a global journey in the oil & gas industry in 2000, moving overseas and going on to hold senior executive legal roles in BG Group plc (formerly British Gas) in London, Asia, and South America, and ultimately serving as the company's Deputy General Counsel overseeing all M&A and Treasury activities globally. When BP plc suffered the Macondo incident in the Gulf of Mexico, Andrew was recruited by BP to be their Associate General Counsel Corporate at the London head office overseeing all legal aspects of their US\$45 billion disposal program and M&A globally, as well as helping the Treasury department re-build BP's balance sheet. After completing the BP disposal program, Andrew moved back to Rio de Janeiro with his wife and children to open Norton Rose Fulbright's new office in the region focusing on the oil & gas industry in South America.

Since 2000, Andrew has seen a real evolution in the practice of law in the energy and natural resources sector.

"The key change I've witnessed is the increased diversity of players and financiers in the energy and natural resources sectors," he says. "When I first began working in the sector, large oil & gas or energy companies listed on a stock exchange would be the principal players in the sector and would generally raise finance for projects from the capital markets or banks using their own balance sheets. The oil & gas, energy and other natural resources sectors

Given the current challenges facing the Canadian energy industry, how does Brazil's energy industry compare?



ANDREW HAYNES

are now much more specialized among companies focused on each of exploration, developments, or production, with much of the required funding for exploration or production activities coming directly from private equity or pension funds. There has also been a tremendous increase in state-owned companies owning resources and undertaking major projects in countries, with giant companies from China, Russia, and Brazil taking on major projects globally, displacing many of the North American and European companies we would be familiar with."

Given the current challenges facing the Canadian energy industry, how does Brazil's energy industry compare?

"The Brazilian oil & gas industry is blessed with better geological opportunities in the offshore Pre-Salt Santos Basin than anywhere else in the world, save for perhaps the Persian Gulf," says Haynes. "The problems the

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sector faces result from a government pushing all development of the Pre-Salt Santos Basin onto Petrobras – the Brazilian state-owned oil company – and saddling it with a great deal of debt, all of which it is struggling to deal with, not to mention the serious corruption issues which arose under the current government.”

As for the Brazilian regulatory environment, Haynes says that it is more stringent and complex than in Canada, and also creates more obstacles to business. Regarding social license issues, there are similar considerations to those faced in Canada.

When asked about his insights into the energy industry in emerging markets, Haynes says that he sees Canadian mining companies, banks, and investors going abroad and succeeding globally in the mining sector, but much less so in the energy sector.

“I hope that more Canadian companies, banks, and investors will have the confidence to go abroad and seize opportunities in emerging markets that are currently being taken by others today.”

“Law school taught me to take complicated challenges, break them into the component parts, resolve the issues related to those parts and then put the whole back together,” Benoit says.

ADVICE FOR THE NEXT GENERATION

What advice do UAlberta Law alumni have for the next generation of energy lawyers?

Andrew Haynes credits David Percy with helping give him a start in the oil business.

“I had a fantastic grounding in oil & gas and natural resources law from courses with David,” he says. “David remains to this day one of the most knowledgeable people about oil & gas law I have encountered; he really provided me with an excellent foundation for a career in the oil & gas industry.”

Martin Ignasiak echoes Haynes’ compliments about his legal education.

“The Faculty’s emphasis on certain critical first-year courses, such as administrative law, was of substantial benefit to me,” he says. “In addition, the student body was diverse in so many ways: politically, culturally, and demographically. I think experiencing such diversity can only benefit someone’s career. When I talk to young people I always tell them that even if they aren’t sure they want to practice law, they should seriously consider the U of A Faculty of Law.”

Roxanna Benoit says that law school taught her a way of thinking and of approaching problems.

“Law school taught me to take complicated challenges, break them into the component parts, resolve the issues related to those parts and then put the whole back together,” she says.

Randall Block emphasizes the importance of learning the business.

“Young lawyers starting out in the practice of energy law need to follow their clients’ business,” he says. “It’s a fascinating industry with constant technological innovation. It’s also populated with great people who can become lifelong friends.”

