POLLUTION CONTROL LAW IN BRITISH COLUMBIA: THE ADMINISTRATIVE APPROACH

by

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ABSTRACT

In recent years the problem of water pollution has been recognized as a meta-problem of unexpected magnitude and complexity. Early attempts to control pollution were stifled by the property-oriented common law of riparian rights and by the lack of Authorities possessing adequate jurisdiction and funds.

The object of this paper is to dilineate the proper legislative and administrative field of water pollution control, with particular reference to British Columbia's pollution control legislation.

As a background, the common law relating to water pollution is sketched and its adequacy evaluated. Early British Columbia Pollution control legislation is outlined in an attempt to determine the roots of the present comprehensive legislation.

The Pollution Control Act 1956 is examined, with particular attention to the administrative tribunal created thereunder. Board procedures are seen to be informal and dependent upon direct communication and negotiation with individuals concerned. An attempt is made to determine the criteria upon which the Board acts in setting effluent standards in

waste disposal permits granted by it. These standards are found to be vitually completely in the Board's discretion, but necessary (with some limitations) for flexible policy administration.

The Board has several means of enforcement at its command including prosecution under the Act, or under the Criminal Code and civil proceedings at the suit of the Attorney-General.

To determine whether civil actions for pollution lie apart from the Act, the question of whether riparian rights have been abrogated in British Columbia by water appropriation legislation is considered. The evidence indicates that actions by riparian owners will continue to lie. The fact that parties hold either water licences or pollution control Board permits makes no difference if pollution in fact exists.

The Board is an administrative tribunal; but it may at certain stages of its permit issuing procedure be required to act judicially. At those stages, the Board's decision is open to review by the courts. Under the present legislation a person who objects to the grant of a permit is not entitled to an oral hearing, though he is entitled to file written representations in support of his objection.

There appears to be no conflict among the numerous

pollution control provisions contained in various provincial statutes. The Pollution Control Act is clearly the governing legislation.

Federal Legislation relating to pollution is validly enacted under Federal Fisheries and Navigation powers; and in a case of direct conflict will override the provincial legislation.

From the preceding examination of the Act, it is concluded that while certain minor changes suggested might to some degree remedy the present legislation, what is required is a policy making, expert tribunal. An important recommendation is that to secure individual rights, a hearing should be granted every person who files an objection to a permit application.

New legislation recently introduced in the British Columbia Legislature provides for appointment of a Director, who will undertake day-to-day administration of the Act. However, the Board will continue to be subject to direction by the Executive Council, and the right to a full oral hearing upon an objection will remain discretionary.

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I INTRODUCTION

The problem of water pollution has recently received a good deal of attention in Canada. Questions have been raised in the House of Commons, national conferences have been held, individuals have written books eulogizing our natural resources, and new sets of disquieting statistics have been disseminated practically daily by the nation's news media. The typical research paper points out that by some future date our now abundant water supplies will be rendered dangerously inadequate by a combination of rapidly increasing population and gross pollution. These studies have often led individuals, associations and governments to the easily reached conclusion that the way to achieve clean water is to outlaw all "pollution".

The seriousness of the water pollution problem cannot be deprecated. The fact that chemical and organic pollution of our major waterways is rapidly increasing cannot be denied. What is objected to is the proposition that water pollution control should be treated as some kind of quasi-criminal problem with national welfare overtones. While the immediate problem of most pollution control agencies --to prevent excessive pollution - is quite clear, the larger problem is often obscured. For one thing, pollution control is often, properly, characterized as one type of natural resource conservation. The emotive content of the word "conservation" has been duly recognized as obscuring its proper context and signification.[1]

To ordinary citizens water pollution control means simply that dumping of waste and effluent into lakes and streams be prohibited so that water resources may be "conserved" for such "beneficial" uses as scenic recreation areas and urban water supplies.

The broader problem involves various uses of the natural resource, water. Use of water for waste discharge and use for swimming or other recreation are simply widely different uses of the same resource. It is apparent that these uses are often competing or conflicting.[2] Utilization of a river by an upstream industrial plant for waste disposal conflicts with use of the same water for domestic purposes by a downstream community. Similarly, upstream diversion for irrigation conflicts with downstream use for drinking water because it may substantially reduce the flow of the stream. Use by an industrial plant for cooling purposes may not interfere at all with downstream use for drinking water or irrigation; but by raising the temperature of the water it may interfere with a fishery. So far as irrigation and drinking water users are concerned, this latter industrial use is a complementary one. But with respect to the fishery it is a competing use.[3]

The problem becomes one of resolving these complementary and conflicting uses so that the resulting allocation provides the greatest net benefit to the residents of the region. Region is generally understood to comprise a drainage basin since this

is the widest area within which pollution of a particular river will be felt. Political and administrative fragmentation of natural drainage basins merely complicates the picture.[4]

How is this problem to be approached? The tendency is to think in terms of prohibiting or regulating so-called "consumptive uses" so as to permit full scope for non-consumptive uses.[5] But it should be noted that water is a flow or renewable resource, and not a stock resource which is subject to depletion.[6] Consequently, in the strict technological sense the only truly consumptive use would be some kind of chemical change that actually reduced the amount of water available on the globe. In fact, all uses are consumptive to the extent that subsequent uses are impaired by loss of one or more qualities that water is considered to contain in its natural state. The measure is not a physical, but an economic one.[7]

Thus all water uses should be valued and weighed for allocational purposes. The use of water for carrying away effluents, for example, should be valued by the cost of alternative methods of disposing of the effluents. When all relevant data on the various uses has been collected, some form of cost-benefit analysis should be applied. The object is to maximize benefit from water use by comparing the differences in the relevant costs and benefits associated with the various alternative water uses.[8]

The economic criteria of efficiency in the use of

water resources, form only part of the picture. Once an efficient allocation to the various uses has been determined, the problem of distribution to individual users remains. Efficiency has been characterized as determining the size of the pie, while distribution relates to the question of how large a share a particular individual is to receive. [9] Once "optimum levels of pollution" are calculated, the responsible agency must determine on social, political and ethical grounds what increment of waste disposal capacity will be assigned to individual waste dischargers.

The law is concerned mainly with the distributional side of the problem. Allocation of particular units of waste disposal capacity will often give rise to objections by competitors for the disposal capacity, and by competing users whose rights might be affected. Questions of individuals' rights such as those raised by objections call for administrative decision-making. The final decision is likely to be based more or less completely on policy grounds (including ethical, political, social and economic criteria). In reaching it however, the tribunal may be required to act according to procedural rules laid down in the governing statute, and in the absence of express rules, according to certain implied principles of natural justice.

Apart from procedural superivision of the decision-making process, the other major function of law in pollution matters is to delineate rights to clean water, and to prescribe compensation for infringement of these rights by waste disposers.

Detailed study of the criteria involved in optimizing net water resource benefits in the province in the economic sense

is beyond the scope of this paper. Attention will be confined to legal and administrative problems relating to water pollution. However, it should not be forgotten that the same legislation that contains the distributional formula is also an instrument for achieving maximization of net water resource benefits in economic terms.

Having attempted to place water pollution control in its proper context, the remainder of this paper will be devoted to an analysis of British Columbia's law and policy relating to water pollution. First, the common law will be outlined. A short history of pollution control legislation prior to 1956 will follow. The Pollution Control Act [10] will then be analyzed, with particular attention to the administrative tribunal established thereunder. Finally, some comments will be made on the following: the scope remaining for common law remedies; judicial review of Pollution Control Board decisions; and other provincial and dominion legislation in relation to water pollution.

II THE COMMON LAW POSITION

English common law on water pollution was included in the body of law inherited by British Columbia when it achieved colonial status in 1858. [11] The common law was essentially concerned with riparian proprietors seeking to protect their proprietary rights against upstream pollutors by action in the civil courts. The remedies were damages and injunction.

Pollution at common law was defined as the addition to water of anything which alters its natural qualities and results in a riparian owner not receiving the natural waters of the stream. [12] Thus, adding hard water to soft water, [13] raising the temperature of the water, [14] or adding some substance harmless in itself which in combination with something already in the water causes damage, [15] have all been held to constitute pollution.

A riparian owner on a natural stream has as one of the bundle of rights representing his ownership of the land, a right to the flow of the stream in its natural state. There must be no sensible diminution or increase in its natural flow and no sensible alteration of its character or quality. Anyone who pollutes the water infringes the right of the lower riparian proprietor and becomes liable for all damage to the riparian's land.[16] A right to pollute the stream can be acquired by continuous discharge of a perceptible amount of effluent for twenty years. [17] Consequently, a riparian proprietor can maintain an action for an injunction without proof of actual damages.[18]

The lower riparian's apparently absolute right to water of undiminished quality must be dovetailed with that of the upper riparian to drain his land into the stream.[19] In a number of the United States cases broader scope is provided for the up-stream user's right by the "reasonable use" doctrine.[20] This doctrine is found in Anglo-Canadian law as well, though probably in a more limited form. Lord Cairns stated the principle in Swindon Waterworks Co. V. Wilts and Berks Canal Navigation Co.:[20]

> Undoubtedly the lower riparian owner is entitled to the accustomed flow of the water for the ordinary purposes for which he can use the water, that is quite consistent with the right of the upper owner also to use the water for all ordinary purposes....But farther, there are uses no doubt to which the water may be put by the upper owner, namely uses connected with the tenement of that upper owner. Under certain circumstances and provided no material injury is done, the water may be used and may be diverted for a time by the upper owner for the purpose of irrigation. That may well be done; the exhaustion of the water which may thereby take place may be so inconsiderable as not to form a subject of complaint by the lower owner, and the water may be restored after the object of irrigation is answered, in a volume substantially equal to that in which it passed before. Again, it may well be that there may be a use of the water by the upper owner for, I will say, manufacturing purposes, so reasonable that no just complaint can be made upon the subject by the lower owner. Whether such a use in any particular case could be made for manufacturing purposes connected with the upper tenement would, I apprehend, depend upon

> whether the use was a reasonable use. Whether it was a reasonable use would depend, at all events in some degree, on the magnitude of stream from which the deduction was made for this purpose over and above the ordinary use of the water [22]

From this it appears that water may be used even for disposing of industrial wastes so long as this use is reasonable in the circumstances.

Pollution (as distinguished from reasonable waste disposal) differs from obstruction or diversion of a stream in that it is an unlawful act in itself.[23] Where it amounts to a public muisance, the party causing it may be prosecuted by indictment [24] or proceeded against by information at the suit of the Attorney-General. Where special damage can be proved an action lies by a private individual based upon the public nuisance, and the Attorney-General need not be joined. [25]

The law as to tidal waters is much the same. There is no right to discharge waste into the sea so as to cause a nuisance to another person. [26] Where pollution of tidal waters does occur it may be restrained by injunction as a public nuisance by the Federal Crown. [27] Contrary to the common law position regarding streams, a right to discharge sewage into tidal waters cannot be acquired by prescription. [28]

As the problem of water pollution came to be recognized as public in nature, common law remedies were seen to be inadequate. The basic common law remedy was cast in terms of compensation and based on interference with what was merely one of a complex of

property rights. No judicial allowance was made for factors of economic or social necessity as is now done in a number of American jurisdictions. [29] Consequently, the flexibility needed to adequately deal with conflicts between polluters engaged in socially beneficial activities, and aggrieved riparian owners, was lacking. [30]

Further, some extremely difficult evidential questions continued to arise in pollution actions. The court must weigh indirect nontechnical (circumstantial) evidence. [31] It must also decide between conflicting scientific evidence and determine what weight to attach to the approved evidence. [32] These latter questions became especially important in cases involving two or more polluters. [33]

It was not enough for a plaintiff merely to show that the defendant had polluted the stream. He had to show that it had been polluted at his premises. Even if he could, if his land was some distance from the source of pollution, it was open to the defendant to cast doubt upon his case by suggesting that the condition was caused by some other waste discharged in the intervening distance. [34]

Even where a public nuisance existed so that prosecution could be initiated by the Attorney-General, or an action for an injunction could be brought in the name of the Attorney-General, the law was inadequate. "Control" was impossible since pollution was required to be already in existence before action could be commenced. Potentially dangerous levels

of pollution could be reached without any one riparian proprietor being sufficiently affected to be moved to commence an action, or to file a complaint with the Attorney-General. It became apparent that legislation was a necessary tool in the control of water pollution.

III B. C. LEGISLATION PRIOR TO 1956

The first provision dealing directly with pollution became law while British Columbia was still a colony. It was contained in the Colony's Health Ordinance 1869. Section 1(b) empowered the Governor-in-Council to delineate health districts and to define the duties of local Boards of Health appointed by him in those districts in all matters relating to

> ...drains, sewers, privies, pigsties, slaughter houses, unwholesome food, diseased cattle, noxious or offensive trades or businesses, epidemic, endemic or contagious diseases or disorders, and for the summary abatement of any nuisance or injury to public health likely to arise therefrom.[35]

Presumably, it was contemplated that many of the nuisances listed would be water borne. The provision was subsequently imported into the Province of British Columbia's Health Act[36] as Section 2(b) thereof.

1892 saw the proclamation of sanitary regulations under the then existing Health Act. [37] The regulations dealt expressly with such mundane but necessary details as approval of cesspool or reservoir system plans and yearly cleaning thereof. Compliance was enforced by threat of a fine not to exceed $100.00.

In 1893, a new Health Act [38] was passed setting up the now familiar provincial Board of Health. The Board had power to make regulations for the prevention and mitigation of disease, and was required to approve plans for proposed water

or sewerage systems.

The Sanitary Regulations 1896,[39] made by the Board of Health under the authority of the Health Act [40] and the Health Act 1893, [41] repealed the 1892 regulations. Besides including administrative instructions directed to local Boards of Health and empowering the Board to require wells to be drilled a stated distance from any known source of contamination, the regulations contained the first provision dealing expressly with stream pollution. This was Section 45 which provided:

> 45 No solid refuse or waste matter of any kind shall be deposited in any stream...unless the best means have been first adopted to purify the same.[42]

What type of treatment would be the "best means" in any particular situation was not indicated in the Act or Regulations. These regulations were repealed and replaced by the Sanitary Regulations 1917,[43] which have come down to the present substantially intact. The section quoted dealing with pollution of streams has never been amended and appears as Section 66 of the present regulations. [44]

In the revision of 1897, the old Health Act was repealed leaving the Health Act 1893 alone as the governing legislation. [45] Since that time the provisions requiring Board [46] approval of waterworks and sewerage plans with regard to quality of water etc. haveremained substantially the same. [47] The sections in the regulations dealing with modes of disposal of liquid household wastes [48] and of sewage and other waste materials [49]

have been in force unaltered since 1917.

Another set of regulations made under the Health Act are the Sanitary Regulations Governing Watersheds which date from 1926. These call for watershed sanitary inspectors to be appointed by cities or municipal councils concerned. The inspectors are to require that all persons working or merely travelling through a watershed be properly inoculated and possess certificates to this effect. The object is prevention of dissemination of water-borne communicable diseases. [50]

In order to provide further controls on stream pollution in rural areas, the Sewerage Act 1910 [51] was passed. It provided that upon petition of a representative number of property owners the Lieutenant-Governor in Council could set up a Sewerage District. Once established, the District's commissioners were charged with requiring proper plumbing and sewer connections and waste disposal.

Another act that might be mentioned is the Sanitary Drainage Companies Act 1904, [52] which provided that these companies must submit plans of works to the Provincial Board of Health for approval. Thus, the provisions of the Health Act requiring Board approval of sewerage works plans [53] were extended to sanitary drainage companies operating beyond the limits of organized territory.

Another means of indirect pollution control was provided by a series of statutes that conferred power on a combination composed of the City of Vancouver and surrounding districts

to expropriate land necessary for sewerage works. The first of these was the Burrard Peninsula Joint Sewerage Act,[54] which was replaced in the following year, 1914, by the more comprehensive Vancouver and Districts Joint Sewerage and Drainage Act.[55] The latter act remained in force with only minor amendments until 1956 when it was repealed by the Greater Vancouver Sewerage and Drainage District Act. [56] This latter act vests in a board much the same duties regarding sewerage construction and maintenance as did its predecessors, along with powers of finance and expropriation.

To this point the sketch of early pollution legislation in B. C. has canvassed only one of its two major sources --health and sewage disposal legislation. The other is legislation with regard to water use and diversion.

In 1903 a very short act [57] was passed with the object of preventing obstruction of watercourses by irresponsible loggers and mill operators as well as by other water users. Section 2 declared that,

> ...in case a person throws or in case an owner or occupier of a mill suffers or permits to be thrown into any lake, river, stream or watercourse, slabs, bark, sawdust, waste stuff or other refuse of any sawmill, or... driftwood, waste wood or leached ashes... he shall incur a penalty not exceeding ten dollars and not less than one dollar for each day during which the contravention of this Act continues, over and above all damages arising therefrom. [58]

This section was imported whole into the Water Act in the 1911 consolidation. [59] It has come down to the present Water Act [60] in slighty different form so that now no offence occurs until the Water Recorder or Engineer has first ordered the polluter to desist. [61]

These are the main sources [62] of the present pollution control legislation in BritishColumbia. It can be seen that pollution was subject to control mainly by water and health authorities under provisions contained in a number of pieces of general legislation. In the application of the specific pollution sections (most often by Health Authorities) the tendency was to lose sight of the broader objectives of water resource allocation. There was confusion and competition among the governing authorities. Pollution control (in the sense of prior prevention) was difficult since the various provisions merely made existing pollution the subject of penalties. Provisions that did foster prevention did so for the wrong reason--viz., because waste disposal into waters was considered a potential health menace and therefore wrong in any degree.

IV THE POLLUTION CONTROL ACT 1956

Because water pollution has not always possessed its present mass appeal, there seemed in the early 1950's to be little chance that affirmative pollution control steps would be taken. A single incident however brought the problem so sharply into focus that the provincial legislature was forced to enact a specific anti-pollution statute.

This was the proposal of the City of Vancouver to expropriate land in Richmond to build the Iona Island sewage treatment plant. Richmond officials objected to the proposed discharge of effluent from the plant into the north arm of the Fraser River. The dispute was settled by the passing of the Pollution Control Act 1956. [63]

Under the Act a Pollution Control Board was set up with power to set standards for effluent discharged into all surface and ground waters, [64] and to determine what constitutes a polluted condition. "Pollution" was defined as "anything done or any result or condition existing, created or likely to be created affecting land or water which in the opinion of the Board is detrimental to health, sanitation, or the public interest."[65] The word "land" indicates that the definition covers soil as well as water pollution.

It was provided that no person shall discharge waste into waters under the jurisdiction of the Board without a permit. The Board could grant such permits in its discretion, attaching

such conditions (in the form mainly of treatment requirements) as it deemed necessary in each particular case. It was also empowered to conduct tests and surveys to determine the condition of various waters in the province.

It must be emphasized that in its original form the Act was not intended to place water pollution control in the resources field. It was quite clearly not regarded as a specialized problem of water resource allocation. The original Act was essentially intended to deal with municipalities and municipal waste discharges. Section 12 declared the Act to apply to:

> All the areas of land contained within the boundaries of a municipality draining by natural or artificial means into the Fraser River or its tributories...[66]

"Works", was originally defined to include,

> drains, ditches, sewers, intercepting sewers, sewage treatment and disposal plants and works, pumping stations, and other works necessary thereto, and outlets for carrying off, treating and disposing of drainage and sewage, and any other works, structures, lands and conveniences included and necessary to the completion of a sewerage or drainage system.[67]

Nowhere in this long list is there any reference to works used for treating industrial waste.

"Effluent" was defined as "anything flowing in or out of a drain, sewer, sewage disposal system or works."[67a]

It was only in 1965 that water pollution control was shifted from the Department of Municipal Affairs to the Department

of Lands, Forests and Water Resources.[68] The amending act, besides redefining "Minister" to mean the Minister of Lands, Forests and Water Resources,[696] inserted into the definition of "works" the words "including industrial waste". [70] The area to which the Act applied had been extended by regulation in 1961 and 1962 so that lands other than municipal lands are now included. [71] Section 12 however retains its original wording, and serves as a reminder that initially the intention of the legislature was to deal only with pollution caused by municipal waste discharges and affecting municipal lands.

A <u>The Pollution Control Board</u>

Section 3 of the Act established the Pollution Control Board, with members and chairman to be appointed by the Lieutenant-Governor in Council for such time as he may determine. The present Board is composed of seven members (including five government officials), under the chairmanship of the Deputy Minister of Lands, Forests and Water Resources. [72] The various areas and departments represented on the Board other than pollution control include Health, Agriculture, Mines, Forestry, Water Resources and Conservation.

The Board has been severely criticized as a "civil servants tribunal"--a "packed board". [72a] Originally it was a composite body composed of government employees and representatives of the general public appointed on a regional representation basis. But this set-up became obsolete when the Board acquired a permanent staff and a budget. The present Board

feels that public representatives are rightly excluded since civil servants are better able to cope with government financial constraints in program and project planning. This, it is submitted, is patently a poor argument. However, if as appears, the government does not intend the Board to create policy or exhibit expertise, then its present membership is quite suitable. The following editorial comment would seem, apart from the rough edges of journalistic bombast, to be basically correct:

> There are capable men in any number of fields who could make an important contribution to this authority, and at the same time remove from its decisions the curse of the all-government rubber stamp. It seems clear that none will be called. The government, alas, undoubtedly has put together exactly the Board that it wants.[73]

The duties and powers of the Board are set out in the Act in some detail, and include the following:

> (a) To determine what qualities and properties of water shall constitute a polluted condition
>
> (b) to prescribe standards regarding the quality and character of the effluent which may be discharged into any of the waters within the area or areas under the jurisdiction of the Board.[74]

These two clauses along with Section 7, which empowers the Board

to issue permits for the discharge of waste, contain the Board's main control powers. It is apparent from these three provisions alone that extremely wide discretionary powers are vested in the Board. No guide lines or formulae are found in the Act by which the existence of a polluted condition is to be determined, or by which standards are to be formulated; nor is there any indication of what factors should be considered in deciding whether or not to issue a permit. [75]

The Board may order any permittee to increase the degree of treatment or alter the manner or point of discharge of effluent.[76] Failure to comply with such order will result in an order to cease discharge of effluent.[77] Further sanction is provided by Section 5 which makes wilful contravention of any provision of the Act or of any order of the Board, an offence punishable by a fine not exceeding $250.00. The penalty was extended to contravention of any order of the engineer in 1965.[78] This was the necessary complement to the altered Section 14, by which certain powers were delegated to the Board's engineer, including the power to determine what constitutes pollution and to order the repair, removal or alteration of any works. [79] Under clauses (c) and (h) of Section 4 the Board has power to conduct surveys and tests and to appoint advisory or technical committees to inform the Board. [80]

For this purpose it employs four full-time Engineers under an Executive Engineer and also has access to provincial Health Department personnel.

It should be noted that aside from the jurisdictional limitations as to subject matter found in the Act, the Board's jurisdiction is also circumscribed geographically. The Act applies only to those areas described in clause (a) of Section 12 and to further areas designated by the Lieutenant-Governor in Council by regulation.[81] So far, this total area includes only about 40% of the provincial area, however it takes in over 95% of the province's population.[82]

B Permit System

(1) Application

(a) Particulars. An individual, industry or municipality is prohibited from discharging waste into any stream in the province without a permit. The onus is placed upon the polluter, actual or potential, to make application to the Board for a permit.[83] He must comply with the regulations and supply whatever plans, specifications and other information the Board requires.[84] Particulars required in the application are set out in Section 2 of the Pollution Control Regulations 1957.[85] The application is required to state that objections must be filed within thirty days of the first

publication of the application. Signed copies of the application must be posted near the point of discharge. Ten days after such posting the applicant must file with the Board secretary copies with attached plan showing the location of the proposed works; publish a copy of the application in two newspapers, as well as in the B. C. Gazette, and furnish to the secretary information in any other matter which the secretary considers relevant.[86]

(b) Procedure

The Board may determine its own procedure. A reason that might be cited for this provision is that,

> The tribunal is a device intended to achieve speed, efficiency and economy in the enforcement of government policy. It is therefore appropriate to leave the question of procedure to the tribunal itself rather than hamper it with a rigid and formal procedure such as that applying to law courts with all its inherent possibilities for delay.[87]

In any event, flexibility would seem to require that no detailed procedural rules be laid down and adhered to. Written rules of procedure would too often leave Board decisions liable to be quashed by courts on minor procedural technicalities.

(c) Review of Application

Upon receipt of an application the Executive Engineer refers it to his technical staff for review. Copies are sent as a matter of practice to the Federal Department of Fisheries,

the Provincial Fish and Wildlife Branch, and the Provincial Health Department. The latter department normally forwards copies to the local Health Units concerned. The municipality involved is also contacted with a view to checking compliance with relevant municipal by-laws, if any. [88]

According to the regulations, upon receipt of an application, the Board secretary is to "refer the application to the Health Branch of the Department of Health and Welfare for examination and recommendation". [89] The Health Branch "upon being satisfied that the pertinent technical information for review of the application" is available is required to make such recommendation. [90] These regulations are somewhat mysterious, since the Board employs its own technical staff and has since 1965 been a branch of the Department of Lands, Forests and Water Resources.

In fact, these particular regulations have been carried over unchanged from the pre-1965 period when the Board was under the Municipal Affairs Minister and without permanent staff. At that time the engineers who handled the technical side of the Board's functions were under the Health Department. The Executive Engineer combined his present post with that of Director of Public Health Engineering. The regulations therefore required that applications be sent to these Health Branch

engineers for technical study.

When however, responsibility for administration of the Act was transferred in 1965, a second subsection was added to Section 8 allowing engineers and other necessary employees to be appointed directly in accordance with the Provincial Civil Service Act. [91] Subsequently, the former Health Department Engineers were transferred to form the technical staff of the Pollution Control Board. Reference of the application to the Health Branch is therefore no longer necessary and immediate replacement of these regulations which constitute a potential source of confusion is recommended.

(d) Prior Communication with Applicant

The application is then referred to the Board's technical staff for study. It should be mentioned at this point that in many cases, the basis of the discharge requirements will have already been the subject of negotiation between Board officials and the applicant. This may at first blush appear to detract from the appearance of impartiality that equality and fairness in the granting of permits is often thought to require. But, the view has been expressed that:

> Communication between agency personnel and those affected by agency proceedings before final decisions are reached is an indispensible safeguard to accuracy and fairness.[92]

The key information required on the application form concerns

the characteristics of the effluent to be discharged. Involved are various technically quantified measures of water purity, technology and chemistry involved in means of treatment, and stream characteristics, including flow rates, silt content and marine biological data. Given all these variables and no knowledge at all of the "standards" the Board will require, prior communication seems eminently reasonable. The Board will then conduct tests and analyses to determine natural water quality and the best means to retain that quality when discharge is commenced.

The formal application will still be reviewed by Board engineers, since changes will often be required either in the light of subsequent tests or because of incorrect data in the application. [93] The problem faced by the Board here is that the characteristics of the effluent are often not known with certainty until after a fairly lengthy period of operation by the waste discharger. [94] The Board is left to review the discharge characteristics in the light of subsequent tests and act if necessary under its power to order the degree of treatment increased. [95]

(2) Decision-making

Assuming that no objections are lodged, the data is then compiled and copies furnished to the Board members.

Generally this material is received by the members a reasonable time prior to the Board meeting at which the application will be considered. Section 7 of the regulations requires that recommendations be received by Board members at least ten days before the meeting. However since the regulation refers to "recommendations of the Health Branch", for reasons mentioned above [96] it is suggested that it would not bind the Board. At the Meeting of the Board, the application is presented by the Executive Engineer. After discussion by the members on the presentation, the Board may either:

(a) refuse to grant the permit;

(b) amend the application and grant the permit;

(c) grant the permit in whole or in part upon such terms and conditions as the Board may prescribe;

(d) require additional plans or other information prior to amendment of the application under cl.(b) or refusal to grant the permit under cl.(a) or granting the permit under cl.(c); or

(e) require the applicant to give security in the amount and form required by the Board. [97]

When an objection is received, the Board may in its discretion order a hearing at which parties whose rights would be affected may attend and make representations. [98] The right

of an objector to a hearing is discussed more fully in the section on judicial review of Board decisions. [99]

(3) Water Quality Criteria

In determining the characteristics it will demand of the proposed effluent discharge, the Board acts under its power to prescribe standards regarding the quality and character of effluent. Aside from "health, sanitation or the public interest" in the definition of pollution, [100] no guiding criteria of any kind are set out in the legislation. A prospective applicant will have no knowledge of what degree of treatment he might be expected to provide.

(a) The Pacific Northwest Area Pollution Control Council

A fairly reliable but unofficial guide is provided by the stated objectives of the Pacific Northwest Area Pollution Control Council, of which the British Columbia Pollution Control Board and Health Department are member agencies. The Council is an informal organization of technical officials connected with pollution control programs in Alaska, British Columbia, Idaho, Montana, Oregon and Washington. There is also representation from the Canadian Department of National Health and Welfare and the U. S. Public Health Service. It was organized in 1949 for the purpose of standardizing pollution control activities in the Pacific Northwest. In 1952 a committee on water quality objectives was appointed which produced a table

of quality objectives and minimum treatment requirements. This table has been revised a number of times, the latest being in November of 1966. [101] The Council declared it to be its policy to:

> 1. Encourage and promote programs for the preservation of surface and ground waters and the restoration of these waters to the best possible condition consistent with the public health and welfare; the propagation and protection of fish, aquatic life and wildlife; and the recreational, agricultural and industrial needs of the area;
>
> 2. Insure that the waters of those basins that have not yet been adversely affected by municipal, agricultural or industrial development and, therefore are of highest possible quality, be preserved in the best condition consistent with reasonable and beneficial future development;
>
> 3. Restore those waters that now exist at levels of quality below that which is necessary and desirable for the best interests of the people, to conditions permitting increased beneficial uses by the people of the area. [102]

This declaration of policy is acknowledged by the Pollution Control Board to be a kind of guiding philosophy in its operations. The Board also endorses the revised water quality objectives and accords them a status such as was contemplated by the Council in its latest report, viz.:

> The objectives as used in this report are rules, tests or guides useful for making decisions regarding water quality. Objectives of water quality are a collection of the best available information relating quality parameters to specific uses. They have no legal authority, but will serve as a guide for setting standards which carry legal authority. Constant surveillance of new technology and new uses must be maintained to keep these objectives flexible and useful. [103]

This table of water quality objectives can serve as a reasonably reliable guide for a potential waste discharger whose plant is in the early design stage. It should be remembered however that these are only quality objectives; treatment requirements are entirely in the discretion of the Pollution Control Board. Consultation with the Board at a very early stage in the development of any waste producing activity is therefore recommended.

(b) "Standards" and "Requirements"

The use of the word "standards" in section 4(b) of the Pollution Control Act should perhaps be clarified. Such standards must be distinguished from statutory standards (such as "public interest" in the definition of pollution in section 2) which limit the discretion of the tribunal. [104] The word "standards" connotes definite rules established by authority.

This imports rigid official or quasi-legal characteristics into the word. [105] The standards prescribed by the Board in in permits issued by it are in no sense rigid or tending to establish vested rights as the word might indicate. Special conditions inserted in permits, along with power under Section 4(f) of the Act to order the degree of treatment increased, provide very definite flexibility.

Probably a far better word to describe the decision by the regulatory body is "requirement", which makes clearer the idea of accomplishing a purpose or objective. It gives no impression of vested right since requirements are less likely than standards to be rigid or fixed. [106] These requirements are established ad hoc by the Board for particular permittees. They are in no way intended to be immutable, nor are they authoritative in subsequent applications to discharge effluent into the same stream. However, in the case of large industrial operations, vested interests are unavoidably created in some degree. "Standards" in permits granted to the first applicant on a stream will naturally tend to influence the degree of treatment that will be required of later applicants, although they are in no way binding.

(c) Source Control and Stream Classification

The Pollution Control Act employs standards or

requirements dealing with the quality and quantity of effluent to be discharged by a particular permittee. These are known as "effluent standards". The Board in issuing permits employs two types of effluent requirements. First, in the effluent characteristics section of the permit, the Board restricts the strength and amount of effluent to be discharged. Second, the special conditions usually include specification as to degree and type of treatment of specified pollutants.

Another common type of requirement relates to quality of the receiving water. These are characterized "stream standards" or "receiving water standards". They may be broken down into two classes: (a) dilution requirements, and (b) standards of receiving water quality. [107]

Dilution requirements are not often employed, although they were favoured at the turn of the century. They were handy measurements at a time when scientific knowledge of pollutants and water quality was scanty. Precedent being what it is, dilution data found in the eighth report of the Royal Commission on Sewage Disposal 1913, continues to be quoted before courts in Great Britain. [108]

Quality standards of receiving waters are based on maximum concentrations for particular pollutants. They depend on the beneficial use to which the stream may be put. Thus,

stream standards are often combined with a system of stream classification according to use, with separate standards being set for each class or zone. For example, Maine classifies water into four categories:

> B. 1 bathing and potable water after adequate treatment;
>
> B. 2 recreational, boating, fishing, industrial and potable water supply after adequate treatment;
>
> C. recreational boating and fishing--not to be used for water supply or bathing;
>
> D. sewage and industrial waste and transportation; but nuisances are not permitted. [109]

It is widely believed by economists that classification, because it takes into account the assimilative capacity of the receiving water, can result in a lower real social cost of water utilization. [110] But on the debit side, such standards are difficult to define with precision and consequently difficult to administer. Moreover, classification is hotly opposed by "source control" (i.e., effluent standards) advocates who feel its effect is to turn designated waterways into open sewers. [111] They argue that classifications once made will be difficult to change, and will tend to create vested interests in polluting waterways. [112] The Pollution Control Board is in the latter camp. The Board holds the view that for

the reasons already given, and because it will run counter to its guiding philosophy of maintaining all waters in as clean a state as possible or practicable, classification should not be introduced. [113]

As the legislation stands, the Board is probably correct in its stand on zoning. So long as economic considerations are more or less freely acknowledged to be overridden by conservation objectives, effluent standards are the appropriate means of control. But if maximization of real social benefit from water resource utilization becomes the goal, and if policy making powers are given to the Board, then stream standards correlated with a classification system will be more appropriate. McKee and Wolf provide an apt summary, viz.:

> Effluent standards have the advantages of simplicity and ease of administration for they are well defined and equitable among industries. Their primary disadvantage lies in the uneconomical use of the assimilative powers of receiving waters. [114]

(4) Legal Effect of a Permit

If a permit is granted by the Board the applicant receives a licence conferring upon him the right to discharge waste of the quality and in the quantity specified in the permit. The important provisions in the permit are those setting out the special conditions imposed by the Board. These conditions

may include provision for remedial measures if the final means of disposal proves unsatisfactory; additional treatment at any stage if in the Board's opinion effluent concentrations are too high; periodic analysis of the effluent; emergency procedure under which the Board must be immediately notified; and provision that the Board may at any time modify or revise the standards and procedures specified. [115] Besides the all-important effluent quality, permits also show the source of the effluent, the point of discharge, the land from which the discharge originates and to which it is appurtenant, and the period of validity. [116]

(a) Term

There is no common term for permits set out in the Act. But an indefinite term does not appear to have been intended since the Act provides that the Board may amend any permit to extend its term. [117] It is accordingly open for the Board to grant temporary permits [118] and to attach whatever contingencies to the term it deems fit. [119]

(b) Prescription

The Act contains no express provision that no right to pollute water can be acquired by prescription. But there is authority for the proposition that no prescriptive right to pollute a stream can be acquired even at common law. [120]

In any case, since the Act is deemed to be "an extension of (the Water Act) for the public interest", [121] the provision in the latter act that "no right to divert or use water may be acquired by prescription" [122] would seem to suffice.

(c) Priorities

There is no provision regarding priorities either on application or as between subsisting permits. In order to forestall future conflicts it is suggested that a provision be inserted to give filing of application procedural priority in certain circumstances. While the decision of the Board would normally prevail ultimately, regardless of order of filing, it is easy to imagine a situation in which two applicants would vie for the last segment of disposal capacity of a stream. Assuming that their proposed quantity of discharge is similar and that the largest economically feasible degree of treatment yields effluent of approximately the same quality, priority of application would govern.

The problem of competing applicants would also be met to some extent by provision for reservations of disposal capacity. It is submitted that a section in much the same terms as section 45 of the Water Act would allow a person to investigate the suitability of a riparian site for his purposes without losing the disposal capacity to a prior applicant.

As to priorities between subsisting permits, consider the following situation. A stream is employed for waste disposal by a number of permit holders. The Board's periodic tests indicate that waste content of the stream has risen beyond acceptable limits. Who should be required to reduce discharges or increase treatment? Possibiliiites include:

(i) requiring the last permitee in point of time to increase treatment;

(ii) requiring the "leastbeneficial user" (presumably according to a statutory ordering) [123] to increase treatment;

(iii) requiring all polluters to increase treatment;

(iv) requiring one polluter to increase treatment (either on the basis of (i) or (ii)) then levying a pro rata charge on the others.

Clearly a solution based on simple priority of permit discriminates against the last comer. Classification according to beneficial uses again may lead to discrimination. The fact that the degree of benefit would turn on the type of industry the user engaged in might lead to unpleasant pandering and allegations of favouritism. On the other hand, to require all dischargers to construct additional treatment facilities would be highly uneconomic, since treatment plants often can be extended only by adding large units of capacity.

The fourth solution is the best. Economies resulting from a larger scale plant would be realized. Costs would be apportioned as nearly as possible according to the pollution caused by each individual or firm, much as the German River Basin Authorities have done. [124]

These recommendations with regard to priorites may appear to be completely inconsistent with the Board's overriding discretion to set standards and prescribe treatment. However the fact that Board permits are stated to be appurtenant to certain lands [125] indicates that some type of property right may vest in the permittee. Moreover, since the Act is deemed not to be contrary to the Water Act but an extension thereof, [126] there is reason to suppose that P. C. B. permits give rise to statutory rights closely analogous to water rights. If this be so, the law requires that these rights be protected and rendered certain as far as is consistent with the policy of the legislation.

(d) Transfers

Although permits are made appurtenant to land or mineral claims [127] there is no provision in the Act that a permit appurtenant to certain land is automotically included in any transfer thereof. A permit appears to be transferable apart from the land to which it was originally stated to be

appurtenant. But, on closer examination it seems that severability is solely in the discretion of the Board since transfer requires an amendment to the permit by the Board under Section 7(4)(g). It is suggested that the works necessary for the exercise of the permit would pass automatically to the transferee, the right being clearly contingent upon the existence and operation of such works. [128]

(e) Conflict With Water Licence

A problem is raised by the possibility of competing licencees, one holding a P. C. B. permit and the other a water licence under the Water Act. It may be argued that the right conferred by an existing water licence [129] cannot be overridden by a Pollution Control Board Permit. Nowhere in the Pollution Control Act is mention made of rights conferred under a permit. Moreover, even assuming that rights (as opposed to mere privileges) are conferred the right to use water for waste disposal is surely a lower beneficial use than, for example, domestic purposes. Indeed, waste disposal is not even mentioned in Section 12 of the Water Act where water uses are ranked. Since the Pollution Control Act is deemed to extend the Water Act "in the public interest", and since the philosophy behind the latter Act is to obtain the most beneficial use of the resource, the water licence may confer a higher right.

A contrary position is taken by those who regard the Pollution Control Board as not disposing of quantities of particular resource use ab initio. Rather, it is authorized by statute to interfere with an existing resource-use right in order to accommodate the claim of a person desirous of using the resource for a conflicting purpose. To this extent the rights granted under a water licence are liable to be abridged. It is submitted however that denial of the status of "resource use" to waste disposal is not necessary to this argument. Waste disposal and water use for domestic, industrial or other purposes are all legitimate uses of the resource. That conflicts arise, is the result of water's"multiple use" characteristic. The better approach is to consider both water use rights and waste disposal rights to be of the same genus--viz., resource use rights, [130] This helps to clarify the P. C. B. permit's function as a resource use licence, not a licence to do the otherwise unlawful act of polluting waters.

The water licence may be subject to partial abridgement by the P. C. B. permit. Section 5 of the Water Act confers no express right to clean water, whereas the P. C. B. permittee has express right to discharge the quantity and quality of effluent allowed by the terms and conditions of his permit.

The effect appears to be a statutory delimitation of

the scope of "reasonable use" at the expense of the statutory water right. What is reasonable waste discharge will obviously differ from flood season to low flow. But if the discharge allowed takes this into account and is otherwise consonant with reasonable use of the stream, no conflict need occur.

C Enforcement

(1) Under the Pollution Control Act

(a) Public Inquiry

The Board may hold a public or other inquiry on any matter within its jurisdiction when it appears to it that proper determination of any matter so requires. [131] For the purposes of the inquiry theBoard chairman has all the powers and jurisdiction of a Justice of the Peace under the Summary Convictins Act. [132] Aside from the summary criminal powers, it is likely that adverse publicity will have some deterrent effect upon a polluter appearing before the inquiry.

(b) Section 5

If the limits of discharge are exceeded or the conditions of the permit otherwise breached, the permittee is subject to penalty under Section 5 which makes every person guilty of an offence "who wilfully contravenes any provision of this Act or any order of the Board, or neglects to do any act or thing required to be done under this Act or under any

order of the Board or Engineer." [133] This section, it should be noted, creates two separate offences--viz., contravention of a provision of the Act, and contravention of an order of the Board or Engineer. The second requires an affirmative act on the part of the Board or Engineer before any breach occurs. It should also be noticed that what is required is a wilful contravention; presumably a waste discharger is not subject to prosecution for accidental excessive discharges in the absence of some degree of guilty intention. [133a]

The creation of an offence committed by anyone who wilfully contravenes any provision of the Act placed the Board in an awkward position immediately after passage of the Act. At that time, before any permits were issued, every outfall in the area under the Board's jurisdiction constituted an offence, being a breach of Section 7 which prohibited any person from discharging waste without a permit. It was obvious that licencing of all existing outfalls would take some time. The problem has been resolved in two ways. First, as a matter of policy the Board has declined to prosecute unless the offence consists of wilful contravention of an order or direction of the Board or Engineer. It has so far required permits to be obtained only for new waste discharges. Existing outfalls require no permit except:

(i) when expansion of waste creating plant is contemplated, and

(ii) when the outfall in the opinion of the Board, causes a nuisance.

This policy is calculated to eventually bring all outfalls in the area of the Board's jurisdiction under permit. Meanwhile, outfalls that were in existence in 1956 and cause no nuisance are left unregulated.

Second, by amendment in 1963, [134] a provision was added that empowered the Board to classify operations and with the consent of the Lieutenant-Governor in Council to exempt any class so determined from the provisions of the Act. Under this provision a regulation was made classifying waste discharges into Class A: all discharges of domestic sewage where the flow is less than 5000 gallons per day, and Class B: all other discharges of waste. [135] Only Class B waste discharges are required to be under permit.

In order to effectively enforce the penalty provision, the Engineer is given wide powers. He may, as already mentioned, determine what constitutes pollution. [136] He also has power to "enter upon any land or premises to inspect, regulate, close, or lock any works", [137] and "may order the repair, alteration, improvement, removal of, or addition to any works." [138]

A problem has arisen with regard to the Engineer's power to enter land or premises to close or lock works. These powers were conferred by amendment to Section 14 in 1965. At the same time, as was mentioned above,[139] the words "including industrial waste" were added to the definition of works in Section 2. The result is that while treatment and disposal works for industrial waste are now included, works which in no way treat or convey wastes, but simply contribute to its creation, are not within the definition. Thus, while the Engineer has power to enter premises to close or lock treatment works "and any other works...included and necessary to the completion of a sewage or drainage system", he has no similar power with regard to direct sources of pollution.[140]

(2) Criminal Code Prosecution

Section 165 of the Criminal Code declares that everyone who commits a common nuisance is guilty of an indictable offence and liable to two years imprisonment. A common nuisance is defined as the commission of an unlawful act which,

> (a) endangers the lives, safety, health, property or comfort of the public, or
> (b) obstructs the public in the exercise or enjoyment of any right that is common to all the subjects of her Majesty in Canada.[141]

The Board has employed this section to prosecute polluters whose action amounts to a public nuisance.[142] The

The section could be used against companies[142a] as well as private individuals.

(3) Civil Proceedings

If a particularly obstinate polluter were to either refuse to apply for a permit or wilfully to exceed permit limits, control through civil action is another possibility for the Board. Where pollution constitutes a public nuisance, action for an injunction could be brought in the name of the Attorney-General.[143] If the polluter is a municipality or some other entity discharging effluent under statutory authority, the statute will be strictly construed.[144] The statutory powers will not be regarded as authorizing the creation of a nuisance unless the statute expressly so states.[145]

V PRIVATE CIVIL ACTIONS

Despite the existence of the statute, actions for pollution at common law may still be brought by riparian proprietors.[146] Since pollution is not a mere nuisance but is considered to be a wrongful disturbance of a servitude,[147] the status to bring an action exists only in riparian owners.[148]

A Riparian Rights in British Columbia

The difficulty is that it has been argued with some force that riparian rights (the right to water in an unpolluted state being one) have been entirely abrogated in British Columbia by legislation creating statutory water rights.[149] The argument runs somewhat as follows. All provincial waters are vested in the crown except only in so far as private rights have been established under licences or approvals issued under the relevant legislation.[150] In the early legislation exceptions were made with respect to appropriations for stock and domestic use to the extent that they could be satisfied out of unrecorded water having public access. Moreover, a clause was included expressly saving the right of a riparian proprietor to use water for domestic purposes.[151] However, in 1925 the Act was amended.[152] The saving clause was dropped and a provision was included that, "It shall not however be an offence for any person to use for

domestic purpose any unrecorded water to which there is lawful public or private access." The necessity for declaring use of unrecorded water to be no offence, it is said, is clear indication that the amendment was intended to vest all water in the Crown for all purposes. A further amendment in 1951, [153] which makes it, in any prosecution under the Act, incumbent upon the person diverting water under this provision to prove that the water was unrecorded, is cited as making it even clearer that such right exists only on sufferance.

On the authorities however, it is submitted that this argument cannot be supported, or at least that it goes too far. In Esquimalt Waterworks Co. V. City of Victoria, [154] Duff, J. said of the 1892 Act that,

> ...it cannot, I think be maintained that it does not indirectly interfere in a most substantial way with pre-existing riparian rights; but it is not, I think necessary to conclude that the Act abrogates those rights. [155]

Salvas V. Bell [156] was an action for pollution of a watercourse by mine tailings. Swanson, Co.Ct.J. found that pollution existed and that, "the plaintiff has at common law, the rights of a riparian proprietor in said stream." [157] Accordingly, he awarded damages for defendant's interference with plaintiff's right to the stream flow in its natural state.

The effect of the 1925 amendment to the Water Act was considered in the case of Johnson V. Anderson.[158] There, action was brought by a person having no water licence against an upstream landowner, who held a licence, but engaged in diversions not authorized by that licence. Fisher, J. held that the plaintiff was entitled to enjoin the wrongful and unauthorized diversion which deprived him of the opportunity that he would otherwise have to lawfully use the water for domestic purposes. He refused to give effect to the argument that the plaintiff's riparian rights had been taken away by the provincial water legislation.

The statement of Lord Moulton delivering the judgment of the Privy Council in Cook V. Vancouver (City) [159] caused some difficulty. His Lordship had said:

> Their Lordships pronounce no opinion as to the right of a riparian proprietor to make use of the water flowing by his land in a way which does not interferewith the recorded water rights of other parties. [160]

But the Board did decide that riparian rights of the other class--right to continuance of the flow undiminished--had been taken away by the B. C. Legislation. [161]

Fisher, J. concluded that this statement of the Privy Council in the Cook Case meant no more than that the legislation

up to that time had taken away the riparian owner's right to the continued flow of water by his land undiminished as against the recorded water rights of other parties--"That is, only in the sense or to the extent that a right to divert or appropriate might be granted to other parties." [162]

On the question of the change effected by the amendment to the Water Act, the learned judge was of opinion that no material change had been made. He referred to the definition of "unrecorded water" in the Act and to the words of Martin, J.A. in the Cook Case, [163] in deciding that the words added to Section 4 did not indicate that the right of a riparian to water for domestic purposes existed only on sufferance.

With regard to the omission of the saving clause he said:

> I do not think it is a fair inference from such absence that the pre-existing riparian right is taken away...
>
> [T]he riparian owner still has the right to make use of [water flowing by his land] and still has a remedy against a wholly wrongful and unauthorized diversion of the stream which deprives him of such right unless the legislation as it now stands takes away such right and remedy. I do not think that the changes already referred to carry the legislation that far. [164]

The more recent amendments, it is submitted, have detracted little from the force of these authorities.

The result is that riparian rights continue to exist in British Columbia subject only to the rights of holders of valid water licences. Thus, the riparian's right to use water may be abridged to the extent that it interferes with the rights of licenced users. To this extent only can it be said that riparian rights have been abridged by the Legislature.

So far as pollution is concerned, it appears that a riparian's right to water of natural quality prevails against all, save perhaps a pollution Control Board permittee.[165] A licencee under the Water Act acquires certain rights, but the right to pollute water is not one of those conferred by Section 5 of the Act.[166] On the other hand, it should be pointed out that a water licence confers no special rights to unpolluted water. The Common law riparian right forms the only basis for an action for pollution of waters.

B Actions Against Permit Holders

It was seen in the preceding section that riparian rights continue to exist to permit actions by a riparian against a polluter who does not hold a Pollution Control Board Permit. Indeed it has been suggested by provincial authorities that

this may prove one of the most effective means of punishing a polluter who finds it worthwhile to pay the small fine imposed by the Act.[167]

It is submitted that an action may also lie against a permit holder where the permittee exceeds the rights conferred by his licence. In particular the permittee would be vulnerable if he exceeded the effluent discharge requirements with respect to quantity or quality, or if he altered the point of discharge without Board approval, or declined to construct the required works.

There have been no cases directly on this point. However, a closely analogous situation is dealt with in a line of cases concerning municipalities' statutory authority to discharge sewage into streams.

In Groat V. Edmonton[168] a downstream riparian sued the city for pollution by storm sewer drainage of a stream that flowed through his land. The Supreme Court of Canada first enunciated the principle that a municipality is not entitled at common law to discharge waste into a watercourse, and therefore may be enjoined in the same manner as any other polluter. However the city had argued that it was authorized by its Charter to build sewers, the contents of which presumably must be discharged into streams. On this point Rinfret, J.

said that although these statutory powers are exercised for the benefit of the inhabitants, the legislation does not authorize interference with a riparian's right to stream flow in its natural quality "except when necessary, and then upon payment of adequate compensation.".[169] He stated that:

> So far as statutory powers are concerned they should not be understood as authorizing the creation of a private nuisance--unless indeed the statute expressly so states.[170]

In two Ontario Cases regarding pollution by municipal sewage plants, a slightly different approach was taken. The courts considered the question to be whether the pollution was the inevitable result of the statutory authority. In Stephens V. Village of Richmond Hill,[171] Stewart, J. found the onus of proving inevitability to be on the municipality, and to be a heavy one. In Burgess V. City of Woodstock,[172] McLennan, J. also found that the requisite inevitability was not established. The evidence indicated that the sewage plant was not properly operated or maintained and was inadequate for the population served.

The Groat Case indicates that the question to ask is: has the legislature manifested an intention that such statutory power should be exercised at the expense of private rights? If the answer to this question is in the affirmative, then it

must be determined, as the Stephens and Burgess Cases decided, whether what occurred was the inevitable result of the exercise of the statutory authority.

It is submitted that in an action against a P. C. B. permittee, only the first question is relevant. The authority to discharge waste given under permits, and indeed the Board's power to grant them is merely permissive. [173] Therefore, the inference is that the legislature intended that private riparian rights were not to be abridged. The statement of Lord Watson in Metropolitan Asylum District V. Hill [174] is precisely in point, viz.:

> Where the terms of the statute are not imperative, but permissive when it is left to the discretion of the parties empowered whether the general powers committed to them shall be put into execution or not, I think the fair inference is that the legislature intended that discretion to be exercised in strict conformity with private rights and did not intend to confer licence to commit nuisance in any place which might be selected for the purpose. [175]

From the above, and from previously discussed principles, the following rules may be formulated for pollution actions against P. C. B. permittees.

1. The permittee will be liable if he exceeds the conditions of his permit and pollution results. [176] This can be

explained as a simple case of excess of statutory authority. The terms and conditions in the permit will likely be construed strictly. [177]

2. The permittee may also be liable where he complies strictly with the conditions of his permit and pollution is caused. [178] The statute nowhere authorizes the Board to permit a nuisance, and the permit itself does not give express authority to pollute, indeed quite the contrary. It merely authorizes waste disposal provided certain specified measures are taken to effectively prevent pollution. In fact, that is the very purpose of the Act and the tribunal created under it --to control water pollution. The presumption must be that the legislature in empowering the Pollution Control Board to grant permits in its discretion intended that the power be exercised so as not to interfere with private rights, and in particular with rights of riparian proprietors. [179]

But if this is wrong, and if the permit in fact encroaches on the right to clean water (perhaps by enlarging the scope of "reasonable use" as has been suggested), actions will still lie against permit holders. However, stronger evidence will be necessary, and inevitability, of pollution (under the permit terms and conditions) will be a defence, though the onus will be on the permittee. [180]

On the facts in (2) it might be asked whether an action could be brought by an affected riparian owner against the Pollution Control Board which laid down the patently faulty treatment requirements. It is submitted that the argument made in (2) is compelling here as well. The Board in no way licences pollution. To allow such an action against the Board would be akin to sanctioning an action by a disgruntled employer against the Labour Relations Board for damage caused by a particularly troublesome union that the Board had certified. This is apart even from the fact that the Pollution Control Board may not be a legal entity suable in a court of law. [181]

In a pollution action against a P. C. B. permittee the fact that the plaintiff holds a valid water licence would seem to make no difference. We have already seen that a water licence includes no express right to clean water. The only valid basis for a pollution action remains the riparian owner's right to the water flowing by his land in its natural state of purity (subject to reasonable use by upper riparians). No question of which licence confers the higher right need arise. [182]

C Presumption of Pollution from Violation of Statute

The problem here is whether a breach of any of the provisions of the Pollution Control Act or of any order of the Board or Engineer is per se evidence that actionable pollution exists. The act

does create a statutory duty not to discharge waste without a permit.[183] But monetary penalties are provided for offences. From this it may be presumed that these special remedies are prima facie intended to be the only ones.

However, this is not conclusive since the remedy does not involve compensation to persons injured, but merely a monetary payment to the Crown.[184] On balance, it is submitted that no special right of action is provided by the statute.[185] The situation is one where, because an action is provided in certain cases by the common law, the presumption is that action will lie in no other cases.[186]

VI THE BUTTLE LAKE CASE

In only one case have provisions of the Pollution Control Act been tested in the courts. This was the well-known recent case of Western Mines Ltd. (N.P.L.) V. Greater Campbell River Water District.[187] The main issues related to procedure--viz., notice and hearing in the issuing of permits. However, the case drew much public attention to the problem of water pollution in the province, and its effects are likely to be felt beyond the actual decision in the litigation.

The action arose out of the granting on September 15, 1966 of certain permits by the Pollution Control Board to Western Mines Ltd. (N.P.L.). The permits allowed discharge of some 800 tons daily of mine and mill waste into Buttle Lake and Myra Creek which flows into the lake.

Upon application for the permits by Western Mines, the Greater Campbell River Water District had filed a notice of objection. Besides objecting to the permits being granted, it had requested technical data from Western Mines and time to consult its own experts, as well as opportunity to submit evidence in a hearing before the Board. On August 19, the Board acknowledged receipt of the objection, stating that it would be considered. Subsequently, the Water District received no correspondence from the Board until it was advised on September 22 that its objection had been considered and dismissed

and that the permits were being issued. In the mean time, on September 1, the Water District had engaged two members of the B. C. Research Council to examine and evaluate all available technical information and to prepare a report for submission to the Pollution Control Board.

The case had already become somewhat of a cause celebre when application was made by way of Notice of Motion to quash the permits on October 11. The fact that the water supply of the District's 16,000 users might be endangered had received wide publicity. The Board's action was also opposed by the B. C. Wildlife Federation, not to mention "conservationists" throughout the Province. Even the Minister of Municipal Affairs (in whose home riding the water district is located) indicated that he would "oppose pollution of Buttle Lake by industry".[188] Besides endangering the quality of Campbell River's drinking water, it was felt by many that the famous Buttle Lake trout which make Strathcona Park a popular fishing area would be jeopardized. While the president of Western Mines stated that objections to the dumping of tailings in the lake were based on "emotionalism" and not scientific fact, petitions circulated in the Campbell River, Nanaimo, Alberni, Courtenay, Cowichan and Duncan Areas, and feelings ran high.

At the hearing, the lengthy notice of motion presented

by counsel for the Water District listed 19 grounds. These included denial of natural justice through bias on the part of the Board and failure to hold a hearing or allow the District to submit written technical evidence of pollution through its experts. He also argued that the Board is charged with preventing pollution where it does not exist, not granting permits by which it might result.

Dryer, J. however dismissed the Water District's application.[189] He accepted the contention of counsel for the Board that there was no evidence that pollution would actually be caused. Dryer, J. went on to what he considered the "principal complaint" of the Applicant--that it was not given an opportunity to present its case or attack opposing evidence either at a formal hearing or otherwise.[190] Whether failure to grant this opportunity is sufficient to deprive the Board of jurisdiction depends, he said, on whether in granting the permits it was exercising a judicial or an administrative function.[191]

His decision was that the Board was exercising an administrative function. This conclusion, he felt, followed from the wording of Section 7, which indicates that in granting or withholding permits the Board operates "according to its own views of proper policy and expediency and not according to any

predetermined rules or laws." [192]

The cases from which he quoted are most interesting. From Lord Radcliffe's judgment in Nakkuda Ali V. Jayarante,[193] he plucked the famous "duty to determine questions affecting the rights of individuals...[and] superadded ...duty to act judicially," test of Lord Hewart in R. V. Legislative Committee of the Church Assembly.[194] This, he followed with a statement from Brown V. Brock and Rentals Administrator. [195] where the "true-test" was taken to be whether the tribunal is "to apply the law or policy as expediency? Is it to be guided by the law or is it a law unto itself?"[196]

It appears that the House of Lords decision in the recent landmark case of Ridge V. Baldwin [197] was not cited to the court. Moreover, in applying the latter test, the court chose to disregard the fact that it was formulated in respect of a very different kind of tribunal, established under wartime legislation and operating during a period of national emergency.

On appeal, the Court of Appeal, in a two to one decision, reversed the trial judge.[198] The majority (Davey, J. A. with whom Branca, J. A. concurred) held that the Board in deciding whether or not to grant the objector a hearing acted in a judicial capacity. Mr. Justice Davey, after careful

consideration of Section 17(2) of the Pollution Control Act concluded that while the section empowered the Board to decide in its discretion whether or not to grant an objector a hearing, all right to substantiate objections was not thereby precluded. The only kind of hearing contemplated by the section was a formal hearing at which the parties might attend before the Board and present their cases. He was of opinion that the section did not cover a hearing in the widest sense of an opportunity for an objector to support his objection by informal submissions and material--e.g., by correspondence. [199] It confers, he said,

> a right to make an effective objection and that means surely, the right to have the objection considered by the Board. That in turn implies a reasonable opportunity to support the objection by representations so that the Board may rule upon it intelligently. Anything less makes the statutory right to object illusuory and farcical. [200]

Mr. Justice Tysoe, who dissented, agreed that the Board had performed a judicial, or at least a quasi-judicial function. However, on the pivotal point--the meaning of the word "hearing" in section 17(2)--he held that the word was used in its general sense and therefore includes the more limited type of hearing. The result in his view, was that the

Board had validly exercised its discretion under the section in refusing the Water District a hearing of any kind.

It was announced recently that the case will be carried to the Supreme Court of Canada. [200a] The British Columbia Court of Appeal, after hearing and accepting evidence that there is no present likelihood of pollution of Campbell River's water supply, suspended execution of its judgment pending the appeal. The court imposed two conditions on dumping during the eight months before the appeal is heard. These were:

1. that proper samples be taken twice monthly; and
2. that the results of the tests on the samples are to be submitted to the Water District which can apply to dissolve the suspension if samples indicate a build up of toxic material that will render the water dangerous.

VII HEARING, APPEAL AND JUDICIAL REVIEW

It is proposed now to deal with a number of points pertaining to appeal and judicial review raised either directly or obliquely in the Buttle Lake Case.[201] First, the appeal provision in the Pollution Control Act will be examined. The question of when it may be necessary to exhaust this right before seeking certiorari will be considered. Subsequent sections will deal with a number of traditional administrative law problems: whether the Board is administrative or judicial, the right to a hearing under the Act; and the Board's discretionary powers.

A Appeal

An appeal lies from every order of an Engineer to the Board, and from every order of the Board to the Lieutenant-Governor in Council.[202] The latter, may delegate any member or members of the provincial Cabinet to hear the appeal.[203] In practice, the Minister of Lands, Forests and Water Resources or a committee headed by him would be likely to be designated to hear a pollution controlappeal.

Appeals from orders of an engineer must be taken within fifteen days from the date of the order, and appeals from Board orders must be taken within thirty days.[204]

Presumably these limitations refer to thehearing of the appeal and not merely to the filing of notice of appeal, since notice of appeal is dealt with in a separate subsection. Such notice shall be given "as directed" by the Board or Engineer from whose order the appeal is taken. Notice is likely to berequired. to third parties whose rights would, in the opinion of the Board, be likely to be affected.

The appeal tribunal is empowered to determine the matters involved and make any order that to it appears just. [205] If a hearing do novo is not the intent of the section, the right of appeal is a very empty one indeed. But even assuming a re-hearing is granted, the members of the provincial executive hearing the appeal would be unlikely to decide in the teeth of technical briefs presented by the Board. [207] On an appeal of this kind interesting questions are likely to arise as to the scope of official notice of technical and scientific facts.[208] In the case of an appeal to the Board from a decision of an engineer, departmental bias would present a formidable obstacle for the appellant. [209]

(1) Certiorari Not Available Where Appeal Lies

Certiorari is not available to quash an order of the Board or engineer until the appeal procedure has been exhausted. In Rucker V.Wilson, [210] application was made for licence to transfer a water right under the Water Act of 1914.

Following the decision of the Comptroller, an objector resorted to the courts despite a provision in the Act for an appeal to the minister similar to that in the Pollution Control Act. Martin, J.A. said:

> The court has no jurisdiction to interfere with the lawful exercise of the comptroller's powers, the remedy against them being an appeal to the minister of lands under section 51(2). [211]

McPhillips, J.A. also placed strong reliance upon the existence of the appeal provision which rendered the case:

> not one of there being a denial of natural justice. If the appellants had invoked the proper and plain provisions of the act it would have been possible to have had the decision of the comptroller reviewed.

The limits of this obligation to exhaust the remedies expressly provided by the statute appear to depend upon the meaning of the word "order" in Section 15. Order is defined as encompassing all decisions or directions of the Board whether given in writing or otherwise.[213] Thus, where an objection is made and the Board decides in its discretion under section 17(2) that no hearing ought to be granted, this decision is appealable to the Executive Council under Section 15.

Why then, one might ask, was certiorari granted in

the Buttle Lake Case[214] where a decision not to hold a hearing under Section 17(2) was apparently in issue? The question was not dealt with either by the trial judge or the Court of Appeal. However, this point was in fact raised as a preliminary objection by counsel for the Attorney-General in the original hearing before Dryer, J.[215] The objection was disposed of at the hearing, as Dryer, J. duly notes in his judgment.[216] The answer to the objection is that a complaint against the merits of the decision must be distinguished from a complaint that the procedural requirements of natural justice were not met. O'Halloran, J.A., drew the distinction plainly in Re Spalding.[217] He said:

> Respondent's complaint on certiorari in essence was not against a wrong judicial decision as such by the special inquiry officer, but it was a complaint that no proper hearing was held by the officer to justify any decision right or wrong.[218]

Davey, J.A. in the same case referred to the court's discretion in certiorari applications:

> It is well settled that the existence of a right of appeal while it faces a discretion in the court does not of itself require the refusal of the writ.[219]

(2) Certiorari Where Statutory Appeal is Pending

The Spalding Case is in fact authority for a broader

principle. The respondent there had appealed to the minister as provided by the Immigration Act. She had not proceeded with nor abandoned the appeal when she moved for certiorari.[220] The decision establishes that in a proper case (that is, subject to the court's discretion) certiorari will be granted even where statutory appeal has actually been launched and remains pending at the time of the hearing.

B Administrative or Judicial Tribunal

The Pollution Control Board, in granting permits after conducting tests and surveys, and after reference to whatever material it deems relevant, is exercising a discretion. This discretion is governed by the policy that it is charged with administering--viz.,controlling waste disposal in waters with a view to achieving or maintaining in the public interest, the highest standards of water quality compatible with necessary industrial, municipal and private waste discharge. This policy is clearly implicit in the statute and regulations.[221] Consequently, the Board's overall purpose, and in particular its permit issuing function, must be classified as administrative, as was recognized by all the Appeal Court Judges in the Buttle Lake Case.[222]

There is ample authority that certiorari will lie

to review the decision of an administrative tribunal, otherwise acting within its jurisdiction where there is, (a) error of law on the face of the record, [223] or (b) denial of natural justice. [224] But where the complaint involves one of the procedural safeguards embodied in the phrase "natural justice", [225] the prerogative writ is said to lie only when the tribunal exercises judicial as opposed to administrative [226] or ministerial [227] functions.

The position with regard to the Pollution Control Board appears to be that since the Board, in issuing a permit acts administratively rather than judicially, its decision is never reviewable on the ground of denial of natural justice. This is precisely the conclusion that Dryer, J. reached. [228] His mistake becomes apparent when the approach taken by the Court of Appeal is considered.

The Court of Appeal recognized that at some stage of the permit proceedings, the Board may be procedurally required to act judicially (or quasi-judicially). [229] If so, the Board is at that stage obliged to observe the rules of natural justice.

The majority (Davey and Branca,J.J.A.) found that the Board is an administrative body, but that its handling of the Water District's objection would be reviewable if at that

stage of the proceeding it was acting judicially. [230] Davey, J.A. took the question of whether the Board was acting judicially to depend upon the construction of the section of the Act that granted the right to object,[231] considered in the context of the whole Act. His conclusion was the the Board had acted judicially. He considered the following circumstances to be particularly persuasive:

(i) Section 17(2) expressly grants a right to object to persons whose rights would be affected; and

(ii) Pollution of domestic water supplies is a serious matter.

The Board's discretion to refuse a hearing under Section 17(2) did not in his opinion exclude entirely the rules of natural justice that became applicable. The word "hearing", he decided, referred only to a formal hearing and therefore did not exclude informal representations in support of objections. This latter conclusion is based upon his finding that the section confers a right to make an effective objection. [232] It can be seen that the question of whether and to what extent the legislature had purported to exclude the rules of natural justice was in fact bound up with the question of whether the duty to act judicially existed at that stage of the proceedings at all.

C The Right to a Hearing

(1) Objections

The Board,may on an objection under Section 17, decide "in its sole discretion" not to hold a formal hearing at which the parties attend before it and make representations.[233] Apparently, failure to give notice of its decision as required by Section 17(2) will not deprive the Board of jurisdiction to issue the permits.[234] If it does decide to hold a hearing, it must notify both the applicant and the objectors of the time and place thereof. All the natural justice requirements as to opportunity to prepare and present one's case, and to receive an unbiased decision will of course apply. Following the hearing the parties are entitled to be notified of the Board's decision.[235]

If the Board decides to hold no hearing, the Buttle Lake Case establishes that the objector is still entitled to support his objection informally.[236] The right to object is an effective one. This implies that the Board must, upon receipt of a notice of objection, supply the objector with copies of relevant material submitted by the applicant. It must then allow the objector reasonable time to adequately prepare and submit his representations. These representations must be accorded due consideration before the Board arrives at its

final decision whether or not to grant the permits. But since the final decision is an administrative one, it is open to the Board to reject these submissions completely and to base its decision upon any considerations it deems relevant.

But is the right to make "informal representations" enough? It is true that similar hearing-objection provisions exist in the Labour Relations Act [237] in respect of certification proceedings, and that the courts have likewise found that no right to an oral hearing exists or is necessary. But the labour legislation also contains arbitrational and mediational machinery for fostering its policy of encouraging and maintaining industrial peace. Pollution Control, on the other hand must rely solely upon the discretionary hearing for determination of its disputes. Yet the broad problem of resource allocation involves a wide array of economic, social, ethical and legal criteria that will not all be effectively raised by an objectors "informal representations".

It has been denoted by one writer a "meta-problem -- viz., a problem whose elements or relevant factors are so broad that they cannot be precisely defined in number or nature".[238] Such a problem must be attacked in the most direct and efficient manner possible. The meta-problem draws in large numbers of interested individuals and groups, each with its own peculiar

bias, prejudices and preferred solution. This feature tends to limit the effectiveness of procedures that narrow the scope of the Board's inquiry.

The Board should recognize the effectiveness and necessity of an "interest based" approach. By such an approach is meant the aim of "co-ordinating the interests involved in the [particular problem by trying] to build desirable policy out of what is acceptable rather than to attempt to deduce acceptable policy from what is desirable".[239] This co-ordination can most readily be achieved by bringing together interest groups, or at least by having the Board fully and impartially hear the story of each interested party separately, and make copies of these representations available to all. The object would be to render decision-making easier by at least identifying a possible area of common ground within the framework of Board policy. By recognizing the necessity of such an "interest based approach", a strong case can be made for the requirement of an oral hearing on every application to which objection is taken.[240] All interested parties should be given notice and opportunity to attend and present briefs.

There is no reason why "interested parties" should not include recognized wildlife and conservation associations and groups. Their presentation of data regarding possible

sacrifice of recreational benefits might well be an important consideration in the Board's decision. However, the extent of such participation should be controlled so that the rights of the original parties are not endangered.[241]

The Board should also be required to communicate its decision to all parties. Such an oral hearing will satisfy the wise requirement that officials or tribunals not only act justly but also appear to act justly.[242]

(2) Public Inquiry

The Board may, when it appears to it that the proper determination of any matter within its jurisdiction requires it, hold a public or other inquiry.[243] An argument that this inquiry is in fact a formal hearing under Section 17(2) was rejected by Davey, J.A. in the Buttle Lake Case. He stated that inquiries under Section 18 may cover any aspect of an application that may be most conveniently decided in that way. Examples cited were, the extent to which a lake or stream provides spawning ground for commercial fish, and the effect of proposed effluent discharge on fish population. However, he was of opinion that the inquiry would be used mainly in other areas of the Board's jurisdiction--e.g., whether effluent meets permit standards, and if not what steps should be ordered under Sections 4(e) and (f).[244]

D Discretion

The Pollution Control Board is vested with wide discretionary powers. It "may" issue, refuse or amend permits [245] and classify operations. [246] It decides "in its sole discretion" whether to grant an objector a hearing. [247] An inquiry may be held where it "appears to the Board" that a matter requires it. [248] The only possible statutory standards are found in the definition of pollution--viz., "detrimental to health, sanitation or the public interest". [249]

(1) Justification for Discretionary Powers

The question might be asked whether the lack of clearly defined statutory standards to guide such a tribunal can be justified. The first point is that the factors to be weighed in determining the existence of pollution and in combating existing pollution are mainly scientific. Problems are highly technical and are becoming more so as modern industries continue to compound hitherto unknown chemical pollutants. [250] Permit applications normally take the form of technical briefs, outlining toxicity, percent solids, B.O.D. etc. of the proposed effluent discharge. Objections are equally supported by scientific material, with a view to attacking the applicant's data and establishing the reliability of the data favourable to the objector. [251] Therefore it can be argued that because matters

dealt with are highly technical and often not completely understood even by scientists, the Board requires broad discretionary powers to provide sufficient scope for its expertise in deciding among technical alternatives.

The answer to this is that the Board itself is not expert. It is composed of civil servants representing various branches of the Department of Lands Forests and Water Resources, as well as other departments. The only Board member likely to possess a high degree of expertise in pollution matters is the Executive Engineer. The Board receives and considers the reports prepared by its engineering staff. But not being experts, they are open to influence in reaching their final decision by objectives of their own departments, and by their personal views on the highly emotional subject of pollution. The final decision is not likely to be the dispassionate scientific finding that characterizes decisions of truly expert tribunals.

Secondly, it might be urged that since the Board is a purely political one, under the chairmanship of the Deputy Minister of Lands, Forests and Water Resources, the free exercise of departmental policy requires discretionary powers. The Deputy Minister is in a sense the amanuensis of the Minister who is charged with implementing government policy [252] and who has an overriding political responsibility in pollution matters.

In fact, it may be argued that this element of ministerial responsibility works to some extent as a safeguard against administrative error or abuse.

Yet the fact remains that at certain stages in its proceedings, matters involving private rights are determined by the Board.

Nor is the line of ministerial responsibility so direct as it was, for example, in Franklin V. Minister of Town and Country Planning.[253] In that case the decision whether there should be a new town of Stephenage was for the Minister alone.[254] Here, the question whether to grant or refuse a permit is for the Board which is composed of members representing an array of often conflicting departmental policies. The distinction is between a truly ministerial decision and one that is merely administrative in the sense that it is policy based.

From the disposition of these pro-discretion arguments it appears that it may be possible to make a plausible case for replacing the P.C.B.'s discretion with more definite statutory standards. Rights closely analogous to rights of property are conferred by permits and similar rights are affected thereby.[255] Further, since Board members are not experts there is no justification for allowing them to make decisions of a technical nature without statutory guidelines of some sort. The new

United States water pollution legislation is based upon the promulgation of standards, [256] as are the statutes of a number of the states. [257]

However, standards cannot be applied so as to fetter the tribunal. Very much in point are criticisms levied at Judge H. J. Friendly's assertion that the failure of agencies to work out a "better definition" of standards which they apply leads to inequality and lack of predictability, as well as public criticism.[258] Stone, [259] and Jaffe [260] criticized his thesis as too wide. In particular they countered that he had failed to take into account the reasons for vesting agencies with particular quasi-judicial powers, and the susceptibility to standards of particular subject matter. Stone went on to point out that when we advocate the necessity of working out and adhering to definite standards in administrative decision-making we must not lose sight of:

> (1) The number, vagueness and degree of potential conflicts among the policy considerations which the legislator has directed to be accommodated; and
>
> (2) The rate of change in the facts relevant to each of these policies.[261]

These words, it is submitted, apply with particular force to the area of pollution control.

Too rigid standards would also have the undesirable

effect of rendering government policy the subject of argument and judicial pronouncement. The government department is at the obvious disadvantage of having no case that it can raise by way of argument.[262]

Another telling point is that engineering sources are of opinion that little advantage can be gained by setting out in rigorous detail the standards to be met.[263] The feeling is that this would open wide the source of a wealth of technical objections to Board action. If the standards took the form of maximum permissible concentrations of harmful substances, they would in fact make it possible to pollute water "according to law".

The conclusion is that somewhat more explicit statutory standards would be desirable for guiding Board action. But, these should not be lengthy, detailed or unduly limiting. Wider expressions should be used, but they should be sufficiently clear, to point out policy objectives and possibly the direction that policy will take in the future.[264]

(2) Judicial Review of Discretion

While we can satisfy ourselves that in theory some degree of Board discretion is necessary to ensure efficient and expeditious action in the area of pollution control, it requires only one widely publicized instance of alleged

"arbitrariness" on the part of the Board to draw attention to the necessity for legal safeguards. Looking at the plight of the Water District in the Buttle Lake Case, [265] one might ask, what safeguards exist against arbitrary or capricious exercise of Board discretion?

First, the Board's administrative actions (e.g., permit granting) will be subject to judicial review only at the fact finding stage. [266] A duty to act judicially may arise at certain stages of the fact finding process as the Buttle Lake Case [267] illustrates.

Second, since the ultimate decision is purely administrative, it is not amenable to the prerogative writs. [268] However, the courts will review where a discretionary power is exceeded. [269] They will interfere only,

(i) if powers are used for an improper purpose [270] or (possibly) "unreasonably"; [271]

(ii) if discretionary powers are exercised upon irrelevant considerations [272] (or without taking into account all the relevant considerations).

Another case in which review may lie is where the decision is made without evidence; [273] although the better view may be to consider "no evidence" as a factor going to unreasonableness or improper purpose.

But while these latter rules might appear comforting, they would in fact be of little use in attempting to review an

exercise of Board discretion. The Board gives no written reasons. Consequently, the "record", upon which the improper purpose or abuse of discretion must be discovered will consist of no more than the formal order and the permits themselves.[273a]

VIII OTHER POLLUTION LEGISLATION

A Provincial Legislation

(1) The Health Act [273]

Certain anti-pollution provisions in the Health Act have already been mentioned as having remained substantially unchanged for half a century.[274] Section 24 provides that plans specifications, engineer's reports and estimates, and all other construction data regarding sewage and sewage disposal systems must be submitted for approval by the Minister. Under Section 25, sewers and sewerage systems are required to be operated so as to avoid any menace to the public health, and the Minister may require operating data to be furnished to him as he deems necessary. Section 26 declares it to be unlawful to "construct, alter, extend or operate" any sewer or systems of sewerage or sewage disposal without a certificate from the minister, who may under Section 27 request alterations so as to better protect the public health before granting the certificate.

These provisions must be read subject to Section 19 of the Pollution Control Act which states that no plans, reports or other information shall be approved under Section 24 of the Health Act, and no certificate given under Sections 26 or 27, without the authority in writing of the Board. Thus, within the area to which the Pollution Control Act applies,

sewer and sewerage projects and systems and alterations thereto must meet the approval of the Pollution Control Board. Outside the jurisdiction of the P.C.B. however, power to approve plans and grant certificates remains with the Minister of Health.

(2) The Water Act

Under the Water Act,[275] a fine or not more than $250.00 can be levied upon any person convicted of "put[ting] into any stream any sawdust, timber, tailings, gravel, refuse or other thing or substance after having been ordered by the Engineer or Water Recorder not to do so."[276] Another very useful provision allows the holder of a water licence authorizing diversion for domestic or waterworks purposes to expropriate, in addition to land needed for diversion works, land, the control of which would help prevent pollution of the water authorized to be diverted.[277]

(3) The Municipal Act

The Municipal Act[278] contains a number of provisions that bear directly or indirectly on pollution control. A municipal council is empowered to prohibit by by-law any person from fouling, obstructing or impeding the flow of any stream, creek, waterway, or watercourse, whether on private property or not, and to provide penalties for breach of any such by-laws.[279]

Section 525 imposes a penalty upon any person who "obstructs, fills up, or injures any creek or watercourse constructed or improved by the municipality. Subject to the provisions of the Health Act and the Pollution Control Act mentioned above, municipal councils may establish systems of sewerage or drainage works and acquire the necessary land and equipment. [280] They are also empowered to regulate and compel the cleaning of septic tanks and cess-pools. [281]

A judge of the Supreme Court or County Court may, upon the certificate of the Medical Health Officer, make an order declaring any drain, ditch, watercourse, pond or surface water a nuisance and dangerous to the public safety or health. He may further, on notice and after hearing the parties, make such order as he deems necessary for abatement of such nuisance. [282]

The council may declare any building, structure, ditch, watercourse, pond or surface water a nuisance and may direct and order that it be removed or otherwise dealt with by the occupier. [283] In case of default by the owner or occupier to comply with the order, the council may enter and deal with the nuisance at the expense of the person defaulting. [284] Under Section 870(j) council may by by-law require manufacturers and processors to dispose of plant waste as directed by the

by-law.

(4) Petroleum and Natural Gas Act

The recently enacted Petroleum and Natural Gas Act[285] contains provisions empowering the Lieutenant-Governor in Council to make regulations relating to pollution by petroleum, natural gas, salt water, drilling mud and other wastes associated with drilling of wells. [286]

Anti-pollution provisions are also found in certain special statutes such as those incorporating water districts.[287]

B Conflict of Pollution Provisions

With the existence of pollution provisions in these various provincial statutes, the question to be asked is whether they conflict in any material way with the pollution Control Act. The point was raised in the Buttle Lake Case.[288] Counsel for the Greater Campbell River Water District argued before Dryer, J. that the granting of the permits by the Pollution Control Board to Western Mines constituted a breach of certain provisions of the Water Act, the Health Act, the Municipal Act, and the Greater Campbell River Water District Act. He contended that the effect of Section 13 of the Pollution Control Act is to import into that Act, the provisions of the Health Act, the Water Act and the Municipal Act. [289]

The trial judge considered that it was not necessary

to decide the issue thus raised, since in his opinion none of the provisions of the other statutes mentioned interfered in any way with the P.C.B.'s power to issue the permits in question.[290] He stated further that:

> exercising rights under the permits may or may not lead to actions which constitute a breach of these sections, but that does not mean that the issue of the permits is itself a breach or beyond the jurisdiction of the Pollution Control Board.[291]

The Board's permit issuing powers, then, are unaffected by the pollution provisions of these statutes. This, it is submitted, is consistent with the plain meaning of Section 13 of the Pollution Control Act. It is also consistent with Section 19 which subordinates the authority of the Health Minister under Sections 24, 26 and 27 of the Health Act to the approval of the P.C.B. The Board is quite clearly the only provincial agency possessing power to licence waste disposal in provincial waters.

The question whether the exercise of waste disposal rights by a P.C.B. permittee will result in a breach of provisions of any of the statutes listed remains open. It has already been suggested that in theory, there is no necessary conflict between a P.C.B. permit and a water licence issued under the Water Act. The latter permits diversion of a stated

amount of water; the former permits disposal of waste of a quantity and quality that will not result in pollution of the waterway.[292]

It is here submitted that the Pollution Control Act, being a specific statute relating expressly and exclusively to pollution control,must prevail over the provisions of the other general statutes.[293] Apart from even Generalia Specialions non Derogant, which is really a presumption and not a rule of law, the legislative declaration in Section 13 of the Act must prevail. That section, as already indicated, deems the Pollution Control Act, not to be contrary to the other general acts, but an extension of such acts. The legislature's express direction that the Pollution Control Act is not to be regarded as conflicting should be determinative of any argument to the contrary. Even if the section be regarded as incorporating the general acts into the special one, the provisions of the latter prevail over any of the former with which they conflict.[294]

The reason for perpetuating pollution provisions in these other general statutes is that the Pollution Control Act applies only to some 40% of the Province. When adequate staff and budget allows the jurisdiction of the Pollution Control Board to be extended to the entire province, most of the other

provisions will no longer be necessary.

C Federal Legislation

The Federal Government is also involved in Pollution control. Some half dozen statutes contain anti-pollution provisions ancilliary to general legislation in areas of exclusive Federal jurisdiction. [295]

(1) Navigable Waters Protection Act

Under the Navigable Waters Protection Act 1927 [296] sawmill operators are prohibited under penalty of fine or imprisonment from throwing sawdust, slabs, bark or any other rubbish into any water which is navigable or which flows into any navigable water. [297] Stone, gravel, earth, cinders or ashes must not be thrown into navigable tidal waters less than 12 fathoms in depth at low tide or into navigable non-tidal waters less than 8 fathoms in depth. [298] It appears that possible conflict with other federal and provincial legislation in respect of waters was contemplated, since no proceedings for recovery of a penalty for violation of a provision of the Act may be instituted without the approval of the Minister. [299]

(2) National Harbours Board Act

Regulations promulgated pursuant to the National Harbours Board Act [300] provide that nothing shall be discharged into harbour waters so as to cause any nuisance or endanger life or health. Such nuisance may be abated by the Board at

the risk and expense of the Polluter who may also be subject to a fine or imprisonment. [301]

(3) Department of Transport Act

The Board of Transport Commissioners may make general and specific regulations for the government of public Harbours in Canada. [302] These include restrictions on and penalties for the discharge of wastes into harbour waters.

(4) Canada Shipping Act

Under Section 495A of the Canada Shipping Act [303] approval is given to the International Convention for the Prevention of Pollution of the Sea by Oil 1954. The Governor in Council is empowered to make regulations to carry into effect the provisions of the Convention and "for regulating and preventing the pollution by oil from ships of any inland, minor or other waters of Canada." [304] The regulations, promulgated in 1960 carry these powers into effect, providing that fouling of surface waters by oil is an offence punishable by a fine of up to $5,000.00. A mixture containing 100 parts of oil for 1 million parts of the mixture is deemed to foul the surface of the water. [305]

(5) Migratory Birds Convention Act

The Federal Wildlife service, pursuant to regulations under the Migratory Birds Convention Act, [306] has authority to control pollution that may affect migratory birds. The Statute derives from the 1916 Migratory Birds Convention between Canada

(Represented by Great Britain) and the United States. Section 40 of the Migratory Birds Regulations reads as follows:

> 40 No person shall knowingly place, cause to be placed, or in any manner permit the flow or entrance of oil, oil wastes or substances harmful to migratory waterfowl into or upon waters frequented by migratory waterfowl, or in any waters flowing into such waters or the ice covering either of such waters.[307]

(6) International Joint Commission

The Federal Department of National Health and Welfare carries out a number of anti-pollution activities, including research and advisory services. It is also given prime responsibility for enforcement of anti-pollution rules and regulations made by the International Joint Commission,[308] which is based on the Boundary Waters Treaty of 1909 between Canada and the U. S. Article 4 of the treaty provides that boundary waters and international streams shall not be polluted on either side to the injury of health or property across the border.

(7) National Housing Act

The National Housing Act[309] now provides loans for municipal sewage treatment projects "in order to assist in the elimination or prevention of water and soil pollution".[310] The loan is not to exceed two thirds of project cost, but by a recent amendment on projects completed by March 31, 1970, 25%

of the principal and 25% of the accrued interest may be forgiven. [311] This is a very important and beneficial provision since the problem of "financial inability" of municipalities to construct necessary treatment works booms very large.[312]

The effect of these provisions is somewhat dulled however by the fact that loans for municipal sewerage projects are limited to trunk lines and central plant. Costly gathering systems and separation of storm and sanitary sewers are outside the sections. [313] The aid also does not extend to private industries required or undertaking to build treatment works.[314] Moreover, the total amount of loans is limited to $100 million.

(8) Fisheries Act

The Federal Department of Fisheries is charged with responsibility for controlling water pollution affecting fish. The Fisheries Act 1932 [315] makes illegal the placing of any toxic or otherwise deleterious substance in any water frequented by fish. [315a] There are also certain powers under the Fish Inspection Act [316] pertaining to sanitation and purity of water used in the canning and preparation of fish.

In 1960-61 Section 33 of the Fisheries Act was strengthened by increasing penalties and permitting the Governor in Council to list substances deleterious to fish in any quantity. [317] No regulations have been proclaimed under the latter power, and thus direct confrontation with provincial pollution

authorities which allow limited dumping of wastes has been avoided.

(9) Criminal Code

Federal criminal law power under the Criminal Code provision relating to common nuisances has already been considered. [318]

D. Possible Constitutional Difficulties

The result, it can be seen, is a welter of federal and provincial legislation containing pollution provisions. The possibility of constitutional conflict is patent.

Provincial anti-pollution legislation is validly enacted under the province's exclusive jurisdiction over matters relating to, "property and civil rights in the province" [319] and over, "generally all matters of a merely local or private nature in the province." [320]

Federal legislation is equally validly enacted under the Dominion's power to legislate in relation to "seacoast and inland fisheries" [321] and "navigation and shipping." [322]

Subject to Dominion paramountcy, the result would seem to be an area of common control for both the province and the Dominion, the several pieces of legislation being valid when viewed from their particular aspects. [322a] Dominion legislation

must be obeyed even by holders of waste disposal permits issued under the Pollution Control Act.

If a conflict occurs so that both pieces of legislation cannot be obeyed at the same time, the Dominion legislation will prevail. [323] The provincial legislation is merely permissive (insofar as permits are issued) and must give way to the mandatory Federal enactments. [324]

Parliament can also acquire regulatory authority in the area of pollution control by enacting legislation implementing treaties on that subject. Pollution provisions under the Migratory Birds Convention Act [325] are valid under this power. Section 5(f) of the National Health and Welfare Act, [326] which empowers the Department to enforce rules and regulations mady by the International Joint Commission (Based on the Boundary Waters Treaty 1909), is also in this category. Parliament's treaty implementing power is found in Section 132 of the B.N.A. Act. However, since the section refers only to British Empire Treaties, it confers no special competence upon the Dominion with regard to treaties entered into by Canada after she gained autonomous status in 1931. [327]

If the problem of water pollution is considered to be one that transcends the borders of the province in that it affects the general public health of the nation, the Dominion

will have legislative authority under the "peace, order and good government" clause of Section 91.[328] The existence of this power does not depend upon so narrow a criterion as national emergency.[329] What is required is a matter of national importance such "that it goes beyond local or provincial concern or interests and must from its inherent nature be the concern of the Dominion as a whole".[330] Thus, in the Margarine Reference, Estey, J. was prepared to hold the Dairy Industry Act (apart from Section 5(a)) valid as federal public health legislation under the residuary clause of Section 91.[331]

It seems clear that Parliament could legislate under its exclusive criminal law power to make water pollution a crime. In fact the present Criminal Code Section 164 may be wide enough for this purpose. Whether it is or not depends upon the meaning of the words "common nuisance" in the section. However, if efficient water resource use, coupled with equitable distribution of units of waste disposal capacity is the objective, the essentially prohibitory nature of the criminal law makes it inappropriate for the purpose.[332]

A different question arises where interprovincial or international waters are polluted and damage occurs in a neighboring jurisdiction. If the law of riparian rights applies in both jurisdictions, the problem is fairly straightforward.

It involves determination of the proper jurisdiction in which to bring the action. Probably, this would be the jurisdiction in which the tort was committed--viz., the jurisdiction in which the outfall is located--especially since damage would not be an essential ingredient of the tort (assuming the action was for infringement of the riparian right).[333]

A more difficult situation occurs when one province alters riparian law to make regulated waste disposal lawful. If pollution results in a neighboring province is there a remedy?

First, it has already been suggested[334] that the effect of British Columbia's Pollution Control Act is not to alter riparian law by abridging the riparian's right to "natural quality" water. It merely expropriates the competing riparian right to reasonable use of a waterway for waste disposal, and allocates units of the disposal capacity to permittees.

Second, if the riparian right to unpolluted water has been altered, the validity of the Pollution Control Act must be considered. One possible argument is that the provincial legislation should be construed as on its face intended to apply only to waters within the province. The matter of pollution of extra-provincial waters appears from its very nature to be one that should not be regarded as coming within any of the classes of subjects assigned to Provincial Legislatures by

by Section 92 of the B.N.A. Act. Therefore, the intention of the legislature could not have been to empower the pollution control tribunal to authorize the pollution of such waters.[335]

In a paper presented to the Resources For Tomorrow Conference in 1961, Bora Laskin suggested two other arguments:[336]

> (1) Pollution Control in interprovincial or international waters is no longer a matter in relation to property and civil rights in the province under Section 92(13), or in relation to matters of a merely local or private nature in the province under Section 92(16). Rather, it is of a non-local nature and extends in its implication beyond provincial boundaries.
>
> (2) While there may be no federal legislative power, yet the provinces are governed inter se by principles of law that protect their common interest and which they are unable to change unilaterally.

As to the former argument, Laskin admits that there is no authority for such a basis of federal power, even if the commerce power be invoked. Extra-provincial characteristics of particular flowing waters may not be sufficient to exclude provincial jurisdiction.

The latter argument is postulated upon the existence of a tribunal with original jurisdiction in controversies between provinces. No such tribunal exists in Canada. Thus, while it is open to provinces to agree to submit to the jurisdiction of a court (e.g., the Crown in right of a province can

expressly bind itself by its water pollution statute), they are not obliged to do so. In the absence of such agreements by or between dominion and provinces, the most likely solution lies in interprovincial agreements or compacts. These compacts have no constitutional sanction as they do in the United States (they are subject to Federal approval), [337] but their effectiveness in Canada could be quite as great. Current examples include the Prairie Provinces Water Board 1948, and the South Saskatchewan River Development Commission 1959. The latter, according to interprovincial agreements, has exclusive jurisdiction over the allocation of project reservoir water, including power to settle disputes relating thereto.

IX RECOMMENDATIONS

Changes that may help to clarify the present legislation and its objectives have been recommended or intimated. These may be summarized:

1. The Pollution Control Act should be extended to cover the entire province. Pollution provisions in other provincial statutes could then be repealed.

2. Pollution Control Regulations 5 to 7, made obsolete by the Board's acquisition of permanent staff and transfer to the Department of Lands, Forests and Water Resources in 1965, should be repealed. It is now clear that the Provincial Health department is intended to be subordinated to the P.C.B. in pollution matters within the latter's jurisdiction.

3. A number of changes are needed in the language of the Pollution Control Act.

   (a) The word "standards" in Section 4(b) should be replaced by "requirements," the latter having no vested right connotation, and emphasizing the existence of an objective to be attained.

   (b) The words "or Engineer" ought to be inserted after the word "Board" in the definition of pollution in Section 2 in order to render certain the Engineer's power in Section 14 to determine a

polluted condition.

(c) The definition of "works" in Section 2 should be amended to expressly include pollution causing works, in order to clarify the Engineer's power to inspect, regulate or close such works under Section 14.

4. Filing of application should be given procedural priority for certain purposes--e.g., two similar applications received on the same day. Reservations might be provided so that potential industrial waste dischargers could investigate riparian sites.

5. When water quality deteriorates in a stream bordered by a number of licenced waste dischargers, only one set of treatment works should be required, with all of the polluters sharing the cost pro rata according to amount and quality of waste discharged.

6. A public hearing should be required on every permit application to which an objection is taken. Notice should be given to all interested parties. "Interested parties" should include accredited wildlife and conservation organizations. Notice of the Board's final decision should be communicated to the parties and written reasons given.

7. Statutory standards to guide the Board in its decision-making should be inserted in the legislation. These should not

be so detailed or rigid as to strap the Board in its policy implementation. Perhaps an unofficial policy outline could be published as a guide for the general public.

While these changes might in some degree improve the existing legislation, recent events have shown that they would probably not be enough. Despite the system of permits and the mouthing of such phrases as "multiple use" and "optimum benefit", the thinking of the legislature continues to be along traditional "conservation" lines. Waste disposal of any kind continues to be synonomous with pollution, and is considered in itself to be some kind of tortious or otherwise unlawful act. The storm caused by the Buttle Lake dispute brought numerous crusading legislators to their feet to decry the state of our waters and the permissive acts of the Pollution Control Board.

The Board itself has clung to the spirit of its governing legislation. It recognizes that within limits waste disposal by municipalities and by beneficial industries is a necessary condition of rapid urbanization and industrialization. Against these benefits it has manfully attempted to balance the benefits presumably derived by society from recreational and aesthetic amenities provided by waters. No comprehensive cost-benefit analysis is attempted; indeed it would be extremely difficult,

since benefits from recreational resources are difficult to measure in monetary terms.[338] The Board has simply adopted as a premise the assumption that society prefers to maintain its streams in as clean a condition as possible within certain rather vaguely defined limits. However,the recreational value of individual streams varies greatly; and therefore it seems that the blanket assumption may tend on certain streams to discourage beneficial industries in the name of fostering virtually non-existent recreational and aesthetic benefits.

The Board is not now a policy maker, but merely an instrument of policy. It is left in the unenviable position of having to absorb public criticism without having even the full support of the government whose policy it administers. The result is that while the Board properly, albiet unscientifically, attempts to perform its duties of resource allocation, its policy tends to be influenced by the naive government attitude.

The answer surely is to invest the Board with policy-making powers. This would necessarily entail its reconstitution as an expert tribunal. A relatively small number of technically or scientifically trained personnel would be required. Legal training in one or more members would be helpful in dealing with matters of drafting and procedure. At least one other member should be a fully qualified economist. Such a tribunal would

satisfy the public's desire for impartiality and at the same time bring a more scientific approach to the problem of pollution control in British Columbia.

Another administrative technique that is often recommended is that of a comprehensive water resources commission. Such a body would be charged with all development, as well as regulatory tasks, relating to the province's water resources. Thus, hydro and flood control as well as diversion and pollution regulation would be handled by committees of the central water resources board.

Commissions of this type have been established in Saskatchewan and Ontario. The Saskatchewan Commission [339] is quite recent and its effectiveness in pollution matters is not yet clear. However, it appears that the Commission's pollution control power was merely an afterthought since a statute empowering the Department of Natural Resources to issue waste disposal permits remains in force, [340] along with other general legislation.

In Ontario, the Water Resources Commission's [341] pollution powers are limited mainly to supervision and encouragement. It has power to levy fines; but to effect a prohibition, it must apply to the court. [342]

The major disadvantage of this type of organization

is that its pollution control function tends to be neglected in favour of more glamorous development projects. It is not a likely form of organization in British Columbia.since the province's well established Hydro Authority would probably resist any proposed integration with water allocation authorities. The better approach is to keep the pollution authority separate, with its own expert staff and province-wide jurisdiction. If integration of function is to be explored it might be convenient to bring all types of pollution, including air pollution, under the jurisdiction of the Pollution Control Board.

X CONCLUSION

Pollution control is essentially an economic problem in maximizing the benefit to be obtained from utilization of the province's water resources. The law is concerned mainly in the distributional side of this problem--in providing ethical and procedural guides for determining what individuals are to be accorded what share of the waste disposal capacity of provincial waters.

The present Act is substantially in accord with these principles. To the extent that it is not, the changes suggested might provide a remedy. What is vitally important is that we do not succumb to the catch words of "conservationists" who would have us sacrifice beneficial industries merely because some water-borne waste is contemplated. They would build in the assumption that society values clean water relatively more even than higher overall living standards that are often the result of industrialization. Certainly, waste bobbing in the oily waters of what was once a favourite recreation water fills us with dismay; but the logical result of regarding <u>all</u> industrial waste disposal as wrong is a return to nature. The economic principles of efficiency, scientifically applied, along with ethical and legal distributional criteria can provide an acceptable mean.

ADDENDUM

When this paper was substantially complete, on March 13, 1967, Bill No. 62--"An Act Respecting Pollution Control"--was introduced in the British Columbia Legislature. The Bill is generally a revision and expansion of the present Pollution Control Act.

The administrative structure set up by the new legislation is two-tiered. First, the Pollution Control Board is perpetuated, consisting of a chairman and such other members as the Lieutenant-Governor in Council may from time to time determine. Section 3(3) provides that the Lieutenant-Governor in Council may direct the Board to inquire into and determine cause of and remedies for any matter relating to the pollution of land, air or water. He may further direct the Board

> (a) to take such remedial action as the Board considers necessary in the public interest; or
>
> (b) to report to the Lieutenant-Governor in Council who may thereafter direct the Board to take whatever remedial action it considers necessary in the public interest.[343]

The Board's functions are limited to determining a polluted condition, prescribing effluent standards, appointing advisory and technical committees, and carrying out instructions under section

3(3).

Second, a Director of Pollution Control is to be appointed. The Director, or his assistant or acting Director, is charged with the day-to-day administration of the Act. To him fall the duties of permit issue, amendment and enforcement.[344]

There appears to be some overlap of function between the Board and the Director (i.e., determining a polluted condition and prescribing standards). However, the probable intention is that the Board will use these powers only in cases specifically referred to it by the Executive Council under Section 3(3), and in prescribing policy limits. This latter function could be expected to be exercised only with the cooperation of, and upon the recommendations of the Director and his staff.

The permit provisions are not substantially changed. The Director is given express authority to grant provisional permits, with final permits to be issued only when the terms and conditions of the provisional permits have been met.[345] However, it should be noted that the same result could be achieved under the old legislation. Since no term was specified in the statute, permits were granted for a certain time or until the required conditions were fulfilled, whichever came first.[346]

The objection provision remains unchanged, except that the Board has been replaced by the Director as decision-maker. The arguments in favour of wide discretionary powers based upon the decision-maker's position as an instrument of government policy now become obsolete. However, since the Director will be an expert, it might be suggested that the discretionary powers are necessary to accommodate the wide range of technical control possibilites.

It is unfortunate that the right of a hearing on objections remains discretionary. The tenacity with which the government clings to its judgment that all individuals affected need not be guaranteed a full oral hearing is indicated by the new Section 6. This is the permit amendment provision which formerly expressly required that the Board consider any objections filed. This omission of discretionary language which Davey, J.A. in the Buttle Lake Case termed "the result of inartistic drafting" has been remedied by the insertion of the words "in the opinion of the Director". Thus, the right of an interested person to be notified of an amendment is now in the Director's discretion.

The only other changes of interest are the following:

1. A new definition of pollution appears--viz., "The introduction into a body of water or storing upon,

in or under land such substances of such character as to substantially alter or impair the usefulness of land or waters."[347] It should be noticed that the words "in the public interest" are no longer included in the definition. Also, the definition does not expressly extend to polluted air, although it is clear from Section 3 that the Board is intended to deal with air pollution problems.

2. The Lieutenant-Governor in Council is empowered to set up a tariff of fees payable in respect of applications, permits etc. He may also make regulations for carrying out the spirit, intent, meaning and purpose of the Act, including the division of the Province into pollution control districts for administrative purposes.[348]

3. No action may be brought against the Board or any engineer for any act or forebearance done in good faith in the performance of any authority or duty imposed under the Act.[349]

In result, the changes are not substantial. The appointment of a Director will presumably take politics out of the daily administration of the Act. However, the spectre of the Board, with its motivating force lying within the Cabinet, may portend

future approximations of the Buttle Lake fiasco. It is to be hoped that the Board will take its inquiry function seriously and construe its terms liberally. If this is done, the Board inquiry could become a valuable instrument for bringing interest groups together, and as such, an adequate alternative to the Director's discretionary hearing.

FOOTNOTES

1 O. C. Herfindahl, "What is Conservation" R. F. F. Reprint No. 30 (August, 1961).

2 Thus water is often referred to as a "multiple use" resource: A. D. Scott, Natural Resources: The Economics of Conservation 108 (1955).

3 For other examples of competing uses see Hirshleifer, De Haven and Milliman, Water Supply: Economics, Technology and Policy 34-35 (1960).

4 Menzies, "Water Pollution in Canada by Drainage Basins", Resources for Tomorrow, Vol. 1, p. 353 (1961).

5 For consumptive and nonconsumptive use classification see Hirshleifer et al, ante, n. 3, at 66-67.

6 This classification was developed by S. V. Ciriacy-Wantrup in Resource Conservation 35-38 (1963).

7 Hirshleifer et al, ante, n. 3, at 67.

8 John V. Krutilla, "Welfare Aspects of Benefit Cost Analysis", Water Resource Development 23 (1965).

9 Hirshleifer et al, ante, n. 3, at 37.

10 R.SB.C. 1960, c. 289.

11 The English Law Ordinance, 1867, R.L.B.C. 1871, No. 70.

12 Coulson and Forbes on Waters 198 (6th Ed. 1952).

13 John Young and Co. V. Bankier Distillery Co., [1893] A. C. 691.

14 Tipping V. Eckersley (1855), 2 K and J 264, 69 E.R. 779.

15 A-G V. Birmingham, Taine and Rea District Drainage Board, [1908] 2 Ch. 551.

16 Salvas V. Bell, [1927] 4 D.L.R. 1099; Jones V. Llanwist U.D.C. (1911), 75 J.P. 68.

17 A-G V. Halifax (1869), 39 L.J. Ch. 129. But see contra, Van Egmond V. Corporation of Seaforth (1884), 60 R. 559, 604, per Proudfoot, J.

18 Stephens V. Village of Richmond Hill [1956], 1 D.L.R. 569, [1955] O.R. 806 (Ont. C.A.); Groat V. Edmonton, [1928] A.C. 522, 531 per Duff, J. (as he then was); Crowther V. Cobourg (1912), 20 O.R. 844. Salmond suggests that an injunction will lie without proof of damage because the basis of the action is interference with a servitude. The action is not in nuisance although pollution properly proven constitutes a nuisance: Salmond on Torts 234 (13th Ed. 1961).

19 Groat V. Edmonton, [1928] S.C.R. 522, 532 per Rinfret, J.; In re Townships of Orford and Howard (1891), 18 Ont. A.R. 496.

20 See Frank J. Trelease,"Co-ordination of Riparian and Appropriation Rights to the Use of Water" (1955), 33 Texas L. Rev. 24 .

21 (1875), L.R. 7 H.L. 697. Also Re Burnham (1894), 22 O.A.R. 40.

22 Id. at 704. Emphasis added.

23 Hodgkinson V. Ennor (1863), 4 B. & S. 229.

24 Criminal Code, S. 164 ("common nuisance").

25 Benjamin V. Storr (1874), L.R. 9 C.P. 400; Clare V. Edmonton, (1914) 5 W.W.R. 1133 (Alta. S.C.). And See Coulson and Forbes, ante, n. 12, at 734.

26 Hobart V. Southend-on-Sea Corporation (1906), 75 L.J.K.B. 305.

27 Hadden V. North Vancouver, [1922] 1 W.W.R. 655.

28 A-G Can. V. Ewen (1895), 3 B.C.R. 468.

29 The doctrine of "comparative injury" or "balancing the equities" has been enunciated in a number of American pollution cases; though it has never been applied in Canada.

29 (cont'd) The general rule is that an injunction will not issue where the public loss and inconvenience caused is, on balance, greater than the advantage to the complainant, even where the complainant would otherwise be entitled to his remedy. Seee.g., American Cyanamid Co. V. Commonwealth (1948), 48 S.E. (2d) 279. (Virginia). However, "financial inability" is never a defence in either Canada or the United States: C. H. Quesseth, "Water Pollution Laws of Oregon" (1965), 3 Willamette L.J. 284, 292.

30 In Stephens V. Village of Richmond Hill, ante, n. 18, at 812 Stewart, J. gave short shrift to a policy argument. He said: "It is quite natural and proper that [the expert witnesses] should insist upon the importance of the welfare of the people at large, but I conceive that it is not for the judiciary to permit the doctrine of utilitarianism to be used as a make weight in the scales of justice. In civil matters,the function of the courts is to determine rights between the parties."

31 See Id. at 808.

32 Id. at 809: "I accept Dr. Howard's evidence when he says that Mr. Billinghurst's method of making tests is neither standard nor approved. procedure" - per Stewart, J. And further at 810: "In my view of this case therefore the scientific evidence ought to be considered as secondary only to the evidence as to the facts" - quoting Sir G. T. Turner, L.J. in Goldsmid V. Tunbridge Wells Improvement Commissioners (1866), L.R. 1 Ch. 349, 353. For a collection of much of the relevant American authority on evidential problems in pollution cases see Paul R. Freeman in Water Quality Criteria, McKee and Wolf (Eds.) California State Water Control Board, Publication no. 3-A, Ch. 4, pp. 65-78.

33 Although, each polluter is severally liable for the whole damage: Blair V. Deakin (1887), 57 LT 522; Pride of Derby and Derbyshire Angling Association V. British Celanese, [1952] 1 All E.R. 1326, 1333 - per Harman, J.

34 G. H. Newson, "River Pollution", [1960] J.P.L. 680; 763, 768.

35 B. C. Ordinances 1868-69.

36 B. C. Consolidated Acts 1888, c. 55.

37 Sess. Papers of Province of B. C. 1893, 3'd sess., 6th Parl. p. 267.

38 (B. C.), 1893, c. 15.

39 Sess. Papers of Province of B. C. 1897, 3'd Sess., 7th Parl. pp. viii-ix.

40 Ante, n. 36.

41 Ante, n. 38.

42 Ante, n. 39.

43 Order in Council No. 829, July 20th, 1917.

44 B. C. Reg. 142/59.

45 R.S.B.C. 1897, c. 91.

46 "Minister" was substituted by (B. C.), 1946, c. 32, s. 8.

47 Express power is now included empowering the Lieutenant-Governor in Council to make regulations for "the prevention of pollution, defilement, discoloration or fouling of all lakes, streams, pools, springs and waters": Health Act, R.S.B.C. 1960, c. 170, s. 6(r). See also sections 24-27.

48 B. C. Reg. 142/59, S. 62.

49 Ibid, s. 67.

50 B. C. reg. 147/59.

51 (B. C.), 1910, c. 43.

52 (B. C.), 1904, c. 16.

53 R. S. B. C. 1897, c. 91, s. 24.

54 (B. C.), 1913, c. 7.

55 (B. C.), 1914, c. 79.

56 (B. C.), 1956, c. 59, Am. 1965, c. 60.

57 Water Courses Obstruction Act (B. C.), 1903, c. 28.

58 Ibid., s. 2.

59 R.S.B.C. 1911, c. 239, s. 333.

60 R.S.B.C. 1960, c. 405.

61 Ibid., s. 41 (k) which reads as follows:

> 41 Every person is guilty of an offence against this Act and liable on summary conviction to a penalty not exceeding two hundred and fifty dollars, and in default to imprisonment not exceeding twelve months, who does any of the following:
>
> (k) Puts into any stream any sawdust, timber, tailings, gravel, refuse, carcass or any other thing or substance after having been ordered by the Engineer or Water Recorder not to do so.

62 Pollution sections also appear in other presently effective statutes including the Municipal Act, R.S.B.C. 1960, c. 255, and the Petroleum and Natural Gas Act (B. C.), 1965, c. 33. These will be discussed later.

63 (B. C.), 1956, c. 36, Am. 1963, c. 42, s. 17 and 1965, c. 37; R.S.B.C. 1960, c. 289.

64 Several pollution control statutes in the United States apply only to surface waters. But T. Bower in "Some Physical, Technological and Economic Characteristics of Water and Water Resources Systems" (1963), 3 Nat. Res. J. 215, 218, has pointed out that surface and ground water are integrally related physically.

65 R.S.B.C. 1960, c. 289, s. 2.

66 Ibid., s. 12. Emphasis added.

67 Ibid., s. 2.

67a Ibid.

68 (B. C.), 1965, c. 37, s. 2.

69 Ibid., s. 2(c).

70 Ibid., s. 2(e).

71 B. C. Regs. 78/64, 79/64.

72 C. J. Keenan, "A Review of the Progress of Water Pollution Abatement in British Columbia", Background paper B 6-1, Pollution and Our Environment Conference p. 6 (Montreal 1966).

72a The Vancouver Sun, Saturday November 5, 1966, p. 4 (Evening ed.).

73 Ibid.

74 R. S. B. C. 1960, c. 289, s. 4.

75 The United States (Federal) Water Quality Act 1965 (79 Stat. 903) adopts water quality standards as the means of attacking water pollution on a nation wide basis. The states must file plans for the adoption of approved standards; otherwise the Secretary of the Interior will do so himself and promulgate these in the recalcitrant state.

76 R.S.B.C. 1960, c. 289, s. 4(f).

77 Ibid., s. 4(g).

78 (B. C.), 1965, c. 37, s. 5.

79 Ibid., s. 3

80 The importance attached to water resources research, and especially to water quality research is apparent from the Proceedings of the U. S. Congress-Senate Committee on Interior and Insular Affairs: Water Resources Research (Washington 1965), and the resulting amendment to the Federal Water Resources Research Act 1964 (78 Stat. 331 as amended by 80 Stat. 129).

81 Ante, n. 71.

82 C. J. Keenan, ante, n. 72, at p. 5.

83 R.S.B.C. 1960, c. 289, s. 7(1).

84 Ibid., s. 7(2).

85 B. C. Reg. 159/59, A sample application form is appended.

86 B. C. Reg. 159/59 s. 3, as amended by B. C. Reg. 77/64.

87 R. F. Reid, "Administrative Tribunals Under Review in Ontario" (1958), 1 Can Bar J. 57, 61.

88 Conversation with C. J. Keenan, Executive Engineer Pollution Control Board, February 22, 1967.

89 B. C. Reg. 159/59 s. 5.

90 Ibid., s. 6.

91 (B. C.), 1965, c. 37, s. 7. Civil Service Act, R.S.B.C. 1960, c. 56

92 R. F. Fuchs, "Fairness and Effectiveness in Administrative Agency Organization and Procedures" (1960), 36 Ind. L. J. 1, 22.

93 This in fact occurred in the applications of Western Mines Ltd. (N.P.L.) for permits to discharge waste into Buttle Lake.

94 In the case of pulp mill effluents, for example, the character of the effluent depends upon a great many variables including generally, the efficiency of the pulping process.

95 R.S.B.C. 1960, c. 289, s. 4(f).

96 Ante, p. 24.

97 R.S.B.C. 1960, c. 289, s. 7(3).

98 Ibid., s. 17(2)

99 See post, p. 73.

100 R.S.B.C. 1960, c. 289, s. 2.

101 Water Quality Objectives, Pollution Control Council Pacific Northwest Area (1966 Revision).

102 Id. Preface.

103 Id. Introduction. Emphasis added. The Council adds to the table a list of references, particularly Water Quality Criteria, McKee and Wolf (Eds.), Publication 3A, State Water Quality Control Board, Sacramento, California (2nd. ed. 1963).

104 This is discussed under the heading Board Discretion, post.

105 Water Quality Criteria, ante, n. 103, at 4.

106 Ibid.

107 Id. at 30.

108 E. W. Taylor, The Examination of Waters and Water Supplies (P. Blakesons Son & Co., 1949), cited in Water Quality Criteria, ante, n. 103, at 30.

109 A. De Vos, "Water Pollution and Recreation Values" p. 6, Background Paper. A4-1-4, Pollution and Our Envirnment Conference (Montreal, 1966).

110 Allen V. Kneese, Water Pollution: Economic Aspects and Research Needs 43 (R.F.F., 1962).

111 A. F. Wigglesworth, "A Review of The Progress of Water Pollution Abatement in Nova Scotia" p. 5, Background Paper B 13-1, Pollution and Our Environment Conference (Montreal 1966).

112 Murray Stein, "Problems and Programs in Water Pollution" (1962), 2 Nat. Res. J. 388, 406.

113 It is interesting to note that despite conservationist sentiments many B. C.municipalities resent the Board's ad hoc determinations and favour the introduction of stream standards. Their complaint is that without standards to attain, design and construction of treatment

works is extremely difficult: See Eric Beecroft, "The Municipality's Role in the Control of Water Pollution", Appendix IV Communications from B. C. Municipalities, Background Paper B 16-1, Pollution and Our Environment Conference (Montreal 1966). The same problem may be faced by industrial waste dischargers when standards are not consistent or reasonably predictable: See Paul G. Bradley, "Producers Decisions and Water Quality Control" p. 2, Background Paper D 29-3.

114 Water Quality Criteria, ante, n. 103, at 30.

115 These conditions were among those included in permit #163 issued to Western Mines Ltd. (N.P.L.) authorizing discharge of tailings and mine-mill waste water into Buttle Lake. The permit has since been quashed by the B. C. Court of Appeal.

116 See appended permit specimen.

117 R.S.B.C. 1960, c. 289, s. 7(4)(f).

118 The term of permit #162 (since quashed) issued to Western Mines Ltd. (N.P.L.) was set out among the special conditions as three months or until the main effluent line (covered by another permit) was completed, whichever came first.

119 Another Western Mines Ltd. (N.P.L.) permit, #163, was issued for 5 years or "until additional milling facilities are added or process changes made which may affect the final quality of the effluent, whichever comes first".

120 Van Egmond V. Seaforth (1884), 6 O.R. 599 (Ont. C.A.).

121 R.S.B.C. 1960, c. 289, s. 13.

122 Water Act, R.S.B.C. 1960, c. 405, s. 3.

123 See e.g. The Water Act, Ibid., s. 12, where beneficial uses of water are ranked. Here, what would be ranked are "beneficial results of waste disposal". It is interesting to note that in s. 12 "Industrial purposes", which usually result in some degree of pollution, are

ranked ahead of "power purpose" which (In the case of a hydro project) causes no pollution at all.

124 See A. V. Kneese, "Water Quality Management by Regional Authorities in the Ruhr Area", Papers and Proceedings of the Regional Science Association 11 (1963); G. M. Fair, "Pollution Abatement in the Ruhr District", Comparisons in Resource Management, Ed. Jarret, 142 (R.F.F., 1961).

125 See Specimen Permit, cl (f). (appendix).

126 R.S.B.C. 1960, c. 289, s. 13.

127 There is nothing in the Act to indicate that every permit must be appurtenant to some land. Strictly, there is no need for appurtenancy if riparian rights no longer exist in B. C. as several writershave suggested. See W. S. Armstrong, "The B. C. Water Act : The End of Riparian Rights" (1959-63), 1 U.B.C. Law Rev. 583.

128 See Dalton V. West Shore and Northern Land Company (1920), 28 B.C.R. 384, which dealt with transfer of water rights. However, Section 7(4) of the Pollution Control Act is similar to the present section 15(1) of the Water Act, R.S.B.C. 1960, c. 405.

129 Section 5 of the Water Act entitles the water licencee to do certainthings in order to utilize his water. Subsection (2) reads as follows:

> (2) The exercise of every right held under any licence is subject always to the provisions of this Act and the regulations, the terms of the licence, the orders of the Comptroller and the rights of all licencees whose rights have precedence.
>
> (Emphasis added)

An argument that rights under this ection entitled the licencee to object to an application for permits under the Pollution Control Act was made by counsel for the Greater Campbell River Water District in Western Mines Ltd. (N.P.L.) V. Greater Campbell River Water District (1967), 58 W.W.R. 705 (B.C.C.A.).

130 This approach is consistent with water pollution control's

position as one aspect of water resource allocation. The necessity for wide Board discretion to enforce control measures (because waste disposers do not themselves directly feel the costs in the form of polluted streams that they impose upon society) is per se no reason to deny waste disposal the status of water resource use.

131 R.S.B.C. 1960, c. 289, s. 18.

132 Ibid. Summary Convictions Act,R.S.B.C. 1960, c. 373.

133 Emphasis added.

133a This requirement does not exclude companies from the application of the section since they may be fined for breach of statutory duty even where mens rea is an essential element of the offence: R. V. Fane Robinson Ltd., [1943] 1 D.L.R. 153.

134 (B. C.), 1963, c. 42, s. 17.

135 B. C. Reg. 77/64.

136 Ante, n. 79.

137 R.S.B.C. 1960, c. 289, s. 14(b). Section 16 provides a right of ingress and egress "upon any land or premises for every Engineer and Board member.

138 Ibid., s. 14(c).

139 Ante, p. 18.

140 The Board has already been thwarted by the inadequate definition of "works". The Engineer discovered in the case of a laundramat that was causing pollution by discharging detergent wastes, that he had no power under s. 14(b) (read with the definition of "works") to enter the premises and lock the offending washing machines--conversation with C. J. Keenan, Executive Engineer, Pollution Control Board.

141 R.S.C. 1953, c. 51, s. 165(2).

142 The laundramat mentioned in n. 140 was prosecuted under this section, but the charge was apparently dismissed in

Magistrates Court on a procedural point--conversation with C. J. Keenan, February 22, 1967.

142a Companies may beindicted or fined for breaches of duty imposed by law: R. V. Can. Allis-Chalmers Ltd. (1923), 54 O.L.R. 38(C.A.); R. V. Uscan Engineering Corp. Ltd., [1949] 1 W.W.R. 780.

143 See A-G Can. V. Ewen, ante, n. 28, where the Dominion successfully brought action to restrain pollution of tidal waters.

144 Stephens V. Village of Richmond Hill, ante, n. 18.

145 Groat V. Edmonton, ante, n. 19.

146 In the section of the Province to which the Act has no application this still provides the main remedy.

147 See Nicholls V. Ely Beet Sugar Factory, [1931] 2 Ch. 84, where Farwell, J. characterized pollution actions as "not trespass, but very analogous to trespass".

148 See St. John V. Barker (1906), 3 N.B.Eq. 358, 2 E.L.R. 20, where it was held that a licencee has no right to complain of pollution.

149 W. S. Armstrong, ante, n. 127, at 584-587.

150 The first statute to declare that all unrecorded water was vested in the provincial crown was the Water Privileges Act (B. C.), 1892, c. 47. The text is close to the wording of the present. s. 3 (Water Act, R.S.B.C. 1960, c. 405).

151 Water Act (B. C.), 1909, c. 48, ss. 4 and 5.

152 (B. C.), 1925, c. 61, s. 3.

153 (B. C.), 1951, c. 88, s. 5.

154 (1906), 12 B.C.R. 302.

155 Id. at 323.

156 [1927] 4 D.L.R. 1099,

157 Id. at 1105. The relevant statute was the Water Act, R.S.B.C. 1924, c. 271.

158 (1936), 51 B.C.R. 413, [1937] 1 W.W.R. 245.

159 (1912), 3 W.W.R. 318, 6 W.W.R. 1492, [1914] A.C. 1077.

160 Id. at 1494 (6 W.W.R.).

161 Ibid.

162 Ante, n. 12, at 247.

163 Ante, n. 159, at 322-326.

164 Ante, n. 158, at 249 (W.W.R.).

165 This is uncertain. It will be suggested below that a permit merely confers the right to use the water for waste disposal, not to pollute it. However, it must be realized that waste disposal of any kind may result in some degree of alteration of a stream's "natural quality". It is more likely that the true position under the permit is one of "reasonable use" for waste disposal with the treatment etc. required to make the use reasonable in the discretion of the P.C.B.

166 Section 5 is set out ante, n. 129.

167 The B. C. Attorney-General, commenting on remarks of a provincial unionist that pollution fines are at present cheaper than control (Section 5 imposes a maximum fine of $250), agreed that fines are not the answer. He was of opinion that the best punishment was to sue the offending company for damages caused by pollution: The Vancouver Sun, Feb. 14, 1967, Evening Edition p. 2.

168 [1928] S.C.R. 522.

169 Id. at 533.

170 Ibid. Emphasis added.

171 Ante, n. 18.

172 [1955] O.R. 814.

173 Section 7 of the Pollution Control Act uses the word "may".

174 (1881), L.R. 6 A.C. 193.

175 Id. at 213. Emphasis added.

176 In C. H. Guy V. Masonite Corp. (1955), 233 Miss. 8, 77 So. (2d) 720, the defendant had received a certificate from the State Fish and Game Commission certifying that it was complying with the Commission's rules on industrial waste effluent. In an action for pollution the court said: "It is contended that this certificate of 1946 is conclusive evidence that the appellant did not pollute these streams in 1950 and 1953. The fact that appellant constructed its settling ponds in accordance with the regulations of the commission and agreed not to release its effluent therefrom except in times of high water and then in such quantities as not to injure fish life does not grant a perpetual licence to violate its agreement with immunity, and the evidence here is sufficient to show that it did release its effluent in such quantities as topollute these streams...."

177 See Burgess V. Woodstock, ante, n. 172.

178 The opposite view was taken by a Washington Court in Ellison Bros. Oyster Co. V. Rayonier Inc. (1957), 156 F. Supp. 214. The Court held that adherence to the terms of a permit was an effective shield in an action for damages caused by pollution.

179 The fact that no provision for compensation of persons affected by the grant of permits is made in the Act is another indication that private rights were not to be abridged. But this fact can also be invoked to argue that Riparian rights no longer exist in British Columbia.

180 Manchester Corp. V. Farnsworth, [1930] A.C. 171, 180.

181 Labour Relations Boards have been held not to be suable entities in the sense that no cause of action can arise against them: Hollinger Bus Lines Ltd. V. Ont. Labour

Relations Board, [1952] O.R. 366, [1952] 3 D.L.R. 162; Retail, Wholesale and Dept. Store Union, Local 580 V. Baldwin, [1953] 4 D.L.R. 735. But, see Commonwealth ex rel Shumaker V. New York & Pennsylvania Co. (1951), 79 A (2d) 439, where a sportsmen's league brought action in equity against both the alleged polluter and the members of the Pennsylvania Sanitary Water Board as individuals.

182 In Western Mines Ltd. (N.P.L.) V.Greater Campbell River Water District, ante, n. 129. One of the arguments raised by the Water District on appeal was that, it was entitled to object to the application of Western Mines for P.C.B. permits by virtue of its rights under a water licence. The point was not dealt with by the court.

183 R.S.B.C. 1960, c. 289, s. 7(1).

184 Salmond on Torts. 345 (14th Ed. 1965).

185 There is some American authority contra, but most of these can be distinguished on the wording of the statute: e.g., in C.L. McMahon V. Smith (1941), 118 P. (2d) 1022-3 (Okla.) it was held that breach of a provision prohibiting pollution by substances from oil or gas wells was negligence in itself. However, the statute contained the words: "A violation of this statutory law is actionable negligence."

186 Salmond ante, n. 184, at 355, citing Phillips V. Britannia Hygienic Laundry Co., [1923] 2 K.B. 832, 842.

187 October 14, 1966, Vancouver Registry No. X 844/66 (B.C.S.C.) (1967), 58 W.W.R. 705 (B.C.C.A.), hereinafter referred to as the Buttle Lake Case.

188 The Vancouver Sun, Wednesday, September 28, 1966, p. 2 (Final Ed.)

189 Ante, n. 187.

190 Id. at p. 4 (mimeo)

191 Ibid.

192 Id., at p. 5.

193 [1951] A.C. 66 (P.C.).

194 [1928] 1 K.B. 411, 415.

195 [1945] 3 D.L.R. 324.

196 Id. at 333.

197 [1964] A.C. 40.

198 Ante, n. 187.

199 Id. at 708.

200 Ibid. Emphasis added.

200a The Vancouver Sun, Tuesday, April 4, 1967 p. 28 (Final Ed.).

201 Ante., n. 187.

202 R.S.B.C. 1960, c. 289, S. 15(1).

203 Ibid.

204 Ibid., s. 15(2).

205 Ibid., s. 15(5).

206 The Franks Committee (U.K., Report of the Committee on Administrative Tribunals and Inquiries 1957, Cmd. 218, paras. 67-102) recommended that ministers and tribunals should give reasons for their decisions. It is submitted that short written reasons by the Board would be desirable in all permit applications. The Board's general administrative character would not be impaired, and waste dischargers and the general public would receive some indication of the direction Board policy is likely to take. Circulars to all permittees and other interested parties setting out reasons for decision in matters involving initial interpretation of provisions of the Act might be considered. Such a policy is successfully maintained by the Alberta Oil and Gas Conservation Board.

207 Griffith and Street, Principles of Administrative Law 194 (2nd. ed. 1957), comment as follows upon effective rights of appeal: "The body trying appeals on issues of law

should be at least as independent of the minister as the tribunal with original jurisdiction and its personnel should be legally qualified."

208 See K. Turner, "Administrative Evidence" (1966), 4 Alberta Law Rev. 373, 383; Davis, "Official Notice" (1949), 62 Harv. L. Rev. 537.

209 In Re Spalding (1955), 16 W.W.R. (NS) 157, 169, Davey, J.A. said with reference to an appeal from a deportation order under the Federal Immigration Act: "The appeal to the Minister will provide neither a convenient nor an adequate remedy for the injustice done the respondent on the original hearing."

210 (1923), 32 B.C.R. 401.

211 Id. at 410.

212 Id. at 412.

213 R.S.B.C. 1960, c. 289, s. 2.

214 Western Mines Ltd. (N.P.L.) V. Greater Campbell River Water District, ante., n. 187.

215 The Vancouver Sun, October 12, 1966, p. 37 (final ed.)

216 Ante., n. 187, at p. 1 (mimeo).

217 Ante., n. 209 (B.C.C.A.).

218 Id. at 160.

219 Id. at 166.

220 Id. at 165-166. See outline of facts per Davey, J.A.

221 See e.g., the definition of pollution in s. 2 of the Act.

222 Ante., n. 187. Even Tysoe, J.A. who dissented agreed that in performing some of its duties the Board acts in an administrative capacity (p. 714).

223 R. V. Northumberland Compensation Appeal Tribunal Ex p. Shaw, [1952] 1 K.B. 338. And see De Smith, Judicial Review of Administrative Action 294-296 (1959).

224 De Smith, Ante., n. 223, at 294 points out that breach of the rules of natural justice is often equated with want of jurisdiction: e.g., R. V. Paddington North & St. Marylebone Rent Tribunal Ex p. Perry, [1956], 1 Q.B. 229, 237, per Ld. Goddard, C.J.

225 English case law has reduced these rules essentially to two, although the latter has two branches: (1) the tribunal must be disinterested and impartial (nemo judex in causa sua) (2) the parties must be given an opportunity to be heard (audi alteram partem) in two respects (a) they must be given adequate notice (to allow them sufficient time to prepare their cases) and (b) they must be given an opportunity to present their cases.

226 Calgary Power V. Copithorne (1959), 16 D.L.R. (2d) 241 (S.C.C.); Joyce & Smith & Co. V. A-G Ont. (1957), 7 D.L.R. (2d) 321 (Ont. H.C.); Dolson et ux V. Edmonton (City) (1959), 27 W.W.R. 495 (Alta. S.C.).

227 The King V. Roy ex. p. Duquesne, [1931] 4 D.L.R. 748 (N.B.S.C.); re Imperial Tobacco Co., [1939] 3 D.L.R. 750 (Ont. H.C.).

228 Ante., n. 187, at p. 5 (mimeo): "The wording of section 7 leads me to the conclusion that when operating under it in the granting of permits or withholding of permits, the Board operates according to its views of proper policy and expediency and not according to any pre-determined rules or laws." He looked at the decision-making function of permit granting rather than at the prior procedural matter of considering the objection.

229 Battaglia V. Workmen's Compensation Board (1960), 32 W.W.R. 1, 7; c.f. N.Z. Licenced Victuallers Ass'n of Employees V. Price Tribunal, [1957] N.Z.L.R. 167.

230 Ante., n. 187, at 706.

231 R.S.B.C. 1960, c. 289, s. 17(2).

232 Ante., n. 187, at 708.

233 R.S.B.C. 1960, c. 289, s. 17(2).

234 As Dryer, J. pointed out in the Buttle Lake Case Ante., n. 187 at p. 3 (mimeo), the statute does not require any

stated time to elapse between the issuing of suchnotice and the granting of the permit, so that where the decision is not to hold a hearing, the objector would not necessarily have an opportunity to do anything anyway. This statement was not commented upon by the Court of Appeal. However their decision that informal representations must be allowed and considered presumably provides adequate protection for an objector.

235 On the same reasoning that Dryer, J. applied to the notice requirements of Section 17(2) it may be that this notice is not mandatory either.

236 In that the case decides that certiorari may be granted even though a person has no right to be heard it is similar to R. V. Manchester Legal Aid.Committee, [1952] 2 Q.B. 43. There certiorari was granted to quash a legal aid certificate at the instance of the other party to the main action who had no right under the regulations to appear before the Committee. The Committee was indeed under oath of secrecy not to reveal information given by an applicant for legal aid.

237 R.S.B.C. 1960, c. 205.

238 Michel Chevalier, "Towards an Actin FrameworkFor the Control of Pollution" p. 6, Background Paper D 30-1, Pollution and Our Environment Conference (Montreal, 1966).

239 Id. at p. 8.

240 The fact that the Board is not at present expert seems a plausible reason for its reluctance to grant public hearings, at which the great majority of the evidence would be highly technical.

241 D.T. Morgan, "Third Party Procedure in Adjudicative Administrative Hearings in California" (1959), 47 Calif.L. Rev. 747, 750.

242 R. V. Sussex Justices, [1924] 1 K.B. 256, 259, per Lord Hewart,CJ.

243 R.S.B.C.1960, c. 289 s. 18.

244 Western Mines Ltd. (N.P.L.). V. Greater Campbell River

Water District, ante., n. 187, at 709.

245 R.S.B.C. 1960, c. 289, s. 7.

246 Ibid., s. 7A.

247 Ibid., s. 17.

248 Ibid., s. 18.

249 Ibid., s. 2.

250 See e.g., W. B. Hart, "Anti-Pollution Legislation and Technical Problems in Water Pollution Abatement", American Association for the Advancement of Science Symposium--Water for Industry, (1956).

251 E.g., the report prepared by the B.C. Research Council on behalf of the Greater Campbell River Water District.

252 See, Local Government Board v. Arlidge, [1915] A.C. 120; Franklin V. Minister of Town and Country Planning, [1948] A.C. 87.

253 Ibid.

254 The English Parliament presumably regarded the discretionary element in such decisions as so dominant that it laid down no principles of responsibility for the Minister. All that was authorized was a factual inquiry as a means of informing the minister or acquainting him with public opinion.

255 Ante., p.37.

256 Ante., n. 75

257 E.g., California, Maine, Maryland and Connecticut, see Water Quality Criteria, Ante., n.103, at pp. 33-54.

258 Judge H. J. Friendly, The Federal Administrative Agencies (1962), cited in Julius Stone, "The Twentieth Century Administrative Explosion and After" (1964),52 Calif. L. Rev. 513, 532.

259 Ibid. (Stone).

260 Book Review (1963), 76 Harv. L. Rev. 858.

261 Ante., n. 258, at 533. Stone went further to note that even purely judicial situations vary widely--from clear cut fact-law issues in a two party dispute, to cases where lack of definite standards is equally a problem.

262 H.W.R. Wade, "Quasi-Judicial and its Background", [1948-50] 10 Camb. L.J. 216, 230.

263 S.C. Wagner, "Statutory Stream Pollution Control" (1951), 100 U.Pa. L. Rev. 225, 237; Water Quality Criteria, ante., n.103, at p. 31.

264 A suggestion is that the Board publish an unofficial policy outline. Basis of the policy, water quality criteria and proposed future planning could be included, much as the Manitoba Sanitary Control Commission has done: Outline of the Provincial Sanitary Control Commission Re Pollution of Bodies of Water, Manitoba Department of Health, November, 1953 (Reprinted 1962).

265 Ante., n. 187.

266 Griffith and Street, ante., n. 207, at 150.

267 Ante., n. 187.

268 Id., at 706 (per Davey, J.A.).

269 Griffith and Street, Ante., n. 207, at 214.

270 Leeds Corporation V. Ryder, [1907] A.C. 420, 423, per Lord Loreburn (H.L.).

271 Associated Provincial Picture Theatres Ltd. V. Wednesbury Corp., [1948] 1 K.B. 223, 234, per Lord Greene; Smith V. East Elloe Rural District Council, [1956] A.C. 736.

272 Roberts V. Hopwood, [1925] A.C. 578; Re Chinese Immigration Act and Chin Sack (1931), 45 B.C.R. 3; Re Macdonald Estate, [1930] 1 W.W.R. 242, [1930] 2 D.L.R. 177.

273 R. V. Nat. Bell Liquors Ltd., [1922] A.C. 128 (P.C.) The American "substantive evidence" requirement has never been adopted in Canada, consequently "some evidence" is all

that is required to support the tribunal's decision: Wilson V. Esquimalt and Nanaimo Railway, [1922] 1 A.C. 202, [1921] 3 W.W.R. 817, reversing with a variation [1921] 1 W.W.R. 1233, 29 B.C.R. 333, 59 D.L.R. 577.

273a Pulp and Paper Workers of Can., Watson I. Local No. 4 V. Celgar Ltd. (1964), 48 W.W.R. (N.S.) 555, 45 D.L.R. (2d) 537 (B.C.C.A.).

273b R.S.B.C. 1960, c. 170.

274 Ante., p.12.

275 R.S.B.C. 1960, c. 405.

276 Ibid., s. 44(k).

277 Ibid., s. 24(2).

278 R.S.B.C. 1960, c. 255.

279 Ibid., s. 519(a).

280 Ibid. s. 531.

281 Ibid., s. 534 (1)(i)

282 Ibid., s. 635.

283 Ibid., s. 873(1).

284 Ibid., s. 873(3) See Re Vancouver charter, Re Wheatley (1957), 24 W.W.R. 323.

285 (B. C.), 1965, c. 33.

286 Ibid., s.113 The Lieutenant-Governor in Council may make regulations to (a)...

> (e) prescribe conditions under which drilling operations may be carried out in water covered areas;...
> (n) prescribe or limit the methods ofoperation to be observed during drilling...including...
> (iv)the prevention of pollution of water.

287 E.g., The Greater Campbell River Water District Act (B.C.),

1962, c. 77.

288 Western Mines Ltd. (N.P.L.) V. Greater Campbell River Water District, Ante., n. 187.

289 Id. at p. 3 (mimeo) (B.C.S.C.).

290 Id. at p. 4.

291 Ibid.

292 Ante., p. 53.

293 Maxwell, The Interpretation of Statutes 176 (10th ed. 1953).

294 Id. at 184, citing A-G V. G. E. Railway (1879), L.R. 7 Ch. 475; L.R. 6 H.L. 367. The argument of counsel for The Greater Campbell River Water District before Dryer, J. that the effect of importing provisions of the other general acts into the pollution Control Act is breach of the General Act sections, is difficult to follow.

295 For a more detailed account of Federal pollution control activities by department, see Background paper B5-1, Pollution and our Environment Conference (Montreal, 1966).

296 R.S.C. 1952, c. 193.

297 Ibid., s. 18.

298 Ibid., ss. 19, 20.

299 Ibid., s. 29.

300 R.S.C. 1952, c. 187.

301 National Harbours Board Regulations, C.S.O.R. 1955 Consolidation 2252 (P.C. -1954-1981), ss. 4 (2), (3), 128.

302 Department of Transport Act, R.S.C. 1952, c. 271.

303 R.S.C. 1952, c. 29, am. 1956, c. 34, s. 35, and 1964, c. 39, s. 31(1), (2).

304 Ibid., s. 495A(2)(b). In R.V. Catlender and Schnurer (1959), 29 W.W.R. (N.S.) 401, it was held that section 495 and

Part VII of the Canada Shipping Act does not apply to oil pollution. The proper anti-pollution provisions are section 495A and Part VIIA.

305 Oil Pollution Prevention Regulations S.O.R./60-70, s.4.

306. R.S.C. 1952, c. 179.

307 Migratory Birds Regulations S.O.R./58-308, s. 40.

308 Department of National Health and Welfare Act R.S.C. 1952, c. 75, s. 5(i).

309. R.S.C. 1952, c. 188.

310 Ibid., ss. 36E, 36F, added by (Can.), 1960-61, c. 1, s. 7, am. by (Can.), 1964, c. 15, s. 13.

311 Ibid., s. 36G, added by (Can.), 1960-61, c. 1, s. 7, am. by (Can.), 1962-63, c. 17, s. 1. It has been suggested by Eric Beecroft (ante., n.113 at p. 23) that this forgiveness feature probably was inserted principally in the interest of employment.

312 C.W. Quesseth, ante., n.29 at 292.

313 R.S.C. 1952, c. 188, s. 36E(b).

314 It is fair to point out however that the province of British Columbia makes no direct grant aid at all available to municipalities for pollution control.

315 R.S.C. 1952, c. 119 s. 33(2).

316 R.S.C. 1952, c. 118 s. 3(e).

317 (Can.), 1960-61, c. 23, s. 4.

318 Criminal Code, s. 164, see ante. p. 43.

319 B.N.A. Act 1867 (Imp.), 30 & 31 Vict., c. 3, s. 92(13).

320 Ibid., s. 92(16). See Shannon V. Lower Mainland Dairy Products Board, [1938] A.C. 231, per Lord Atkin.

321 B.N.A. Act, s. 91(12).

322 Ibid., s. 91(10). Pollution provisions in the Navigable Waters Protection Act R.S.C. 1952, c. 193 and regulations under theCanada Shipping Act R.S.C. 1952, c. 29 are under this head. The provisions in the National Harbours Board Act, R.S.C. 1952, c. 187, are probably under this power as well, although s. 108 (3'd Schedule, Item 2) may be relied upon with respect to harbours or parts thereof that existed at Confederation.

322a Though there might, in enforcing the provincial legislation, be incidental involvement with one of the federal heads of power: A-G Ont. V. Barfried Enterprises Ltd., [1963] S.C.R. 510.

323 O'Grady V. Sparling, [1960] S.C.R. 804, (1960), 25 D.L.R. (2d) 145. The provincial statute would be ultra vires if the acts authorized under it interfered e.g., with navigation: Fleming V. Spracklin (1921), 50 O.L.R. 289, 64 D.L.R. 382; Re Brandon Bridge (1884), 2 Man. R. 14.

324 Nicholson V.Moran, [1949] 4 D.L.R. 571. Relief against interference with a public right of navigation was granted despite approval under section 7 of the Navigable Waters Protection Act since the provision is merely permissive.

325 Implementing the Migratory Birds Convention 1916, concluded between Great Britain (acting for Canada) and the United States.

326 Ante., n. 308.

327 A-G Can. V. A-G Ont. (Labour Conventions Case) [1937] A.C. 326. However, Kerwin, C.J. in Francis V. The Queen, [1956] S.C.R. 618, 621, has suggested that in the future it might be necessary to reconsider the Labour Conventions Case.

328 A-G Ont. V. Canada Temperance Federation, [1946] A.C. 193.

329 Id. at 205.

330 Ibid. The dictum of Viscount Simon was approved by Cartwright, J. in Monro V. National Capital Commission (1966), 57 D.L.R. (2d) 754, 759.

331 Reference Re Validity of Section 5(a) of the Dairy Industry Act, [1949] S.C.R. 1, 78.

332 Regulationof pollution could be achieved under the Criminal Law power, by for example, making it an offence unless certain conditions are complied with: Re Race Track and Betting (1921), 61 D.L.R. 504. The required flexibility would be lacking however.

333 Wolff, Private International Law 494 (2nd ed. 1952). In George Monro Ltd. V. The American Cyanamid and Chemical Corp., [1944] K.B. 432, an American company distributed rodent poison through an agent in England. The poison damaged an English farmer's land and he successfully sued the English agent. But on the question whether leave should be granted to serve notice of a writ on the American corporation, the court held that the tort was committed in America, and service outside the jurisdiction was not allowed.

334 Ante., p. 53.

335 McKay V. The Queen, [1965] S.C.R. 798.

336 Bora Laskin (now Laskin, J.A.), "Jurisdictional Framework For Water Management" Resources For Tomorrow Conference 1961 Vol. 1, p. 211 at p. 221.

337 See Edward, J. Cleary, "What the United States Can Learn" (Commenting on G.M. Fair's Paper "Pollution Abatement in the Ruhr District") Comparisons in Resource Management 172 (R.F.F., 1961).

338 See P. H. Pearse, A New Approach to the Valuation of Non-Marketed Recreation Resources (Mimeo, soon to be published by Resources For the Future Inc.); Marion Clarison, Methods for Measuring the Demand For and the Value of Outdoor Recreation (R.F.F. Reprint No. 10 (1959).

339 See M. H. Prescott, B. Boyson and R. C. Landine, "A Review of the Progress of Water Pollution Abatement in Saskatchewan", Background Paper B8-1, Pollution and Our Environment Conference (Montreal 1966).

340 Pollution of Waters (Prevention) Act 1962, R.S.S. 1965, c. 352.

341 See D.S. Caverly, L.M. Tobias, B.C. Palmer, "Work of the Provincial (Ontario) Government Toward the Control of Water Pollution", Background Paper B 10-1, Pollution and Our Environment Conference (Montreal, 1966); The Ontario Conference on Co-ordinated Water Pollution Control, Ontario Water Resources Commission (Toronto, November, 1960).

342 Ontario Water Resources Commission Act 1957, R.S.O. 1960, c. 281, s. 26(3).

343 Bill No. 62 (1967), An Act Respecting Pollution Control, s. 3(3).

344 Ibid., s. 10, where the powers of the Director are set out.

345 Ibid., s. 7.

346 Ante., n. 119.

347 Pollution Control Bill (No. 62, 1967), s. 2.

348 Ibid., s. 19.

349 Ibid., s. 20.

APPENDIX

THE GOVERNMENT OF
THE PROVINCE OF BRITISH COLUMBIA

POLLUTION-CONTROL BOARD

(Chapter 36 of Statutes of 1956)

PERMIT

_____, of _____
(Name.) (Address.)
is hereby authorized to discharge effluent as follows:—

(*a*) The source of the effluent is _____
(Plant, factory, municipality, etc.)

(*b*) The point of discharge is located as shown on the attached plan.

(*c*) The maximum quantity of effluent which may be discharged is _____

(*d*) The quality of the effluent shall be at all times equivalent to or better than _____

_____
(Per cent solids, toxicity, B.O.D., etc.)

(*e*) The works authorized to be constructed are _____

_____, located as shown on the attached plan.

(*f*) The land from which the effluent originates and to which this permit is appurtenant is _____

_____

(*g*) The period of time for which this permit is valid is _____ from the date of issue.

(*h*) The Board directs that the following special conditions shall apply _____

_____

_____

_____

_____

_____

_____

_____

_____

_____
Chairman, Pollution-control Board.

Date issued _____

Permit No. _____

o

THE GOVERNMENT OF
THE PROVINCE OF BRITISH COLUMBIA

POLLUTION-CONTROL BOARD

APPLICATION FOR A PERMIT UNDER THE "POLLUTION-CONTROL ACT"

I, ...
(Full name.)

of .....
(Address.)

hereby apply to the Secretary, Pollution-control Board, for a permit to discharge .....

.....
(Type of effluent.)

into .....
(Name of creek, river, lake, bay, inlet, etc.)

which flows ..... (Direction.) and discharges into .....

and give notice of my application to all persons affected.

The point of discharge shall be located at .....

.....
(Give distance and direction from some surveyed or known point.)

.....

The land upon which the effluent originates is .....

.....
(Give legal description or, in case of municipal sewage, name of municipality and area thereof. Use reverse side if necessary.)

.....

The quantity of effluent to be discharged is as follows:—

Maximum hourly rate ..... (C.F.S.) ..... (Imp. gal. p.m.)

Maximum 12-hour discharge .....
(Imperial gallons.)

The operating season during which the effluent will be discharged is .....
(Continuous or date to date.)

Average 24-hour discharge .....
(Imperial gallons.)

The characteristics of the effluent to be discharged are as follows:—	Before Treatment	After Treatment	
	Average	Average	Maximum
Suspended solids (p.p.m.) - - -			
Total solids (p.p.m.) - - - -			
Biochemical oxygen demand (p.p.m.) -			
pH - - - - - - - -			
Temperature (degrees Fahrenheit) - -			
Coliform bacteria (average m.p.n. per 100 ml.)			

Toxic chemicals (p.p.m.) .....
(Name - use reverse side if necessary.)

The type of treatment to be applied to the effluent before discharge is as follows:—

.....

.....

.....

A copy of this application was posted at the proposed point of discharge on the ..... day

of ....., 19.....

This application is to be filed with the Secretary, Pollution Control Board, Parliament Buildings, Victoria, B.C. Objections may be filed with the Secretary within thirty days of the first publication of the application, by any person whose rights would be affected.

Date .....

(Signature of applicant or agent) .....

IMPORTANT

Every applicant must do the following:—

(1) Post the application on the ground; that is, in conspicuous places at or near the proposed point of discharge.

(2) File two copies with the Secretary, Pollution-control Board, within ten days of the posting on the ground.

(3) Publish a copy of the application in one issue of the B.C. Gazette and in two newspapers as directed by the Secretary.

All copies must be signed and completed by filling in the blanks in the application form, and, in addition, two copies must be filed with the Secretary, Pollution-control Board, and contain a plan showing the applicant's land, the location of the point of discharge and all land touched or crossed by the works, and the following additional information indicated:—

In support of my application for a permit to discharge sewage and (or) other waste material, I submit the following information:—

(*a*) The works will be entirely on my own property; or

(*b*) The works will affect physically the property of the following owners:—

Name of Owner, Including the Crown	Description of Land	Area Required for Works	
		Length	Breadth

ADDITIONAL INFORMATION:-

BIBLIOGRAPHY

Books

Ciriacy-Wantrup, S. V., Resource Conservation: Economics and Policies. Berkeley: University of California, Division of Agricultural Sciences, Agricultural Experiment Station, Rev. ed. 1963.

Coulson, H. J. W., Coulson and Forbes on Waters. London: Sweet and Maxwell, 6th ed. 1952.

DeSmith, Judicial Review of Administrative Action. London: Stevens, New York: Oceana Publications, 1959.

Griffith and Street, Principles of Administrative Law. London: Pitman, 2d ed. 1957.

Heuston, R. F. V. (Ed.), Salmond on Torts. London: Sweet and Maxwell, 13th ed. 1961, 14th ed. 1965.

Hirshleifer, De Haven, and Milliman, Water Supply: Economics, Technology and Policy. Chicago: University of Chicago Press, 1960.

Maxwell, The Interpretation of Statutes. London: Sweet and Maxwell, 10th ed. 1953.

McKee and Wolf (Eds.), Water Quality Criteria. Sacramento: California State Water Control Board Publication N. 3-A, 2nd. ed. 1963.

Scott, A. D., Natural Resources: The Economics of Conservation. Toronto: The University of Toronto Press, 1955.

Taylor, E. W., The Examination of Waters and Water Supplies. London: P. Blakesons Son and Co., 1949.

Wisdom, A. S., The Law on the Pollution of Waters. London: Shaw and Sons, 1956.

_____, The Law of Rivers and Watercourses. London: Shaw and Sons, 1962.

Wolff, M., Private International Law. Oxford University Press, 2d ed. 1952.

Periodicals

Armstrong, W. S., "The B.C. Water Act: The End of Riparian Rights," (1959-63), 1 U.B.C. L. Rev. 583.

Backus, R. A., "Water Pollution Control in Colorado" (1964), 36 Colorado L. Rev. 413.

Bower, T., "Some Physical Technological and Economic Characteristics of Water and Water Resources Systems" (1963), 3 Nat. Res. J. 215.

Davis, K. C., "Official Notice" (1949), 62 Harv. L. Rev. 537.

Ferrier, W. H., "Administration of Water Rights in California" (1956), 44 Calif. L. Rev. 833.

Fuchs, R. F., "Fairness and Effectiveness in Administrative Agency Organization and Procedures" (1960), 36 Ind. L.J. 1.

Holsinger, H., "Procedures and Practice Before the California Water Rights Board" (1957), 45 Calif. L. Rev. 676.

Jaffe, Book Review (1963), 76 Harv. L. Rev. 858.

Koplovitz, S. B., "The Right of a Downstream Riparian Owner to Enjoin Upstream Pollution" (1963) 27 Albany L. Rev. 64.

Milliman, J. W., "Water Law and Private Decision" (1958-61) 1-4 Jour. Law & Econ. 41.

Morgan, D. T., "Third Party Procedure in Adjudicative Administrative Hearings in California" (1959), 47 Calif. L. Rev. 747.

Moskovitz, A., "Quality Control and Re-use of Water in California" (1957), 45 Calif. L. Rev. 568.

Newson, G. H., "River Pollution," [1960] J.P.L. 680, 763.

Quesseth, C. H., "Water Pollution Control Laws of Oregon" (1965), 3 Willamette L.J. 284.

Reid, R. F., "Administrative Tribunals Under Review in Ontario" (1958), 1 Can. Bar J. 57.

Stein, M., "Problems and Programs in Water Pollution" (1962), 2 Nat. Res. J. 388.

Stone, J., "The Twentieth Century Administrative Explosion and After" (1964), 52 Calif. L. Rev. 513.

Taylor, B. D., "Control of Stream Pollution" (1955), 33 Texas L. Rev. 370.

Trelease, F. J., "Co-ordination of Riparian and Appropriation Rights to the Use of Water" (1955), 33 Texas L. Rev. 24.

Turner, K., "Administrative Evidence" (1966), 4 Alberta Law Rev. 373.

Wade, H. W. R., "Quasi-judicial and Its Background," [1948-50] 10 Camb. L. J. 216.

Wagner, S. C., "Statutory Stream Pollution Control" (1957), 100 U. Pa. L. Rev. 225.

Willis, J., "Administrative Decision and The Law" (1959-60) 13 U. of Tor. L. J. 45.

Published Reports

Ciriacy-Wantrup, S. V., "Benefit-Cost Analysis and Public Resource Development," Economics and Public Policy in Water Resource Development, Eds., Smith and Castle, 1964.

Cleary, E. J., "What the U.S. Can Learn," Comparisons in Resource Management, Ed., Jarret 172, Resources for the Future, 1961.

Clawson, M., Methods for Measuring the Demand for and the Value of Outdoor Recreation, R.F.F. Reprint No. 10, 1959.

Fair, G. M., "Pollution Abatement in the Ruhr District," Comparisons in Resource Management, Ed., Jarret 142, R.F.F., 1961.

Hart, W. B., "Anti-pollution Legislation and Technical Problems in Water Pollution Abatement," American Association For the Advancement of Science Symposium: Water for Industry, 1956.

Herfindahl, O. C., What is Conservation, R.F.F. Reprint No. 30, 1961.

International Joint Commission, Report on the Pollution of Boundary Waters, Ottawa, 1951.

_____, Safeguarding Boundary Water Quality, 1961.

Kneese, A. V., "Water Quality Management by Regional Authorities in the Ruhr Area," Papers and Proceedings of the Regional Science Association 11, 1963.

_____, Water Pollution: Economic Aspects and Research Needs 43, Resources For the Future, 1962.

Laskin, Bora, "Jurisdictional Framework For Water Management," Resources For Tomorrow Conference, Vol. 1, p. 211, Ottawa, Queen's Printer, 1961.

Menzies, "Water Pollution in Canada by Drainage Basins," Resources For Tomorrow Conference, Vol. 1, p. 353, Ottawa, Queen's Printer, 1961.

Ontario Conference on Co-ordinated Water Pollution Control, Ontario Water Resources Commission, Toronto, November 1960.

Organization For European Economic Co-operation, Air and Water Pollution: The Position in Europe and The United States, 1957.

Pearse, P. H., A New Approach to the Valuation of Non-marketed Recreation Resources (Unpublished manuscript for Resources For the Future, 1967).

Pollution and Our Environment Conference, Montreal, October, 1966.

- Beecroft, E., "The Municipality's Role in the Control of Water Pollution," Background Paper B16-1.

- Caverly, D. S.; Tobias, L. M.; Palmer, B. C., "Work of the Ontario Government Toward the Control of Water Pollution," Background Paper B10-1.

- Chevalier, M., "Towards an Action Framework for the Control of Pollution," Background Paper D30-1.

- De Vos, A., "Water Pollution and Recreation Values," Background Paper A4-1-4.

- Keenan, C. J., "A Review of the Progress of Water Pollution Abatement in B.C.," Background Paper B6-1.

- Prescott, M. H.; Boyson, B.; Landine, R. C., "A Review of the Progress of Water Pollution Abatement in Saskatchewan," Background Paper B8-1.

- Wigglesworth, A. F., "A Review of the Progress of Water Pollution Abatement in Nova Scotia," Background Paper B13-1.

United Nations-F.A.O., Groundwater Legislation in Europe, F.A.O. Treaty Series No. 5, 1964.

United States, Report of the President's Water Resources Policy Commission: Water Resources Law, Washington, 1950.

_____, Congress House Committee on Public Works: Water Pollution Control Hearings on Water Quality Act of 1965, 89th Cong., 1st Sess.

_____, Proceedings of the Congress-Senate Committee on Interior and Insular Affairs: Water Resources Research, Washington, 1965.

_____, Restoring the Quality of Our Environment; Report of the Environmental Pollution Panel of the President's Science Advisory Committee, Washington, 1965.

Miscellaneous

Interview with C. J. Keenan, Executive Engineer, B. C. Pollution Control Board, February 22, 1967.

Myers, A., Pollution: A Survey, Vancouver Sun Reprint, 1965.

Outline of the Provincial Sanitary Control Commission Re Pollution of Bodies of Water, Manitoba Department of Health, November, 1953 (Reprinted 1962).

The Pacific Northwest Area Pollution Control Council, Water Quality Objectives, November, 1966.

The Vancouver Sun, Wednesday, September 28, 1966, p. 2 (Final Ed.).

_____, Friday, October 12, 1966, p. 37 (Final Ed.).

_____, Saturday, November 5, 1966, p. 4 (Final Ed.).

_____, Tuesday, February 14, 1967, 1967, p. 2 (Final Ed.).

_____, Tuesday, April 4, 1967, p. 28 (Final Ed.).

Cases Cited

A-G v. Birmingham, Tame and Rea District Drainage Board, [1908] 2 Ch. 551.

A-G v. G. E. Railway (1879), L.R. 7 Ch. 475, L.R. 6 H.L. 367.

A-G Canada v. A-G Ontario, [1937] A.C. 326.

A-G Canada v. Ewen (1895), 3 B.C.R. 468.

A-G Ontario v. Barfried Enterprises Ltd., [1963] S.C.R. 570.

A-G Ontario v. Canada Temperance Federation, [1946] A.C. 193.

American Cyanamid Co. v. Commonwealth (1948), 48 S.E.(2d) 279 (Virginia).

Associated Provincial Picture Theatres Ltd. v. Wednesbury Corp., [1948] 1 K.B. 223.

Battaglia v. Workmen's Compensation Board (1960), 32 W.W.R. 1.

Benjamin v. Storr (1874), L.R. 9 C.P. 400.

Blair v. Deakin (1887), 57 L.T. 522.

Re Brandon Bridge (1884), 2 Man. R. 14.

Brown v. Brock and Rentals Administrator, [1945] 3 D.L.R. 324.

Burgess v. City of Woodstock, [1955] O.R. 814.

Re Burnham (1894), 22 O.A.R. 40.

Calgary Power Ltd. v. Copithorne (1959), 16 D.L.R. (2d) 241.

Re Chinese Immigration Act and Chin Sack (1931), 45 B.C.R. 3.

Clare v. Edmonton (1914), 5 W.W.R. 1133.

Cook v. City of Vancouver, [1912] 3 W.W.R. 318, 6 W.W.R. 1492, [1914] A.C. 1077.

Crowther v. Coburg (1912), 20 O.R. 884.

Dalton v. West Shore and Northern Land Co. (1920), 28 B.C.R. 384.

Dobson et un v. Edmonton (City) etc. (1959), 27 W.W.R. (N.S.) 495.

Elliston Brothers Oyster Co. v. Rayonier Inc. (1957), 156 F. Supp. 214.

Esquimalt Waterworks Co. v. City of Victoria (1906), 12 B.C.R. 302.

Fleming v. Spracklin (1921), 50 O.L.R. 289, 64 D.L.R. 382.

Francis v. The Queen, [1956] S.C.R. 618.

Franklin v. Minister of Town and Country Planning, [1948] A.C. 87.

Frome United Breweries v. Bath J.J., [1926] A.C. 586.

George Monro Ltd. v. The American Cyanamid and Chemical Corp., [1944] K.B. 432.

Goldsmid v. Tunbridge Wells Improvement Commissioners (1866), L.R. 1 Ch. 349.

Groat v. Edmonton (City), [1928] S.C.R. 522.

Guy, C. H. v. Masonite Corp. (1955), 233 Miss. 8, 77 So. (2d) 720.

Hadden v. North Vancouver (1922), 1 W.W.R. 655.

Hobart v. Southend-on-Sea Corporation (1906), 75 L.J.K.B. 305.

Hodgkinson v. Ennor (1863), 4 B. & S. 229.

Hollinger Bus Lines Ltd. v. Ontario Labour Relations Board, [1952] O.R. 366, [1952] 3 D.L.R. 162.

Re Imperial Tobacco Co., [1939] 3 D.L.R. 750.

Jones v. Llanwist U.D.C. (1911), 75 J.P. 68.

John Young and Co. v. Bankier Distillery Co., [1893] A.C. 691.

Johnson v. Anderson (1936), 51 B.C.R. 413, [1937] 1 W.W.R. 245.

Joyce and Smith and Co. v. A-G Ontario (1957), 7 D.L.R. (2d) 321.

The King v. Roy ex parte Duquesne, [1931] 4 D.L.R. 748.

Local Government Board v. Arlidge, [1915] A.C. 120.

Re Macdonald Estate, [1930] 1 W.W.R. 242.

McKay v. The Queen, [1955] S.C.R. 798.

McMahon, C. L. v. Smith (1941), 118 P. (2d) 1022 (Okla.).

Manchester Corporation v. Farnsworth, [1930] A.C. 171.

Monro v. National Capital Commission (1966), 57 D.L.R. (2d) 754.

Nakkuda Ali v. Jayarante, [1951] A.C. 66.

New Zealand Licenced Victuallers Ass'n of Employees v. Price Tribunal, [1957] N.Z.L.R. 167.

Nicholls v. Ely Beet Sugar Factory, [1913] 2 Ch. 84.

Nicholson v. Moran, [1949] 4 D.L.R. 571.

O'Grady v. Sparling, [1960] S.C.R. 804.

Phillips v. Britannia Hygienic Laundry Co., [1923] 2 K.B. 832.

Pride of Derby and Derbyshire Angling Ass'n v. British Celanese, [1952] 1 All E.R. 1326.

Pulp and Paper Workers of Can., Watson I. Local No. 4 v. Celgar Ltd. (1964), 48 W.W.R. (N.S.) 555.

R. v. Can. Allis-Chalmers Ltd. (1923), 54 O.L.R. 38.

R. v. Catlender and Schnurer (1959), 29 W.W.R. 401.

R. v. Fane Robinson Ltd., [1943] 1 D.L.R. 153.

R. v. Legislative Committee of The Church Assembly, [1928] 1 K.B. 411.

R. v. Manchester Legal Aid Committee, [1952] 2 Q.B. 43.

R. v. Nat Bell Liquors Ltd., [1922] A.C. 128.

R. v. Northumberland Compensation Appeal Tribunal ex parte Shaw, [1952] 1 K.B. 338.

R. v. Paddington North and St. Marylebone Rent Tribunal, ex parte Perry, [1956] 1 Q.B. 229.

R. v. Sussex Justices, [1924] 1 K.B. 256.

R. v. Uscan Engineering Corp. Ltd., [1949] 1 W.W.R. 780.

Re Racetrack and Betting (1921), 61 D.L.R. 504.

Reference Re Validity of Section 5(a) of the Dairy Industry Act, [1949] S.C.R. 1.

Retail, Wholesale and Department Store Union, Local 580 v. Baldwin, [1953] 4 D.L.R. 735.

Ridge v. Baldwin, [1964] A.C. 40.

Roberts v. Hopwood, [1925] A.C. 578.

Rucker v. Wilson (1923), 32 B.C.R. 401.

St. John v. Barker (1906), 3 N.B.Eq. 358.

Salvas v. Bell, [1927] 4 D.L.R. 1099.

Shannon v. Lower Mainland Dairy Products Board, [1938] A.C. 231.

Shumaker v. New York and Pennsylvania Co. (1951), 79 A. (2d) 439.

Smith v. East Elloe R.D.C., [1956] A.C. 736.

Re Spalding (1955), 16 W.W.R. (N.S.) 157.

Stephens v. Village of Richmond Hill, [1955] O.R. 806.

Swindon Waterworks Co. v. Wilts and Barks Canal Navigation Co. (1875), L.R. 7 H.L. 697.

Tipping v. Eckersley (1885), 2 K. & J. 264, 69 E.R. 779.

In Re Townships of Orford and Howard (1891), 18 Ont. A.R. 496.

Van Egmond v. Corporation of Seaforth (1884), 6 O.R. 559.

Re Vancouver Charter, Re Wheatley (1957), 24 W.W.R. 323.

Western Mines Ltd. (N.P.L.) v. Greater Campbell River Water District (1967), 58 W.W.R. (N.S.) 705 (B.C.C.A.), Vancouver Registry No. 844/66 (B.C.S.C.).

Wilson v. Esquimalt and Nanaimo Railway, [1922] 1 A.C. 202, [1921] 3 W.W.R. 817.

Statutes

British Columbia, Civil Service Act, R.S.B.C. 1960, c. 56.

_____, English Law Ordinance 1867, R.L.B.C. 1871, No. 70.

_____, Greater Campbell River Water District Act (B.C.), 1962, c. 77.

_____, Health Act, R.S.B.C. 1960, c. 170.

_____, Labour Relations Act, R.S.B.C. 1960, c. 205.

_____, Municipal Act, R.S.B.C. 1960, c. 255.

British Columbia, Petroleum and Natural Gas Act (B.C.), 1965, c. 33.

_____, Pollution Control Act (B.C.), 1956, c. 36, am. 1963, c. 42, s. 17 and 1965, c. 37; R.S.B.C. 1960, c. 289.

_____, Pollution Control Bill (No. 62, 1967).

_____, Summary Convictions Act, R.S.B.C. 1960, c. 373.

_____, Water Act, R.S.B.C. 1960, c. 405.

Canada, Canada Shipping Act, R.S.C. 1952, c. 29, am. 1956, c. 34, s. 35 and 1964, c. 39, s. 31(1) and (2).

_____, Criminal Code, R.S.C. 1952, c. 51, s. 165(2).

_____, Department of National Health and Welfare Act, R.S.C. 1952, c. 75.

_____, Department of Transport Act, R.S.C. 1952, c. 271.

_____, Fish Inspection Act, R.S.C. 1952, c. 118.

_____, Fisheries Act, R.S.C. 1952, c. 119, as amended by 1960-61, c. 23, s. 4.

_____, Migratory Birds Convention Act, R.S.C. 1952, c. 179.

_____, National Harbours Board Act, R.S.C. 1952, c. 187.

_____, National Housing Act, R.S.C. 1952, c. 188, as amended by 1960-61, c. 1, s. 7, 1962-63, c. 17, s. 1 and 1964, c. 15, s. 13.

_____, Navigable Waters Protection Act, R.S.C. 1952, c. 193.

Ontario, Ontario Water Resources Commission Act 1957, R.S.O. 1960, c. 281.

Saskatchewan, Pollution of Waters (Prevention) Act 1962, R.S.S. 1965, c. 352.

United Kingdom, British North America Act 1867, 30 & 31 Vict. c. 3.

United States, Water Quality Act 1965, 79 Stat. 903.

_____, Water Resources Research Act 1964, 78 Stat. 331, am. 80 Stat. 129.