



The Surface Rights Act by Douglas A.S. Paterson, Q.C.

With South-West Manitoba enjoying an oil production boom, this Act is very relevant. It essentially governs the relations between rural landowners or tenants and oil producers, and their contractors.

Basically when an oil producer has the right to explore for oil and gas and hopefully produce it, the mines and minerals title holder often jumps with joy in anticipation of royalties from the lease and production agreements. But what about the surface title owner? Very often he or she only has to look forward to hassle and crop interference.

Most oil/gas production occurs in rural Canada and therefore farmers have their land use interrupted by this oil and gas activity. The farmer and oil rights holder usually operate with a surface rights agreement. This provides for compensation to the surface title holder in return for the oil and gas operator having access rights to the surface and using it for drilling and production activities. The operator cannot

abuse nor waste the lands and must keep them clean and restore them fully when the oil activity ends. Very often, however, disputes arise between the parties – either before the agreement is signed or during its lifetime. The Surface Rights Board (SRB) has jurisdiction for all matters regarding compensation, access, land maintenance and restoration, as well as deciding disputes between the parties.

During hearings, the board operates relatively informally and is not bound by technical rules of court evidence. It may go to the site in question and inspect the area before deciding. The board also provides mediation services if a party requests that before a hearing is held.

The board may award costs against unsuccessful parties. If access is needed quickly or compensation cannot be agreed on, a hearing is held and the Board will decide any issues by Order.

Sometimes operators are in a rush to access the lands, so they

apply for interim orders of access to begin work. The board allows interim access if it would work an undue hardship on the operator to wait when compared to any prejudice the owner/occupant would suffer if immediate access is given to the operator.

There can be an appeal to the Court of Appeal for Manitoba from a board order on the basis of unfair procedure, breach of jurisdiction or any other error of law.

Oil, although maligned from an environmental point of view, is important economically for Canada. It will be with us for a long time yet, so it's very advantageous for all to have an entity like the Surface Rights Board.

The well-site is what the operator wants to work from to drill for petroleum. This means that very often a road must be built over productive farm lands. Issues arise as to the best or shortest route. Electricity must also serve the well-site if it is productive and so questions of where and how many hydro

poles arise. These installations take productive land out of the income stream and profit picture of the farmer so replacement compensation from the operator is often very contentious. Where the surface title holder is also not the mines and mineral title holder, it is likely the surface title holder will harbor some suspicion and resentment to the oil industry. The objectives and behavior of the Surface Rights Board should cause it to be a forum where fair decisions about compensation are made but in a way where hard feelings are reduced.