

## ABlawg: Year in Review 2019

By: Admin

### Introduction

This was another busy year for ABlawg, with a total of 113 posts in 2019 to date. Nigel Bankes surpassed the 300 mark for lifetime posts in 2019 and [one of his posts from 2017](#) was cited by the Supreme Court of Canada in *Redwater* (aka *Orphan Well Association v Grant Thornton Ltd*, [2019 SCC 5 \(CanLII\)](#)), the second time the SCC has cited ABlawg (see also *Mikisew Cree First Nation v. Canada (Governor General in Council)*, [2018 SCC 40 \(CanLII\)](#), citing [another of Professor Bankes' posts](#)).

Here are some other highlights of the year on ABlawg.

### The Numbers

The ABlawg post with the most hits this year was Martin Olszynski's [Everything You Wish You Didn't Need to Know About the Alberta Inquiry into Anti-Alberta Energy Campaigns](#), with over 3900 hits. Close behind were Shaun Fluker's post [Distracted Driving and the Traffic Safety Act](#), with over 3500 hits, a joint post by Professors Olszynski and Bankes, [Setting the Record Straight on Federal and Provincial Jurisdiction Over the Environmental Assessment of Resource Projects in the Provinces](#), with over 3300 hits, and Jennifer Koshan and Linda McKay-Panos's post [The Alberta Inquiry and Freedom of Expression, with over 3000 hits](#). A post by Robert Hamilton and David Wright on [Albext/Wexit/Albwexit and the Rights of Indigenous Peoples](#) had just under 3000 hits and also had the most likes of any ABlawg post on Twitter this year. ABlawg now has over [2000 followers on Twitter in addition to 1595 email subscribers](#).

Nigel Bankes once again had the most annual output on ABlawg, with 28 posts, followed by Jennifer Koshan with 10 posts, Shaun Fluker with 9 posts, David Wright with 8 posts, Martin Olszynski and Lisa Silver with 7 posts each, and Jonnette Watson Hamilton with 6 posts.

### Area Specific Posts in 2019

#### *Energy and Environmental Law*

As in past years ABlawg has continued to monitor and comment on developments in oil and gas law, electricity law and related areas of utility regulation.

The most important development in oil and gas law was undoubtedly the Supreme Court of Canada's decision in *Redwater* (see above) dealing with the priority of a secured lender as

against the abandonment requirements of the Alberta Energy Regulator. Jassmine Girgis commented on the Supreme Court decision in *Redwater* [here](#) and the decision was also notable as one of two Supreme Court decisions that have referenced ABlawg posts dealing with the lower court decisions on appeal (see above). Other oil and gas cases covered by ABlawg included two decisions on offset well clauses ([here](#)), as well as a decision dealing with liability for abandonment was between the vendor and purchaser of lands in the [Mackenzie Delta](#) and decisions on the operating agreement [here](#) (the test for lifting a stay of proceedings in a case involving a change of operator) and [here](#) (a decision of the English Court of Appeal on the principle of holding the operator neutral).

The big story in the electricity sector was the decision of the new United Conservative Party (UCP) government [to abandon the proposed addition of a capacity market](#) to the existing energy and ancillary markets. ABlawg had been following the development of the capacity market (see [here](#) and [here](#)) but we did not otherwise post on this change in direction. ABlawg did however post on a good number of National Energy Board (NEB, and now the Canadian Energy Regulator (CER)) utility decisions [here](#) (negotiated settlements) and [here](#) (Enbridge's open season preceding a bid to move from common carrier status to contract carriage). ABlawg also posted on Alberta Utilities Commission (AUC) facility and utility decisions including decisions on [needs identification decisions](#), rate grandparenting [here](#), the regulation of gas transmission pipelines and the status of district energy decisions [here](#). ABlawg also provided commentary on a significant line of AUC decisions that clarified the status of self-supply and export generation projects in Alberta: EPCOR Water Services Inc., EL Smith Solar Power Plant, February 20, 2019, [Decision 23418-D01-2019](#); [AUC Decision 23756-DOI-2019](#), Advantage Oil and Gas Ltd. Glacier Power Plant Alteration, April 26, 2019; [AUC Decision 24393-D01-2019](#), International Paper Canada Pulp Holdings ULC Request for Permanent Connection for 48-Megawatt Power Plant, June 6, 2019; and [AUC Decision 24126-D01-2019](#), Keyera Energy Ltd, Cynthia Gas Plant Power Plant Application, June 25, 2019 and for the ABlawg comments on those decisions see [Opening a Can of Worms](#) and [here](#) and [here](#). In sum, the AUC concluded in these decisions that a generating project would not be approved for self-supply and export unless the project fell within the 5 MW limit of the Microgeneration Regulation or unless the project had an industrial system designation under section 4 of the *Hydro and Electric Energy Act*, [RSA 2000, c H-16](#). The implications of these decisions are still reverberating at year end (see the submissions on the AUC's website [here](#)).

ABlawg continued to provide commentary on the new federal impact assessment regime as that legislation and several key regulations came into force in August 2019. In the lead-up to this, Professor Sharon Mascher [commented](#) on the proposed project list, noting several areas of concern, including the change in project size thresholds that will likely result in fewer assessments under the new regime. Prior to royal assent Bill C-69 underwent unprecedented scrutiny from Senators. During those hearings, Martin Olszynski made submissions to the Senate Committee on Energy, Environment, and Natural Resources, which were the basis of his [ABlawg post](#) on the matter. Looking ahead, in 2020 the federal government will put further guidance and regulations in place, including guidance for implementing the new climate change-related requirements in the new regime. This climate guidance will flow from the government's strategic assessment on climate change, which was the focus of a [post](#) by David Wright.

Meanwhile, legal challenges to the federal government's (re)approval of the Trans Mountain Pipeline Expansion Project (TMX) continue to be heard by the Federal Court of Appeal. This matter included several unusual twists, which were explained by Professors Bankes, Olszynski and Wright in a series of posts ([here](#), [here](#) and [here](#)) this past fall.

Last but not least, ABlawg published a series of posts on the Alberta Inquiry into Anti-Alberta Energy Campaigns. In addition to the posts by Olszynski, Koshan and McKay-Panos mentioned above, Shaun Fluker's post examined [procedural fairness](#) issues associated with the Inquiry.

### ***Constitutional Law***

On constitutional issues, ABlawg continued to follow the fate of Alberta's Bill 12 (the "turn off the taps legislation") with posts [here](#) and [here](#), as well as the post noted above dealing with Alberta's challenge to the [constitutional validity of Bill C-69](#), the federal *Impact Assessment Act*, and [various provinces' challenges](#) to the federal government national carbon pricing regime, the *Greenhouse Gas Pollution Pricing Act*.

Jonnette Watson Hamilton and Jennifer Koshan posted on several equality rights issues and decisions (see [here](#), [here](#), [here](#) and [here](#)). One of these posts – [Time for Buy-Back: Supreme Court Set to Hear Important Adverse Effects Discrimination Case](#) – was cited by the Women's Legal Education and Action Fund (LEAF) in its [intervention](#) in *Fraser v Canada (Attorney General)*, [2018 FCA 223 \(CanLII\)](#), an appeal heard by the Supreme Court in December ([2019 CanLII 42345 \(SCC\)](#)). Professor Koshan also posted on developments related to the rights of farm and ranch workers before and after the provincial election (see [here](#) and [here](#)).

### ***Criminal Law***

Lisa Silver made several contributions to ABlawg in the area of criminal law. In [Why Reconsider W\(D\)?](#) and [W\(D\) Strikes Again!](#), she commented on recent efforts by the appellate courts to modernize *W(D)* for use in a changing and complex legal landscape. Professor Silver was asked to present to a judicial audience on this issue as a result of her ABlawg posts and other scholarship on the issue. On the sentencing side, Professor Silver wrote two posts on the Alberta Court of Appeal's use of sentencing starting points to provide a unified approach to sentencing. In [Sentencing to the Starting Point: The Alberta Debate](#), she outlined the historical background of this approach and the controversy arising from it. Her most recent post on the issue, [Binding the Courts: The Use of Precedent in Sentencing Starting Points](#), views the controversy through a different lens as the Alberta Court of Appeal reminds the lower courts of the vital precedential value the starting points provide, particularly for pressing social issues. Her other posts cover the spectrum of criminal law, dealing with issues of [mens rea](#), [privacy](#), and [mental health issues](#) (see also Professor Silver's excellent [Ideablawg](#) for more blog posts and podcasts).

Jennifer Koshan published several posts on domestic violence law – criminal and otherwise – with collaborators on her project Domestic Violence and Access to Justice Within and Across Multiple Legal Systems, funded by SSHRC and the Law Foundation of Ontario (see [here](#), [here](#) and [here](#)).

## ***Health Law***

With both federal and provincial elections in the past year, health-related issues were at the forefront of public policy debates. In October, the federal government proceeded with its plan to legalize edible cannabis products, which is discussed in Lorian Hardcastle's post [Canadian Cannabis Regulation Part II: Edibles, Extracts and Topicals](#), the latest in a [series](#) of blog posts on cannabis regulation. Another topic that is currently on the federal policy agenda is universal insurance for pharmaceuticals, which she examined in [Pharmacare...Long Overdue](#). [Canadian Women Still Struggling with Access to Reproductive Care](#), also addresses the issue of access to pharmaceuticals, with a focus on federal and provincial barriers to the accessibility of reproductive drugs. At the provincial level, policy-makers are grappling with how to address the opioid epidemic. In [Will Alberta's Lawsuit Against Opioid Manufacturers Improve Public Health?](#), Professor Hardcastle explores the new government's decision to file a lawsuit that would help to recoup health care costs from those who make and distribute opioids.

## **Other Highlights**

Former student Dylan Finlay's 2014 post ["Putting" Browne v Dunn into Perspective](#) was cited by the Manitoba Court of Appeal in *R v Dyck*, [2019 MBCA 81](#).

Nigel Banks' post [Summary Judgment Not Available in a Farmout Case](#) was [republished](#) in The Negotiator, the magazine of the Canadian Association of Petroleum Landmen.

A post by Jassmine Girgis, [Bidders Do Not Owe Duties of Fairness and Honesty to Other Bidders in Tendering Competitions](#), was republished by the Canadian College of Construction Lawyers in their Legal Update (see [here](#)).

Jonnette Watson Hamilton's post, [Wear and Tear, Cleanliness, Repair, Replacement and Betterment: A Landlord's Claims for Compensation at the End of a Residential Tenancy](#), was reprinted in the Alberta Residential Landlord Association's Quarterly *Rental Gazette* Winter Edition and summarized by the Access Review in their November 13 post, [A Landlord's Claims for Compensation at the End of a Residential Tenancy: A Repost from ABLAWG](#).

Nigel Banks' post [The Senate, the Oceans Act and Marine Protected Areas](#) was cited extensively in debates in both the House of Commons (May 10, 2019) [here](#) and the Senate (April 11, 2019) [here](#).

## **Concluding Thoughts**

Thanks to all of our followers for reading ABlawg and especially to those who take the time to send us messages about the value of particular ABlawg posts or ABlawg more generally. We wish all of our readers a happy holiday season and look forward to engaging with you in 2020.

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