File No. OG 003-06

Lorne F. G. Carter	)	Monday, the 5th, day
Deputy Mining and Lands Commissioner	)	of February, 2007.

THE OIL, GAS AND SALT RESOURCES ACT

IN THE MATTER OF

An application under clause 8(1)(a) of the **Oil, Gas and Salt Resources Act**, R.S.O. 1990, c. P.12, as amended by 1994, c. 27, s. 131; 1996 c. 30, s. 56-70; 1998, c. 15, Schedule E, s. 24; 1999, c. 12, Schedule N, s. 5; 2000, c. 26, Schedule L, s. 8; 2001, c. 9,Schedule K, s. 4; 2002, c. 18, Schedule L, s. 6; 2006, c. 19, Schedule P, s. 4., for an Order, by the Commissioner, that the oil or gas interests within a spacing unit be joined for the purposes of drilling or operating an oil or gas well (the **"Order");**

(Amended February 5th, 2007)

AND IN THE MATTER OF

An application pursuant to Ontario Regulations 245/97, amended to O. Reg. 75/04 at clauses 8(3)(a) and (b) wherein; No person shall, drill a well in a spacing unit that has not been pooled; produce oil or gas from a spacing unit that has not been pooled, and at subsections 14(3) and 14(4) whereby the application for an order to allow pooling within a spacing unit shall include specific information to the extent that it is applicable to the issues being determined (the "**Regulation**");

(Amended February 5th, 2007)

AND IN THE MATTER OF

All and singular those parcels, lots or tracts of land and premises, comprised of 150 acres more or less, lying within Moore 5-13-III, Spacing Order 2005-8, dated the13th, day of December, 2005, so designated by the Ministry of Natural Resources ("MNR") and comprised of the South three-quarters of the East Half of Lot 13, being Tracts #4, #5 and #8, and the South three-quarters of the West Half of Lot 12, being Tracts #3, #6 and #7, all within Concession III, Geographic Township of Moore, Township of St. Clair, County of Lambton, Province of Ontario, introduced as an exhibit for this Application, and further described on Schedule "A" attached hereto and forming part of this Order (the "Spacing Unit");

(Amended February 5th, 2007)

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AND IN THE MATTER OF

All and singular those certain parcels, lots or tracts of land and premises, situate lying and being within the subject Spacing Unit, belonging to David O' Neil Enterprises Limited (Ontario Corp. Number 1062011), whereby said lands comprise approximately 67.6160 acres, lying within Tracts #3, #6 and part of #7, within Lot 12, Concession III, Geographic Township of Moore, Township of St. Clair, County of Lambton, Province of Ontario.

(Amended February 5th, 2007)

BETWEEN:

PORTRUSH PETROLEUM CORPORATION
APPLICANT

- and -

DAVID O'NEILL ENTERPRISES LIMITED
(formerly 1062011 Ontario Limited)

[such landowner who has *not* entered into a Petroleum and Natural Gas Lease and Grant in favour of the Applicant]

RESPONDENTS OF THE FIRST PART
(Amended February 5th, 2007)

- and -

GREGORY BRUCE BAKER, MICHELLE LEE BAKER, LLOYD GEORGE YOUNG, ANNA LILLIE YOUNG, KEITH LLOYD YOUNG AND GAYLE YOUNG
[such landowner(s) who have signed into a Petroleum and Natural Gas Lease(s) and Grant(s) in favour of the Applicant]

RESPONDENTS OF THE SECOND PART
(Amended February 5th, 2007)

AND IN THE MATTER OF

Clause 14(3) (h) of O. Reg. 245/97, amended to O. Reg. 75/04 providing that the relationship between the unleased landowners, Respondents of the First Part, and the initial unit operator, the Applicant, be governed by a Petroleum and Natural Gas Lease and Grant attached hereto and forming part of this Order under Schedule "E";

(Amended February 5th, 2007)

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AND IN THE MATTER OF

Service of the Order shall include notice on all Lessors (landowners) within both; executed and ordered aforesaid Petroleum and Natural Gas Lease(s) and Grant(s) in favour of the Lessee (initial unit operator) that the various habendum and pooling clauses each contained therein are being exercised by the Lessee;

(Amended February 5th, 2007)

AND IN THE MATTER OF

In the alternative, an Application for an Order which joins the interests of the Respondents with the interests of the Applicant within the spacing unit pursuant to clause 8(1)(a) of the **Oil, Gas and Salt Resources Act**, R.S.O 1990, c.P.12, as amended, on terms and conditions specified and filed with the Application and forming the Order herein.

O R D E R

WHEREAS a hearing was held in this matter commencing at nine-thirty o'clock in the forenoon on the 17th day of October, 2006, in the Duke of Connaught Room of the Hilton Hotel, at 300 King Street, London, Ontario with Mr. Christopher Lewis , Counsel for the Applicant, having introduced evidence, a witness and submissions in compliance with the appointment and no one having appeared for, or on behalf of the Respondents;

AND WHEREAS the tribunal was advised by Mr. Christopher Lewis, counsel for the Applicant, that unleased landowners identified as Respondents of the First Part, David O'Neill Enterprises Limited (Ontario Corp. Number 1062011), a company of Mr. David R. O'Neill, have *not* entered into a Petroleum and Natural Gas Lease and Grant with the Applicant and were duly advised of this Hearing by mail, dated the 22nd day of August, 2006;

AND WHEREAS the Applicant, has obtained Petroleum and Natural Gas Lease and Grants with the seventy-five percent majority of the landowners (Respondents of the Second Part) in the spacing unit; which represents 82.385 acres or 54.93 percent of the said lands and were duly advised of this Hearing by mail, dated the 22nd day of August, 2006;

AND WHEREAS the benefits of pooling protect the correlative rights of the landowners and will allow the Applicant to satisfy application requirements to obtain a drilling license to drill a well within the Spacing Unit and proceed to produce oil or gas from the said well pursuant to subsection 8(3) of Ontario Regulation 245/97, amended to O. Reg. 75/04;

AND WHEREAS protection of the rights of landowners (Lessors) to royalties and the right of the Applicant (Lessee) to the leased substances is governed by the various habendum and pooling clauses contained within the Petroleum and Natural Gas Lease(s) and Grant(s);

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UPON reading the documentation filed and hearing the evidence in support of this application;

1. IT IS ORDERED that the Title of Proceedings be amended as follows; at page one (1) the reference to section 12 of Ontario Regulation 245/97 be deleted and paragraph one (1) be replaced as follows;

> An application under clause 8(1)(a) of the **Oil, Gas and Salt Resources Act**, R.S.O. 1990, c. P.12, as amended by 1994, c. 27, s. 131; 1996 c. 30, s. 56-70; 1998, c. 15, Schedule E, s. 24; 1999, c. 12, Schedule N, s. 5; 2000, c. 26, Schedule L, s. 8; 2001, c. 9,Schedule K, s. 4; 2002, c. 18, Schedule L, s. 6; 2006, c. 19, Schedule P, s. 4., for an Order, by the Commissioner, that the oil or gas interests within in a spacing unit be joined for the purposes of drilling or operating an oil or gas well (the **"Order**");

and at page one (1) the second paragraph be deleted and replaced with;

> Any application for such an **Order** is pursuant to Ontario Regulations 245/97, amended to O. Reg. 75/04 at clauses 8(3)(a)and (b) wherein; no person shall, drill a well in a spacing unit that has not been pooled; produce oil or gas from a spacing unit that has not been pooled, and at subsections 14(3) and 14(4) whereby the application for and the order to allow pooling within a spacing unit shall include specific information to the extent that it is applicable to the issues being determined (the "Regulation");

and at page one (1) the third paragraph be deleted and replaced with;

> All and singular those parcels, lots or tracts of land and premises, comprising of 150 acres more or less, lying within Moore 5-13-III, Spacing Order 2005-8, dated the 13th day of December, 2005, so designated by the Ministry of Natural Resources ("MNR") and comprised of the South three-quarters of the East Half of Lot 13, being Tracts #4,#5 and #8, and the South three-quarters of the West Half of Lot 12, being Tracts #3,#6 and #7, all within Concession III, Geographic Township of Moore, Township of St. Clair, County of Lambton, Province of Ontario, introduced as an exhibit for this Application, and further described on Schedule "A" hereto and forming part of this Order (the "Spacing Unit");

and at page two (2) the first paragraph be deleted and replaced with;

> All and singular those certain parcels, lots or tracts of land and premises, situate lying and being within the subject Spacing Unit, belonging to David O' Neil Enterprises Limited (Ontario Corp. Number 1062011), whereby said lands comprise of approximately 67.6160 acres, lying within Tracts #3, #6 and part of #7, within Lot 12, Concession III, Geographic Township of Moore, Township of St. Clair County of Lambton, Province of Ontario;

2. IT IS FURTHER ORDERED that the portion of the Title of Proceedings describing the RESPONDENTS, in the First, Second and Third Parts be deleted and replaced with;

DAVID O'NEILL ENTERPRISES LIMITED
(Ontario Corp. Number 1062011)
[such landowner who has *not* entered into a Petroleum and Natural Gas Lease and Grant in favour of the Applicant]

RESPONDENT OF THE FIRST PART

- and -

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GREGORY BRUCE BAKER, MICHELLE LEE BAKER, LLOYD GEORGE YOUNG, ANNA LILLIE YOUNG, KEITH LLOYD YOUNG AND GAYLE YOUNG
[such landowner(s) who have signed into a Petroleum and Natural Gas Lease and Grant(s) in favour of the Applicant]

RESPONDENTS OF THE SECOND PART

3. IT IS FURTHER ORDERED that the joined interests of the Respondent of the First Part, David O'Neill Enterprises Limited and the Applicant, Portrush Petroleum Inc. for the purpose of pooling be governed by a Petroleum and Natural Gas Lease and Grant similar to the eight page format attached hereto as Schedule "E" and forming part of this Order.

4. IT IS FURTHER ORDERED that the interests of the Respondent of the First Part, David O'Neill Enterprises Limited, and the interests of the Applicant, Portrush Petroleum Inc. be hereby joined, for the purpose of pooling, to the Spacing Unit (Moore 5-13-III, Spacing Order 2005-8) further identified in the Geographical and Geological description(s) attached as Schedule "A" hereto and forming part of this Order, pursuant to clause 14(4)(b) of Ontario Regulation 245/97, amended to O. Reg. 75/04;

5. IT IS FURTHER ORDERED that the Spacing Unit be comprised of Tracts #4,#5 and #8 within Lot 13 and Tracts #3,#6 and #7 within Lot 12. The Tract allocation of each landowner within the Spacing Unit is detailed in Schedule "C" attached hereto and forming part of this Order pursuant to clauses 14(4) (c) and (d) of Ontario Regulation 245/97, amended by O. Reg. 75/04;

6. IT IS FURTHER ORDERED that those interests of the Respondent(s) of the Second Part, be joined within the Spacing Unit, aforesaid, being described as landowners with a Petroleum and Natural Gas Lease/Grant in favour of the Applicant, for the purpose of pooling, more particularly documented and described in Schedule " F" attached hereto and forming part of this Order and in compliance with clause 14(4) (e) of Ontario Regulation 245/97, amended by O. Reg. 75/04;

7. IT IS FURTHER ORDERED that this Order for pooling will be effective the 5th day of February, 2007 and the completion date of the Petroleum and Natural Gas Lease and Grant and its commencement shall share the same date.

8. IT IS FURTHER ORDERED that the duration, *interalia,* of the Lease/Grant (Schedule "E") between David O'Neil Enterprises Limited and Portrush Petroleum Inc. shall be for an approximate term of three years, so affixed in the Habendum clause therein and continuing until Friday, the 5th day of February, 2010.

9. IT IS FURTHER ORDERED that, in accordance with clause 14(4) (i) of O. Reg. 245/97, amended to O. Reg. 75/04, the Applicant, Portrush Petroleum Inc. is appointed as the Initial Unit Operator of the Spacing Unit.

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10. THIS TRIBUNAL FURTHER ADVISES that service of this Order, together with the appropriate and individual Petroleum and Natural Gas Lease/Grant(s), will be affected by the tribunal by registered mail and by the Applicant, Portrush Petroleum Corporation through hand delivery to the residence of the Respondent of the First Part, David O'Neill Enterprises Limited (Landowner) at the address indicated in Schedule "D" attached to and forming part of the Order and **FURTHER ORDERS** that service of the Order indicating the pooling of interests will be affected by the Tribunal and the Applicant, Portrush Petroleum Inc. through regular mail delivery to the residence addresses of all four Landowners as indicated in Schedule "D" attached hereto and forming part of the Order.

11. IT IS FURTHER ORDERED that no costs shall be payable by any parties to this application.

12. IT IS FURTHER ORDERED that upon weighing the arguments for an award in favour of the Applicant, the tribunal finds that no cost awards will be made to any party.

13. IT IS FURTHER ORDERED that this Order is binding on the Applicant and all the Landowners and their executors, heirs, successors or assigns.

Reasons for this Order are attached

DATED this 5th day of February, 2007

Original signed by Lorne F.G. Carter

Lorne F.G. Carter
Deputy Mining and Lands Commissioner

File No. OG 003-06

Lorne F. G. Carter	)	Monday, the 5th, day
Deputy Mining and Lands Commissioner	)	of February, 2007.

THE OIL, GAS AND SALT RESOURCES ACT

IN THE MATTER OF

An application under clause 8(1)(a) of the **Oil, Gas and Salt Resources Act**, R.S.O. 1990, c. P.12, as amended by 1994, c. 27, s. 131; 1996 c. 30, s. 56-70; 1998, c. 15, Schedule E, s. 24; 1999, c. 12, Schedule N, s. 5; 2000, c. 26, Schedule L, s. 8; 2001, c. 9,Schedule K, s. 4; 2002, c. 18, Schedule L, s. 6; 2006, c. 19, Schedule P, s. 4., for an Order, by the Commissioner, that the oil or gas interests within a spacing unit be joined for the purposes of drilling or operating an oil or gas well (the **"Order");**

(Amended February 5th, 2007)

AND IN THE MATTER OF

An application pursuant to Ontario Regulations 245/97, amended to O. Reg. 75/04 at clauses 8(3)(a) and (b) wherein; No person shall, drill a well in a spacing unit that has not been pooled; produce oil or gas from a spacing unit that has not been pooled, and at subsections 14(3) and 14(4) whereby the application for an order to allow pooling within a spacing unit shall include specific information to the extent that it is applicable to the issues being determined (the "**Regulation**");

(Amended February 5th, 2007)

AND IN THE MATTER OF

All and singular those parcels, lots or tracts of land and premises, comprised of 150 acres more or less, lying within Moore 5-13-III, Spacing Order 2005-8, dated the13th, day of December, 2005, so designated by the Ministry of Natural Resources ("MNR") and comprised of the South three-quarters of the East Half of Lot 13, being Tracts #4, #5 and #8, and the South three-quarters of the West Half of Lot 12, being Tracts #3, #6 and #7, all within Concession III, Geographic Township of Moore, Township of St. Clair, County of Lambton, Province of Ontario, introduced as an exhibit for this Application, and further described on Schedule "A" attached hereto and forming part of this Order (the "Spacing Unit");

(Amended February 5th, 2007)

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AND IN THE MATTER OF

All and singular those certain parcels, lots or tracts of land and premises, situate lying and being within the subject Spacing Unit, belonging to David O' Neil Enterprises Limited (Ontario Corp. Number 1062011), whereby said lands comprise approximately 67.6160 acres, lying within Tracts #3, #6 and part of #7, within Lot 12, Concession III, Geographic Township of Moore, Township of St. Clair, County of Lambton, Province of Ontario.

(Amended February 5th, 2007)

BETWEEN:

PORTRUSH PETROLEUM CORPORATION
APPLICANT

- and -

DAVID O'NEILL ENTERPRISES LIMITED
(formerly 1062011 Ontario Limited)

[such landowner who has *not* entered into a Petroleum and Natural Gas Lease and Grant in favour of the Applicant]

RESPONDENTS OF THE FIRST PART
(Amended February 5th, 2007)

- and -

GREGORY BRUCE BAKER, MICHELLE LEE BAKER, LLOYD GEORGE YOUNG, ANNA LILLIE YOUNG, KEITH LLOYD YOUNG AND GAYLE YOUNG
[such landowner(s) who have signed into a Petroleum and Natural Gas Lease(s) and Grant(s) in favour of the Applicant]

RESPONDENTS OF THE SECOND PART
(Amended February 5th, 2007)

AND IN THE MATTER OF

Clause 14(3) (h) of O. Reg. 245/97, amended to O. Reg. 75/04 providing that the relationship between the unleased landowners, Respondents of the First Part, and the initial unit operator, the Applicant, be governed by a Petroleum and Natural Gas Lease and Grant attached hereto and forming part of this Order under Schedule "E";

(Amended February 5th, 2007)

. . . . 3

AND IN THE MATTER OF

Service of the Order shall include notice on all Lessors (landowners) within both; executed and ordered aforesaid Petroleum and Natural Gas Lease(s) and Grant(s) in favour of the Lessee (initial unit operator) that the various habendum and pooling clauses each contained therein are being exercised by the Lessee;

(Amended February 5th, 2007)

AND IN THE MATTER OF

In the alternative, an Application for an Order which joins the interests of the Respondents with the interests of the Applicant within the spacing unit pursuant to clause 8(1)(a) of the **Oil, Gas and Salt Resources Act**, R.S.O 1990, c.P.12, as amended, on terms and conditions specified and filed with the Application and forming the Order herein.

REASONS

This matter was heard by the Tribunal on Tuesday, the 17th day of October, 2006, in the Duke of Connaught Room of the Hilton Hotel at 300 King Street, in London, Ontario.

Appearances by;

Mr. Christopher A. Lewis, Counsel on behalf of the Applicant, Portrush Petroleum Corporation.

No one appeared at the Hearing on behalf of or representing the Respondent,
David O'Neill Enterprises Limited.

Preliminary/ Procedural Matters

Mr. Lewis requested that amendments be made to the Title of Proceedings with regard to the Respondent of the First Part. He submitted that the Respondent of the First Part be changed from 1062011 Ontario Limited to David O'Neill Enterprises Limited, a company owned by the same Mr. David O'Neill.

Mr. Lewis submitted that based on telephone conversations (August 22nd, 2007) which included; himself, Mr. David O'Neill (Respondent) and Mr. Daniel Pascoe (Registrar – Office of the Mining and Lands Commissioner) it was ascertained from the Respondent that he was not aware of the Application or the Appointment for Hearing mailed out on August 14th, 2007. Mr. Lewis informed Mr. O'Neill that service was sent to the attention of Mr. O'Neill for 1062011 Ontario Limited at R.R. #1, Courtright, Ontario. The Respondent informed Mr. Lewis et al, during the telephone conversation, that the corporation name is David O'Neill Enterprises Limited at 1167 Oil Springs Line, R.R.#1, Courtright, Ontario N0N 1H0. Mr. Lewis submitted a corporate profile report [Exhibit #4] as result of a Ministry of Consumer and Business Services

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search dated August 22nd, 2006. The report confirmed that the previous corporate name (1062011 Ontario Limited) had been changed to David O'Neill Enterprises Limited of the same address.

Mr. Lewis submitted the cover letter [Exhibit #5] dated August 22nd, 2006 addressed to David O'Neill Enterprises Limited to the attention of Mr. David O'Neill and noted that the Respondent was re-served on that date with the proper corporate name and address.

Further, Mr. Lewis conducted a search in the General Registry at the Sarnia Land Registry Office which produced a copy of the registered Articles of Amendment, dated March 7, 1996 and known as Instrument No. 778906 [Exhibit #6]. Mr. Lewis submitted that the original title search had been completed on the actual property which still shows ownership being registered in the name of 1062011 Ontario Limited and does not reflect the Articles of Amendment registered in the General Registry. He pointed out that the Respondent was duly re-served and the record reflects that appropriate corrections were made. He indicated that the Title of Proceedings requires amendment of the Respondent of the First Part to read "DAVID O'NEILL ENTERPRISES LIMITED (formerly 1062011 Ontario Limited)".

Mr. Lewis submitted that an amendment to the Petroleum and Natural Gas Lease and Grant [Exhibit #7] presented with the Application, at page one, should be corrected to read:

DAVID O'NEILL ENTERPRISES LIMITED
(formerly 1062011 Ontario Limited)

A body corporate with its Head Office at the Township of St. Clair, in the Province of Ontario.
(hereinafter called "the Lessor")
OF THE FIRST PART

It was the Applicant's contention that the Respondent was uncooperative in the land leasing process resulting in this Application and this Hearing. Consequently, costs are being sought.

Background

Portrush Petroleum Corporation, the Applicant, is incorporated under the laws of the Province of British Columbia. Its head office is located at 700 - 595 Howe Street, Vancouver, British Columbia, V6C 2T5.

The Applicant has received directions from the Ministry of Natural Resources., in relation to a request for a drilling license. All lands (being 150 acres) identified within the specific Moore 5-13-III, Spacing Unit (2005-8) must be under lease before a request for a license is considered pursuant to O.Reg. 245/97, amended by O.Reg. 75/04; at subsection 8(3)[1].

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[1] Ontario Regulation 245/97, amended by O.Reg. 75/04, whereby;
8(3) No person shall,
(a) drill a well in a spacing unit that has not been pooled.

The Applicant, Portrush Petroleum Corporation, currently has executed Petroleum, Natural Gas Lease(s) and Grant(s) with three of the four landowners within the designated spacing unit. The efforts to acquire the final fourth lease voluntarily were met with resistance from the landowner. This ordered Petroleum and Natural Gas Lease and Grant for the final 67.6160 acres from landowner, David O'Neill Enterprises Limited, will complete the spacing unit and allow the Applicant to proceed with the application for a well license to drill for oil or gas.

The Applicant made an Application for a Pooling Order under the **Oil, Gas and Salt Resources Act, R.S.O. 1990, c. P. 12, as amended** pursuant to clause 8(1)(a) therein.

Issues

1. Can the purpose of the **Oil, Gas, and Salt Resources Act** be ascertained?

2. Is the Order justified under the circumstances? What constitutes an agreement going forward? Is there a standard lease used in the issuing of an Order?

3. Given the Respondent's position is service sufficient? Is service of the Order required for all landowners?

4. Can the tribunal determine awards and/or assess costs in relation to an application under the **Oil, Gas and Salt Resources Act**?

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EVIDENCE

Opening Statement by Mr. Christopher Lewis, Counsel for the Applicant.

Mr. Lewis stated that the Applicant (Portrush Petroleum Corporation) is in a difficult position. The Ministry of Natural Resources requires all of the landowners interests to be in a mandated spacing unit under a Petroleum and Natural Gas Lease(s) and Grant(s) before drilling and exploration for oil and gas can take place. Currently, the Applicant has three (3) of the four (4) landowners under lease which enables the Applicant to pool their interests. The requirement to pool interests is found in section 8 of Ontario Regulation 245/97, as amended.

This Application for an Order is being filed under clause 8(1) (a) of the **Oil, Gas and Salt Resources Act** concerning a one hundred and fifty (150) acre spacing unit, described as being part(s) of Lot 12 and Lot 13, Concession III, in the Township of St. Clair (formerly the Township of Moore), County of Lambton, Ontario. One owner of certain properties within the Spacing Unit, the Respondent of the First Part (David O'Neill Enterprises Limited), has refused to sign a Petroleum and Natural Gas Lease and Grant in favour of the Applicant.

Mr. Lewis submitted a Petroleum and Natural Gas Lease and Grant (Exhibit #7) which the Applicant wishes to persuade this tribunal to Order upon the Respondent of the First Part because it is in the best interests of all the landowners. The application was supported by expert evidence regarding the operator, as well as, geographical and geophysical descriptions of the unit location/prospect. The granting of this application will allow the Applicant to proceed with drilling a well on what is believed to be a true prospect.

Mr. Lewis concluded that the purpose of the **Oil, Gas and Salt Resources Act** and Ontario Regulation. 245/97, amended by O. Reg. 75/04 is to encourage the drilling and production of oil and/or gas in an orderly fashion, protecting the correlative rights of the parties involved.

Evidence by Mr. Cyril J. Hadley (Sworn and Accepted as an Expert Witness)

Counsel for the Applicant requested that the tribunal accept Mr. Cyril J. Hadley as an expert witness in Silurian Pinnacle Reef Geology. The tribunal heard no evidence or objection to the contrary and so granted expert status to Mr. Hadley.

Mr. Hadley introduced himself to the tribunal (his *Curriculum vitae* was entered into evidence as Exhibit #2). He stated that he is a Petroleum Geologist and a Professional Engineer with over 53 years of experience in the oil and gas industry. He noted his employment over the years with Imperial Oil. Work that ranged from; the Leduc, Alberta oil fields in the mid 1950's and drilling operations in Quebec, Maritimes, Newfoundland and Ontario in the 1960's. He then joined Ram Petroleum Limited (Toronto) in 1970 to continue work on "Pinnacle Reef Exploration" and has since formed Hadley Resources Limited (incorporated in Ontario -1981) as a consulting firm. He noted that he is currently under contract to the Applicant.

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Mr. Hadley pointed out that the term “pinnacle reef” is derived from discoveries by Union Gas and Imperial Oil in Southwestern Ontario in the 1930’s. A reef, he described, is an accumulation of hydro-bearing rock and similar to a barrier reef (oceanic) made up of organisms. The reef mass can be as small as twelve acres and as great as fifteen hundred acres. Experience shows that the reefs grow together to become a series with a possible height of three hundred to one thousand feet. These reefs are significant drilling targets for lucrative oil and gas exploration. However they are hard to locate because of their tall, pole-like, structure and limited top target area. Dry holes discovered in past drilling efforts are prevalent and have been as little as only fifty metres away in any direction from a production formation. Reefs found in Southwestern Ontario have been historically three hundred to four hundred feet in height.

Mr. Hadley reflected on his experience in Southwestern Ontario and Michigan. Pinnacle reef finds at Petrolia East and Corey East, dating back to the seventies, produced volumes of 200,000/300,000 barrels of oil per day and are still producing today. The Edys Mills find was similar and has since been placed in gas storage (estimated to be 12 bcf - natural gas). He further noted other discoveries such as; Range #1, #7 through #11, being incipient or bottom reefs that never grew to pinnacle reef size, with approximately 1.0 bcf of natural gas storage space. He indicated that the pinnacle reef, in this application, is like a telephone pole with one reef built on another over time, similar to a sunken ship that grows into a reef.

The landsman acting for him on this file was Mr. Murray Brown. He noted that it was Mr. Brown’s job to acquire the Petroleum and Natural Gas Lease(s) and Grant(s). The sequence of events was outlined to acquire the leases. The first lease signed was with Gregory Bruce and Michelle Lee Baker for 7.39 acres in Lot 12, Tract #7 (June 22nd, 2005). Next the leases for 50 acres in Lot 13, Tracts #5 and #8 with LloydGeorge and Anna Lillie Young (June 24th, 2005) and 25 acres in Lot 13, Tract #4 with Keith Lloyd and Gayle Young (June 29th, 2005) were signed with Bluewater Energy Quest and reassigned to Portrush Petroleum Corporation on July 10th, 2006. Lastly, the landsman approached Mr. O’Neill and made four attempts to complete a Petroleum and Natural Gas Lease and Grant. The reported objections to signing a lease included; *He did not want anyone on his land. He did not want to ever have a rig on his land. He did not want to cooperate. He will not sign a lease under any conditions. He indicated his trust in Mr. Brown but not for the others involved.*

Mr. Hadley, examined the various Petroleum and Natural Gas Lease and Grant (Exhibit #7) clauses and changes from the earlier submission for the tribunal. He emphasized; the name change in several paragraphs, consideration of 100 Dollars, the Lease duration assigned for three years, a twelve and one-half percent payable royalty and the provision clause for pooling. He indicated that the three year term and the $100 consideration conform to a previous tribunal decision (*Talisman v. St. Pierre*[2]).

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[2] Taliman v. St. Pierre, June 17, 1998, Mining and Lands Commissioner, file OG 009-98, (unreported) 25 pp.

It was noted through counsel/witness examination that the distribution of the twelve and one-half percent royalty is on an areal basis for each of the landowners (Exhibit #1, Tab #1) and the Respondent of the First Part (O'Neill) will get the lion's share of the royalty owing to his 45.0774 percent interest in the spacing unit lands.

Referring to the Geological base map (Exhibit #1, figure 3), Mr. Hadley noted from his seismic information that the anomaly or prospect straddles the Waubuno Line Road. Mapped information indicates that it starts just north of the intersection of the Waubuno Line Road and the Oil Springs Line Road and terminates by a dry hole location on Lot 12, Tract #3 in the south east corner near the road. He likened this prospect (1200 feet by 2300 feet) to the nearby Waubuno Pool Gas Storage (E.B.O. 31), 3500 feet to the southeast, that was discovered in 1951 through gravity tests with proven dimensions of 2500 feet in the long axis and 1200 feet in the short axis. The bottom depth of the well is expected to be 2100/2200 feet which is indicative of a Guelph A-1 formation (Silurian). He noted that there is another gas storage 2000 feet to the northwest called the Kimball Colinville Pool[3] (Gas Storage - O. Reg. 700). He explained that once these wells are depleted of oil and/or gas, they are converted to gas storage as designated by the Ontario Energy Board. He completed his area description by referring to another oil (A-1 carbonate) producing field to the northeast called Brigdon Pool. He speculated that from his experience these types of formations are usually found near pinnacle reefs.

Mr. Hadley referred to Figure 4 of Exhibit #1 (A2 Carbonate Formation Structure and Seismic A2 Carbonate Formation Reflector) and noted how seismic testing works. He explained that the seismic results and elevations of this prospect indicate a chaotic field which usually produces a pinnacle reef formation. He also referred to past drilling efforts on the west side of the Waubuno Line Road which produced only anomalous wells outside the reef. He described the process used to measure the area through seismic tests and noted that the sound of dynamite shots traveled to reflect off of the A-2 carbonate and produce readings that were very impressive.

He referred to Figure 5 of Exhibit #1, (Isopach "B" Salt) and explained that the thinner salt layer immediately around the subject prospect well location usually indicates the presence of carbonates which is similar to the information that was found for the near-by Waubuno Pool.

The Waubuno Pool, Mr.Hadley noted, produced 6.01 bcf of natural gas before going into storage and it is expected that this pool prospect is similar, at approximately 5.0 bcf of natural gas. At today's prices that could translate to twenty-five million dollars in revenue. Production for this prospect is estimated to be 3 million cubic feet of natural gas per day.

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[3] Paper by; C. Hadley and D.P. Andrews (1967) "Kimball Colinville Reef Complex – A Case History Lambton County, Southwestern Ontario" , Petroleum Institute (Toronto).

Mr. Hadley noted that the Applicant has shared the geology and the seismic information with the Ministry of Natural Resources (October 2005) and the Applicant filed an application in November, 2005 ahead of the Ministry approval of Spacing Order 2005-8 [Exhibit #1, Tab 1, page 8 of 8] in December, 2005. He pointed out that they have been following the steps outlined by the Ministry to acquire a license. The issuing of this Order will complete the leasing of all the lands within the designated spacing unit. He referred to the well location plotted on Figures 3, 4 and 5, of Exhibit #1 indicating that they intend to seek further approval to drill off-target near the center of the spacing unit based on the usual set-back requirements.

Mr. Hadley stated that Portrush Petroleum Corporation (Vancouver), incorporated in 2000, which trades on both the Vancouver and Toronto stock exchange(s), will be the operator of this drilling prospect. He noted that the President of the company, Mr. Martin Cotter, is a petroleum engineer with Alberta exploration experience. Mr. Hadley explained that he is a shareholder of the company and the contracted consultant on this prospect. He noted that his experience with the company dates to 2000 when he located a pinnacle reef prospect near Detroit which now produces oil under the operator Direct Energy. He added that, the company also has interests near Corpus Christie, Texas. He explained that the company (December 31st, 2005 statement) has a net equity of $1,718,248 on assets of $1,843,436.

Arguments for the Application – Mr. Christopher Lewis, Counsel for the Applicant

Mr. Lewis made reference to his printed submission ("Book of Authorities"[4]). He stated that the purpose of this application is to enable the Applicant (Portrush) to proceed to drill a well. He noted that the witness provided evidence that supports drilling in a pinnacle reef formation. Royalties of approximately fifty-eight thousand dollars per month can be expected from this type of reef formation and the royalty share for the Respondent of the First Part (O'Neill Enterprises Limited) could be as high as twenty-six thousand dollars monthly, owing to their forty-five percent share of the total royalty to be paid out to landowners. The Respondent's failure or refusal to sign a Petroleum and Natural Gas Lease and Grant makes it impossible for the Applicant to obtain and satisfy the requirements for a license to drill a well in the spacing unit that is believed to contain a substantial find.

Mr. Lewis concluded that the Applicant has to pool various interests within the spacing unit pursuant to subsection 8 of the O. Reg. 245/97, amended to O. Reg.75/04;

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[4] "Book of Authorities' prepared by Mr. C. Lewis for the application before the Office of the Mining and Lands Commissioner herein.
Tab #1 - Oil, Gas and Salt Resources Act, R.S.O. 1990, c. P. 12. Current version as at September 29th, 2006, 15 pp.
Tab #2 - Oil, Gas and Salt Resources Act – Ontario Regulation 245/97, *Amended to O. Reg. 75/04*, EXPLORATION, DRILLING AND PRODUCTION. Current version as at September 29th, 2006, 16 pp.
Tab #3 - Mining Act, R.S.O. 1990, c. M. 14. Current version as at September 29th, 2006, pages 5 – 8 and 55 – 64
Tab #4 – Talisman Energy Inc. vs. St. Pierre, June 17th, 1998, Mining and Lands Commissioner – file OG 007-98 (unreported). 25 pp.

> 8. (1) This section applies to all oil or gas exploratory and development wells.

and

> 8. (3) No person shall,
>
> (a) drill a well in a spacing unit that has not been pooled;
>
> (b) produce oil or gas from a spacing unit that has not been pooled.

and contained in the "DEFINITIONS";

> Pooled spacing unit means a spacing unit in which all the various oil and gas interests have been pooled.

and

> pooling means the joining or combining of all various oil and gas interests within a spacing unit for the purpose of drilling and subsequently producing a well.

Mr. Lewis noted that by ordering the Petroleum, Natural Gas Lease and Grant [Exhibit #7] then the pooling clause at paragraph #9, can be used to pool and join the various landowner interests within the spacing unit. Subsequently the twelve and one-half percent royalty will be shared among all four landowners on an areal basis. The Applicant has no other option than to make an application for an Order under subsection 8(1) of the **Act** which states;

> The Commissioner may order that,
>
> (a) the oil or gas interests within a spacing unit be joined for the purpose of drilling or operating an oil or gas well;
>
> (b) management of the drilling or operation be carried out by the person, persons or class of persons named and described in the order.

Mr. Lewis noted that the tribunal relying on subsection 14(3) of the O. Reg. 245/97, amended to O. Reg. 75/04 is empowered to make such an Order based on the information that has been tendered. He noted that subsection 14(4) of the O. Reg. 245/97, amended by O. Reg. 75/04 outlines the content of order and the applicable issues to be determined. It requires the appointment of the Applicant as the operator of the drilling operations and invokes the form of oil and gas lease that will govern the relationship between the Applicant (Lessee) and the Respondent of the First Part (Lessor).

Mr. Lewis stated that he has difficulty ascertaining the precise reasons for the Respondent's refusing to sign a lease. Reflecting on several conversations held with the Respondent, he recounted the negative responses mentioned by Mr. Hadley (page 7 herein) in his testimony. He concluded that no new evidence will be put forward today by the Respondent to discount the application.

Mr. Lewis noted the similarities between a previous application *(Talisman v. St. Pierre*[5]*)* before the Mining and Lands Commissioner and the current application. Similarly all but one landowner had entered into a lease in a smaller (50 acre) spacing unit. He quoted from the tribunal's findings in that decision; 11

[5] Ibidem

> The question to be determined in this application is whether an owner of a small portion of a spacing unit, in this case less than 2 percent, can prevent drilling and production from taking place, not only on their land, but on the land of their neighbours.

and

> The respondents do their position considerable harm in not attending the hearing, as specific reasons for their opposition to the proposed lease are unknown and anything which the tribunal might say in this regard is pure speculation.

This application was similarly holding back their neighbours and was not attend by the Respondent. Further, Mr. Lewis emphasized the uncertainty of the Respondent's objections in this application and from the previous decision applied the tribunal's findings to this case.

> What are the effects of the failure to pool all of the oil and gas interests in a spacing unit, so that production could begin? First, and most importantly, all of the other landowners in the spacing unit are deprived of their opportunity to deal with the lands as they see fit. Not only are they deprived of the potential royalties arising from production, but they also are put in the position of being at risk from having their lands drained by production from pooled spacing units which adjoin theirs. Taken to its logical conclusion, and in the absence of an application for initialization, meaning an application to join the interests in the entire pool, the oil and gas reserves under the leased lands in this spacing unit are effectively sterilized to production and vulnerable to having that resource seriously depleted, if not drained entirely, from under their lands.

Mr. Lewis reiterated that there is a fair amount of well control within a spacing unit. He noted that based on Mr. Hadley's testimony, it appears that the siphoning-off of oil and/or gas is less likely than it was in the *Talisman* decision. The big inequity in this application is that the Respondent is depriving their neighbours of the economic benefits that can be derived from substantial production of oil and gas from a drilled well.

The previous *Talisman* decision notes the neighbours have voluntarily signed leases and would like to see the development of a well and the resulting royalties paid out which is supported by legislation and regulations. In the *Talisman v. St. Pierre* decision, the tribunal summed up the legislation at page ten;

> The legislation is clearly drafted to balance the rights of the individual property owners and producers, protecting the correlative rights of the individual landowners, meaning that surrounding landowners are protected from having oil or gas drained without compensation. It is also, however, designed to provide for careful, well supported exploratory drilling, as evidenced for the need to form a pooled spacing unit in most cases, methodical production found in ordered spacing units which are fully pooled, and ultimately, where circumstances warrant or the producers or Minister so wish, unitization of the entire pool.

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In summation, Mr. Lewis stated that the purpose of the legislation is based on concerns that the landowner may be deprived of their rightful royalties and the encouragement of the production of oil and gas in an orderly fashion. Accordingly, the Regulations and the operating standards are to ensure proper drilling and environmental procedures.

Mr. Lewis further noted that the Applicant, based on the corporate information supplied, is in compliance with subsection 16 of O. Reg Regulations concerning bonding requirements.

He continued that based on the intent of the legislation there is a bias towards seeing the resources utilized and captured in a proper manner not unlike the findings expressed by the tribunal in the *Talisman v. St. Pierre* decision at page 10, paragraph 2;

> The Tribunal finds that it is not the purpose of the **Oil, Gas and Salt Resources Act** to allow a sole landowner to hold other landowners and an oil and gas producer in a spacing unit *hostage* by withholding their agreement to enter into a lease for the oil and gas interests. A fully pooled spacing unit is not only a benefit to the pooled spacing unit landowners and the producer; it offers benefit by way of royalties to the Province and directly creates jobs as well as jobs in spin-off industries and support.

The landowners receive royalties and the Province receives income tax from the production. Mr. Lewis noted the use of the word “hostage” in the previous decision and suggested that the current Respondent is prohibiting the development of the spacing unit and this prospect. The Applicant is prepared to invest substantially more in developing the oil and gas prospect beyond what they have invested in the preparation for this Hearing, services of counsel and the utilization of a geological expert to date.

Mr. Lewis submitted that the tribunal should follow the reasoning in the previous *Talisman* decision and grant the requested Order. The duration of the Order should be for a three year term. The primary reason is that it is precisely what was ordered in the previous decision *(Talisman vs. St. Pierre)*, so there is a precedent. Secondly, the one lease completed with the Respondent of the Second Part (*Baker*) is for a duration of three years. In addition, the proposed order submission has adopted a parallel language used in the *Talisman* decision which includes;

> For so long thereafter as there is production or that they are without cessation of operations for 90 days.

Clauses (#5 and #7) in the suggested Order format, note the method of service and registration of this Order; by regular and registered mail is the same as the previous *Talisman* decision and registered against the title of all lands within the spacing unit so that future landowners are bound to the Order as successors in title.

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Costs Argument by Mr. Christopher Lewis for the Applicant

Mr. Lewis referred to the **Mining Act** at Part VI, section 126 and the Commissioner's authority to make an award;

> Costs
> The commissioner may in his or her discretion award costs to any party, and may direct that such costs be assessed by an assessment officer or may order that a lump sum be paid in lieu of assessed costs. R.S.O. 1990, c. M.14. s. 126

He requested that the tribunal fix costs based on the documentation submitted (Exhibits #9 and #10). He emphasized his reasoning and the similarities with the previous *Talisman v St. Pierre*[6] decision where the Respondents did not attend the Hearing. He quoted from the findings in that decision at page 10;

> There were no submissions made on the issue of costs, however, the Tribunal finds that it places the applicant and the Tribunal in an unfortunate position where opposition to an application such as this one is not opposed in person or in writing at the hearing. This being the case, in future, all Appointments for Hearing will give notice to prospective respondents that failure to attend the hearing of the matter may result in costs being awarded against them.

The previous Order did not award costs against the respondent largely because the warning was not included in the Appointment for Hearing. The Appointment for Hearing for this application stated;

> AND TAKE NOTICE that if you do not participate at this hearing the Tribunal may proceed in your absence; you will not be entitled to notice of any further proceedings and costs may be awarded against you.

Mr. Lewis pointed to the appointment for hearing notification and the reasoning and *obiter* set in the previous decision and asked that costs be awarded against the David O'Neill Enterprises Limited in favour of the Applicant.

Mr. Lewis presented invoices and a work in progress report (Exhibits #9 and #10) and pointed out that they totaled approximately $10,800.00. He noted further that the cost for his hearing attendance was an additional $1,200.00. That would bring his total billings for the hearing to approximately $12,000.00 and on the usual party-and–party basis, a fixed reward of one-half or $6,000.00 could be made payable.

Mr. Lewis asked that costs be awarded against the Respondent of the First Part (David O'Neill Enterprises Limited) in the amount of $6,000.00 payable within 30 days of the issuance of the tribunal's Order.

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[6] Ibidem

F I N D I N G S

Purpose of the Act

The **Oil, Gas and Salt Resources Act** does not contain a statement of purpose. Nonetheless, it is possible to infer the purpose of the **Oil, Gas and Salt Resources Act** from Ontario Regulation 245/97, amended to O. Reg. 75/04, entitled "EXPLORATION, DRILLING AND PRODUCTION". The Regulation within its "DEFINITIONS" at clause 1. makes countless references to "oil, gas, drilling, production, well, and exploration" which leads the reader to a clear interpretation of the **Act's** objectives. The most compelling reference can be found under "pooling";

> "Pooling" means the joining or combining of all the various *oil and gas interests* within a spacing unit for the purpose of *drilling* and subsequently *producing from a well*;

The first part of the statement is clearly focused on "oil and gas interests" and the latter half certainly implies "drilling" and "producing from a well."

Further the provisions of clauses 8(1)(a) and (b)[7] of the **Act** and the Regulation under subsections 14(1)and(2)[8], clearly define the development of oil and gas pooled resources.

The tribunal finds that the intent of the **Act** is focused on oil and gas exploration and production and the Regulations focus on the conservation and management of such resources. Mr. Lewis, counsel for the Applicant, argued that the purpose of the **Act** and the Regulations is to encourage drilling and production which the tribunal considers to be consistent with the aforesaid.

This tribunal finds direction from the various Statute statements and the arguments of Mr. Lewis forms the foundation for the purpose of the **Oil, Gas and Salt Resources Act.**

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[7] **Oil, Gas and Salt Resources Act. R.S.O. 1990, c. P.12,** as amended;

Joining of Interests, pooling order

8.(1) The Commissioner may order that,

(a) the oil or gas interests within a spacing unit be joined for the purpose of drilling or operating an oil or gas well;

(b) management of the drilling or operation be carried out by the person, persons or class of persons named or described in the order;

[8] **ONTARIO REGULATION 245/97, *Amended to O. Reg. 75/04***;

POOLING ORDERS

14. (1) In this section and in section 15,

"tract" means an area of land, within an existing or proposed spacing unit or unit area, of which the ownership of the oil and gas rights is distinct from any other ownership of oil and gas rights within the spacing unit or unit area.

(2) A person having an oil or gas interesting in a spacing unit may apply to the Commissioner for an order to pool the oil and gas interests within the spacing unit.

Alternatively, rather than a clear directive stating the purpose of the **Act**, the tribunal is satisfied on the circumstances of this case that the underlying purpose of the legislation can be ascertained through a consideration of the consequences of no exploration. Specifically, if the exploration and production for hydrocarbons from under these lands was to go undeveloped, the economic benefits to operators, employees, royalty interests and the economy overall would never be seen. While the foregoing discussion is by no means conclusive, it is noted by the tribunal that the purpose of the **Act** is in evidence and remains consistent with the **Mining Act** interpretations.

Whether the Order is justified under the circumstances?

The tribunal finds the application for an Order is justified. At issue is the need to complete a spacing unit pattern as set-down by the Ministry of Natural Resources before a license to drill a well for the production of oil and/or gas will be entertained through an application. There are overriding considerations such as; favouring the interests of one or more parties over the interests of others, possible consequences for excluded parties, and the benefits to both landowners and operators contracted under a Petroleum and Natural Gas Lease and Grant.

The Respondent's reported uncooperative position regarding the Applicant's Petroleum and Natural Gas, Lease and Grant leaves the tribunal to speculate as to the possible objections which may or may not address the Respondent landowner's concerns. The legislation has been designed to protect the rights of landowners (correlative rights) while allowing industry advancement under strict regulations (spacing unit). The examination of the evolution and reasoning behind the legislation and regulations may cast light on some of Respondent's concerns.

Oil and/or gas are wandering liquids and gases and unlike base metal minerals, their movement is likely to occur and concentrate in various places over time. This wandering tendency coupled with the uncertainty of establishing the limits and size of a pool through current science leaves geologists with uncertainties. Legislation is given the task of protecting everyone's interests and establishing criterion for procedure and process.

The tribunal finds the hydrocarbon substance is owned by its captor and in this case is expected to be Portrush Petroleum Corporation. The rule of capture is recognized in Ontario and in reading Ballem[9], an authority on the subject, at page 92 he explains;

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[9] Ballem, John Bishop, THE OIL AND GAS LEASE IN CANADA, 3rd. Ed., (Toronto: University of Toronto Press, 1999)

> The "rule of capture", succinctly phrased by Hardwicke[10] is, "the owner of a tract of land acquired title to the oil and gas which he produces from wells thereon, though it may be proved that part of such oil and gas migrated from adjoined lands", is firmly entrenched in Canadian Law in Borys v. Canadian Pacific Railway and Imperial Oil Limited[11], the Privy Council said:
>
> > The substances are fugacious and are not stable within the container although they cannot escape from it. If any of the three substances is withdrawn from his property which does not belong to the appellant, but lies within the same container and oil and gas situated in his property thereby filters from it to the surrounding lands, admittedly he has no remedy. So also, if any substances is withdrawn from his property, thereby causing any fugacious matter to enter his lands, the surrounding owners have a remedy against him. The only safeguard is to be the first to get to work, in which case those who make the recovery become owners of the materials which they withdraw from any well which is situated on their property or from which they have authority to draw.

Further found in the case Kelley v. Ohio Oil Co[12] is another explanation as to the *rule of capture*;

> > The right to acquire, enjoy and own property, carries with it the right to use it as the owner pleases, so long as such use does not interfere with the legal rights of others.
> >
> > To drill an oil well near the line of one's land, cannot interfere with the legal rights of the owner of the adjoining lands, so long as all operations are confined to the lands upon which the well is drilled. Whatever gets into the well, no matter where it comes from. In such cases the well and contents belong to the owner or lessee of the land, and no one can tell to a certainty from whence the oil, gas or water which enters the well came.

Salient to the rule of capture is the balancing effect of the "correlative rights" of the landowners. The tribunal finds that the protection of correlative rights benefits two parties; those having an executed lease agreement and those who have not. The protection is extended to all parties in 100 per cent of a unit area. Those in executed agreements are protected and awarded rentals and royalties for their lands under lease and share in the worth of the produced hydrocarbon resources. Those landowners not yet in a lease are protected against having their rental and royalty rights to the resources, underlying their lands, siphoned-off without any compensation. Protection is afforded through the spacing unit requirements. The pooling of all parties in a Spacing Unit as referenced in the O. Reg. 245/97, amended by O. Reg. 75/04 is designed for the purpose of protecting correlative rights.

The tribunal is most cognisant of the correlative rights of landowners in rendering a decision. The tribunal finds in this Application that seventy-five percent of landowners is a substantial number within executed agreements and the protecting of their interests to enter into pooling and production is a natural step.

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[10] Hardwicke E., The Rule Of Capture And Its Implications As Applied to Oil And Gas, 13 Texas Law Review, 391, 393 (1935)

[11] [1953] 2 D.L.R. 65, (1952-53) 7 W.W.R. (N.S.) 546, 550 (J.C.P.C.)

[12] Kelley V. Ohio Oil Co.; 57 O.S. 317, 327, 328 (1897).

The one party not yet signed into an executed lease will be subject to a compulsory order joining their interests with the operator. The correlative rights of all the landowners will be protected given this pooling Order.

The tribunal finds that the Office of the Mining and Lands Commissioner has provided several publications on the terminology of this industry and an explanation on the matter of Correlative Rights[13] is available.

The Statutes and regulations surround the respect for correlative rights of landowners through spacing unit designations, reasonable set-back requirements and compensation methods. The tribunal finds the interested parties correlative rights have been addressed and accounted for in this pooling application.

The tribunal finds that addressing the lease document itself may ease the landowners concerns and an abridged attempt is provided herein.

The Petroleum and Natural Gas Lease and Grant is protective of the Lessee's rights and powers over the said lands. However it does recognize economic compensation in the event of the production of oil and/or natural gas from under the said lands and it does save the Lessor from harm and damages related to the working operations. The agreement is considered to be greater than a real estate lease, identified as a profit a` prendre and the most commonly quoted judicial definition is that of Lord Cairns in *Gowan v. Christie*[14]*;*

> Not in reality a lease at all in the same sense in which we speak of an agricultural lease… What we call a mineral lease is really when properly considered a sale out and out of a portion of land. It is liberty given to a particular individual for a specific length of time to go into and under the land and get certain things there if he can find them and take them away just as if he had bought so much of the soil.

The oil and gas lease is heavily weighted in favour of the lessee and it is not surprising that lessors consider it to be an unconscionable transaction. Court[15] decisions in the past have

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[13] **Oil, Gas and Salt Resources Act**, document of explanation, page 4, authored by the Office of the Mining and Lands Commissioner, Queen's Printer for Ontario, printed in Ontario, Canada, 2000.

> The Correlative Rights of landowners; means the inherent right of an owner of oil or gas in a pool to his share of the production and reservoir energy and his right to obtain his just and equitable share of production and to be protected from wasteful practices by others in the pool.
>
> The Protection of Correlative Rights of landowners is provided for by the Province under the **Act** in that it places requirements on the operators to drill and produce a well within the target area of a pooled spacing unit.

[14] [1873] L.R. 2 Sc. & Div. 273 at page 284.

[15] *Crommie v. California Standard Company*, [1962], 38 W.W.R. (nr) 447 (alta. S.C., T.D.)

struck down notions on the basis that lessors have to be established as subservient to an over-powering lessee and subject to duly onerous terms. This is most often not the case in the industry where standards of royalty are established and paid to lessors with little or no effort on their part.

The tribunal finds that the executed leases and the proposed lease do not present any onerous terms or conditions foreign to the industry. Nonetheless a challenge to any one of the documents is certainly possible, but not within the authority of this tribunal to adjudicate. It is the tribunal's opinion that the specimen lease document submitted is consistent with those executed leases herein and those currently used in the industry.

Counsel for the Applicant submitted that the lease included for the Order is the same as the precedent lease approved in the Order, *Talisman v. St. Pierre*[16]. The tribunal considers this to not be the case and approving the content of a precedent lease document is not within the authority of this tribunal. The tribunal relies on the document submissions of the Applicant for adoption within the Order.

All petroleum and gas leases have to contain core elements and based on the writings of a learned scholar Ballam[17], in these matters pertaining to the "Oil and Gas Lease in Canada", the following is reproduced from his book so entitled;

> There are as many definitions of contract as there are text writers. All, however, agree that a valid contract must have the following elements: (a) an intention to be bound – the parties must intend that their obligations each to the other are enforceable and that any failure to perform will involve legal consequences – there must be a binding offer, properly accepted; (b) a consideration or price to be paid for the promises or undertakings; (c) an understanding between the parties as to the subject matter of the contract[18].

Differences exist in the industry regarding the petroleum and natural gas lease and grant as do the various lease agreements involved in this spacing unit. The tribunal does not prefer one over the other. The oil industry has addressed this subject out of necessity and past legal challenges and has agreed in principle to ground rules for the preparation of various clauses and phrases for such leases.

The precedent in this application is the Order which encumbers a landowner (Lessor) with the submitted version of the Petroleum and Natural Gas Lease and Grant and joins their interests with the operator (Lessee). The relationship continues based on the lease habendum and subsequent pooling/unitization clauses. The tribunal is compelled to continue to review the Petroleum and Natural Gas Lease(s) and Grant(s) submitted with each application for an Order.

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[16] Ibidem

[17] Ibidem

[18] See Guest, ed., Chitty on Contracts, 27 ed., vol. 1 (London – Sweet & Maxwell, 1994)

Notice

The tribunal is satisfied that the parties to this application have been given adequate notice of the proceedings. Notices (Appointment for Hearing) were sent by regular and registered mail to all current leased and unleased landowners in the Spacing Unit. Further relevant notice is deemed complete through the contact and signed acknowledgments of the seventy-five percent executed lease landowners indicating their willingness to pool or join interests for the purposes of drilling a well.

The tribunal is satisfied that all anticipated parties to the proceedings herein have been duly served which is verified through submissions [Exhibit #1] where Mr. Christopher A. Lewis advises in his cover letter, dated August 14, 2006, that "We have served this Application on all of the Respondents and the Ministry of Natural Resources"

Further Mr. C. Lewis submitted, his letter dated August 22, 2006 to David O'Neill Enterprises Ltd. [Exhibit #5] and noting a telephone conversation between D. O'Neill, C. Lewis and D. Pascoe (Registrar - Office of the Mining and Lands Commissioner) wherein it is verified that the company name was changed to David O'Neill Enterprises Ltd. from 1062011 Ontario Limited, and his enclosure again of the Application previously sent on August 14, 2006. Further the Document General [Exhibit #6] submitted by Mr. C. Lewis provides evidence from the Registry confirming the name change aforesaid.

The Appointment for Hearing notice served on the landowners, "Messers/Ms. - Baker, Young and Young", is considered a courtesy notice to those who have entered into Petroleum and Natural Gas Leases and Grants with Portrush Petroleum Corporation (Applicant), which re-inforces completed contracts. They are not considered adverse Respondents to this application.

The notices served on the Third Party mortgagees; Canada Trustco Mortgage Co. and Polysar Lambton Credit Union Limited is also considered a reasonable courtesy notice to those with an interest in the property, with no direct effect on their contract position through the Order. Subsequently, they were removed from the matters for the Order.

The tribunal further notes several telephone conversations concerning matters of the Hearing between the Respondent, Counsel for the Applicant and the Registrar (D. Pascoe) of the Office of the Mining and Lands Commissioner, concerning procedures and service. This serves to reinforce delivery of notice as to proceedings.

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Service of the Order for Pooling

The tribunal finds that this Order for pooling interests is reasonably consistent with the various pooling clauses contained in the four Petroleum and Natural Gas Lease(s) and Grant(s) between the Landowners and the Initial Unit Operator.

Notice of operator pooling is strongly advised for all landowners. The tribunal supports such notice for pooling based on several concerns. First, the pooling clauses in the ordered lease differs from the three executed leases in that written notice is required for the landowner upon pooling efforts by the operator. Past arguments as to whether a written pooling notice to the Lessors is necessary received a ruling by the Supreme Court. Their answer was "NO". Further, in *Gibbard*[19], Locke J expressed disagreement with the opinion of Johnson J A in the Alberta Court of Appeal that a formal written notice of the election of the lessee pool was necessary. He went on to point out that there was sufficient evidence that the lessee had pooled the lands because of an application it had made to fix a special spacing unit and letters to the lessor enclosing royalties that would be applicable if the pooling had been effective. Alternatively, the CAPL[20] lease currently advised for use provides that after pooling the lessee shall give written notice to the lessor describing the spacing unit with respect to which they are pooled. These several points of view differ.

The three executed leases in this application are dated 2005 and silent as to a written notice for pooling. While the new ordered Petroleum and Natural Gas Lease and Grant (2007) follows with a need for written notice. The tribunal finds that based on the differences, it makes good business sense and contributes to a consistency which otherwise may be questioned, to have notice of pooling made on all four landowners/lessors (Respondents of the First and Second Part). None of the leases is extinguished by the pooling order.

The extension of the Order in this manner is beyond Counsel arguments and submissions. Mr. Lewis presented that upon invoking the Lease on the one unleased landowner, the Applicant will enact the pooling clauses. However, in fact, requirements will have been completed and will allow for a formal application for a license to drill a well in a completed spacing unit at which time if granted will allow the operator the ability to activate the pooling clauses.

The working of the said lands goes forward based on four separate contracts/leases. The Order does not serve as a dominant agreement nor does it over-ride the contents of any one lease. It can be said that a minor failure in one lease can serve to nullify the order's purpose to satisfy requirements for a spacing unit.

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[19] [1961] S.C.R. 725 -732 (1961-62), 36 W.W.R. 529 (S.C.C.).
[20] CAPL – Canadian Association of Petroleum Landmen

COSTS

The tribunal finds that there will be no cost payable by any party pertaining to the Hearing process.

The tribunal heard arguments from Counsel for the Applicant that costs should be awarded against the Respondent of the First Part. The tribunal, upon determining an award, is drawn between the notice itself, the issues that arose during negotiation prior to the Appointment for Hearing notice, the weight of the Petroleum and Natural Gas Lease and Grant imposed through the Order, the economic benefits and the precedent *Rule of Capture.* These issues have all been addressed within the findings herein.

Counsel took the approach that the Appointment for Hearing notice emphasized that a failure to attend could result in costs being awarded against the Respondent which is supported by a previous decision (*Talisman)* in which the tribunal of the day resolved to make notice to attend in future appointment materials. The application dealt with herein included such notice[21] on page three;

> **AND TAKE NOTICE** that if you do not participate at this hearing, the tribunal may proceed in your absence, you will not be entitled to notice of any further proceedings and costs may be awarded against you.

The tribunal agrees that it has the authority to award costs, based on Statutes, as argued by Counsel. The notice is quite clear in this matter.

Costs are usually awarded based on matters which display a definite contrary position by one party upon another. The tribunal finds the Respondent of the First Part took an uncooperative position and cloaked himself in presenting a negative response to contract efforts. It is indeterminable whether the Respondent was blocking efforts to establish the spacing unit or was simply unfamiliar with matters and terminology pertaining to oil and gas exploration. It has been the experience of this tribunal that even counsel for respondents (Mr. Lewis is excluded owing to his unquestionable knowledge of these matters and industry terms) in past applications were not well voiced in industry contracts nor certain terminology, likely due to the fact that applications, such as herein, are not frequent occurrences. The Office of the Mining and Lands Commissioner has attempted to educate those involved through their publications and will continue with these efforts.

The resulting economic benefits to the landowners, the operator and the public purse are rather obvious and in making this Order the tribunal sees a full win-win situation not possible otherwise.

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[21] "Appointment for Hearing" notice by The Mining and Lands Commissioner, on the 25th, day of August, 2006.

The tribunal has taken notice of the Petroleum and Natural Gas Lease and Grant submitted for this Order and the difference between the *consideration* given in each of the executed leases and the ordered lease. The *consideration*, contained in the habenhum clauses, ranges from $2,500.00 for the Bakers, $500.00 for each of the Young parties to a low of $100.00 for the Respondent of the First Part (David O'Neill Enterprises Limited). Notably, the initial consideration payment in the latter case is considerably less than the amounts paid others.

The tribunal finds that the Applicant was in the control of the application process from its initiation in the fall of 2005 through the transfer of lease interests to Portrush in the summer of 2006 to the hearing date.

The tribunal finds that an award for costs will not serve any purpose in these matters. The process of negotiating any contract may be wrought with delays and bluffs by either party however, each is exerting their rights. Nonetheless frivolous and fraudulent misrepresentations are punishable through a reward when proven beyond a doubt.

CONCLUSIONS

Conclusions or direction for a Pooling Order are found in subsection 14(4) of the Ontario Regulations 245/97, amended by O. Reg. 75/04;

(4) A pooling order of the Commissioner shall include, to the extent that it is applicable to the issues being determined,

(a) the effective date of the order;

(b) a geographical and geological description of the pooled spacing unit;

(c) a plan of the pooled spacing unit showing its boundaries and the tracts within it;

(d) a summary showing the tract allocation of each party's interest within the tract and the pooled spacing unit;

(e) a copy of the oil and gas lease that governs the relationship between the working interests and any surface rights owner and any mineral rights owner of an oil and gas interest who have not executed a petroleum and natural gas lease;

(f) the appointment of the initial operator;

(g) a copy of all agreements that will govern the relationship between the working interest owners with respect to operations, charges and credits;

(h) a statement of how the costs of the hearing are to be shared among the interested parties;

(i) a statement as to the duration of the order; and

(j) direction as to the notice to be given of the order.

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APPENDICES

Schedules to these findings referenced and included for clarity are as follows:

Schedule "A"		*1 page*
	(i) The Spacing Unit (said lands)	
	(ii) Geographical description	
	(iii) Geological description	
Schedule "B"		*4 pages*
	Spacing Order 2005-8	
	"Wabuno Prospect" Figures #3, #4 and #5	
Schedule "C"		*2 pages*
	Spacing Unit Parcel/Tract Distribution	
	Summary of Tract Allocation	
Schedule "D"		*1 page*
	Address for Service List - Respondents of the First Part	
	- Respondents of the Second Part	
	- Applicant	
Schedule "E"		*8 pages*
	Petroleum and Natural Gas Lease and Grant	
Schedule "F"		*29 pages*
	Executed Petroleum and natural Gas Lease(s) and Grant(s)	

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