File No. OG 001-07

Lorne F. G. Carter	)	Monday, the 25th, day
Deputy Mining and Lands Commissioner	)	of June, 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 June 25, 2007)

AND IN THE MATTER OF

Any application pursuant to Ontario Regulation 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 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**");

(Amended June 25, 2007)

AND IN THE MATTER OF

All and singular those parcels, lots or tracts of land and premises, comprised of 51.20 acres more or less, lying within Tracts #3 and #6 and geographically described as the Southwest Quarter of the North Half and the Northwest Quarter of the South half of Lot 25, concession 5, Geographic Township of Humberstone, City of Welland, Regional Municipality of Niagara, Province of Ontario and further described on Schedule "A" attached hereto and forming part of this Order (the "Spacing Unit");

(Amended June 25, 2007)

. . . . 2

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: Peter Gugliemli and Joanne Gugliemli comprised of approximately 5.25 acres, Vincenzo Dipalo and Elisa Dipalo comprising of approximately 5.88 acres, Fischtein Investments Limited and Poynts Estates Limited (c.o.b. "Branson Heights") comprising of approximately 2.69 acres, Stanley Davies and Josephine Davies comprising of approximately 17.41 acres, and those lands belonging to Robert Frederick Davies comprising of approximately 19.97 acres (Pooled Lands).

(Amended June 25, 2007)

B E T W E E N:

ROBERT FREDERICK DAVIES

Applicant

- and -

FISCHTEIN INVESTMENTS LIMITED and
POYNTS ESTATES LIMITED
(c.o.b. "Branson Heights")

[such landowner who has *not* entered into a
Pooling Agreement in favour of the Applicant]

Respondents of the First Part

(Amended June 25, 2007)

- and -

PETER GUGLIEMLI and JOANNE GUGLIEMLI,
VINCENZO DIPALO and ELISA DIPALO,
STANLEY DAVIES and JOSEPHINE DAVIES

[such landowner(s) who have signed into a Pooling Agreement
in principle in favour of the Applicant]

Respondents of the Second Part

(Amended June 25, 2007)

AND IN THE MATTER OF

Clause 14(3)(h) of the O. Reg. 245/97, amended to O. Reg. 75/04 providing that the relationship between the landowners, Respondents of the First Part, the Second Part and the Initial Unit Operator, the Applicant, be governed by a specific Pooling Agreement (Private Well) attached hereto and forming part of this Order under Schedule " B ";

(Amended June 25, 2007)

. . . . 3

AND IN THE MATTER OF

Service of the Order shall include notice on all Landowners within both; the executed and ordered aforesaid Pooling Agreement 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 June 25, 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 ten-thirty o'clock in the forenoon on the 13th day of March, 2007, in the Duke of Connaught Room of the Hilton Hotel, at 300 King Street, London, Ontario with Mr. Christopher A. Lewis, Counsel for the Applicant, and Mr. Tim McCullough, Counsel for the Respondent, Fischtein Investments Limited and Poynts Estates Limited (c.o.b. Branson Heights), having introduced evidence, cross-examination of the witness and provision for a rebuttal in compliance with the appointment for hearing;

AND WHEREAS no one appeared for, or on the behalf of the other Respondents;

AND WHEREAS the Ministry of Natural Resources issued Well License 4889, effective the 13th day of June, 2006 for a private use well on lands owned by the Applicant, Robert Davies, subject to having the landowners of the designated Spacing Unit signed into pooling agreement(s) by way of an Order issued under subsection 8(1) of the **Oil, Gas, and Salt Resources Act**, by the Deputy Mining and Lands Commissioner, joining the interests of the property owners;

AND WHEREAS the evidence and submissions confirmed that eighty percent of the landowners, including the lands of the Applicant/Operator, have signed an agreement indicating their consent to sign a pooling agreement and that the lands of these landowners comprise approximately ninety-five percent of the said lands;

AND WHEREAS the Respondent of the First Part has not entered into a consent agreement with to the Operator/Applicant;

. . . . 4

AND WHEREAS Ontario Regulation 245/97, amended by O. Reg. 75/04 provides for a private use well under section 1, as follows;

> private well means,
>
> (a) an unplugged well drilled for the purpose of oil or gas exploration or production on land of which the operator owns both the surface and mineral rights, and
>
> **1.** if oil or gas is produced from the well, the oil or gas,
>
> (i) is for the operators private use,
> (ii) is not used in relation to a business or commercial enterprise, and
> (iii) is not sold by the operator

AND WHEREAS the tribunal has been provided with submissions indicating the allocation and compensation for the landowners to be pooled;

AND WHEREAS the Regulator, the Ministry of Natural Resources, has not recognized previous pooling agreements between any of the landowners and the Operator is amenable to the revised format put forth by the Applicant and all Respondents of both the First and Second Part(s) who will be ordered into such agreements for the purposes of clarity and uniformity.

UPON reading the documentation filed in support of the Application and upon hearing the evidence;

1. IT IS ORDERED that the Title of Proceedings be amended as follows; at page one (1) paragraphs one through four are rescinded and replaced with;

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"**);

AND IN THE MATTER OF

Any application pursuant to Ontario Regulation 245/97, amended to O. Reg. 75/04, at clause 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 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**");

. . . . 5

AND IN THE MATTER OF

All and singular those parcels, lots or tracts of land and premises, comprised of 51.20 acres more or less, lying within Tracts #3 and #6 and geographically described as the Southwest Quarter of the North Half and the Northwest Quarter of the South half of Lot 25, Concession 5, Geographic Township of Humberstone, City of Welland, Regional Municipality of Niagara, Province of Ontario and further described on Schedule "A" attached hereto and forming part of this Order. (the Spacing Unit)

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: Peter Gugliemli and Joanne Gugliemli comprised of approximately 5.25 acres, Vincenzo Dipalo and Elisa Dipalo comprising of approximately 5.88 acres, Fischtein Investments Limited and Poynts Estates Limited (c.o.b. "Branson Heights"), Stanley Davies and Josephine Davies comprising of approximately 17.41 acres, and those lands belonging to Robert Frederick Davies comprising of approximately 19.97 acres (the Pooled Lands)

and at page two (2) the reference to the Respondent of the First Part and the Second Part be rescinded and replaced with;

FISCHTEIN INVESTMENTS LIMITED and
POYNTS ESTATES LIMITED
(c.o.b. "Branson Heights")

[such landowner who has *not* entered into a
Pooling Agreement in favour of the Applicant]

RESPONDENTS OF THE FIRST PART

- and -

PETER GUGLIEMLI and JOANNE GUGLIEMLI, VINCENZO DIPALO and ELISA DIPALO, STANLEY DAVIES and JOSEPHINE DAVIES

[such landowner(s) who have signed into a Pooling Agreement in principle in favour of the Applicant]

RESPONDENTS OF THE SECOND PART

2. IT IS FURTHER ORDERED that this Order for the pooling of lands for a private well will be effective on Monday, the 25th day of June, 2007 and the Pooling Agreement (private well) with all parties shall share the same date of commencement.

3. IT IS FURTHER ORDERED that the interests of all Respondents within the Spacing Unit be joined to the interests of the Applicant.

. . . . 6

4. **IT IS FURTHER ORDERED** that the duration of the Order shall be for a period consistent with the various clauses contained in the pooling agreements and shall continue until surrendered by the Applicant through choice and/or default.

5. **IT IS FURTHER ORDERED** that the Applicant, Mr. Robert Davies, is appointed as the Initial Unit Operator of the private well within the prescribed spacing unit.

6. **IT IS FURTHER ORDERED** that the Operator shall pay an annual royalty consistent with the current oil and gas industry standards at twelve and one-half percent as described and allocated in Schedule "C" attached and forming a part of this Order or One Hundred Dollars whichever is the greater of the two and **IT IS FURTHER ORDERED** that an annual accounting of the market value of the natural gas volume used, net of costs to operate, be provided to the landowners.

7. **IT IS FURTHER ORDERED** that service of this Order, together with the appropriate Pooling Agreement (Private Well) will be effected by the tribunal by registered mail and by the Applicant, Robert Davies through hand delivery to the address of the Respondent of the First Part at the address indicated in Schedule "D" attached to and forming part of this Order and **IT IS FURTHER ORDERED** that service of the Order and the appropriate Pooling Agreement (Private Well) be mailed to the Parties of the Second Part by regular mail.

8. **IT IS FURTHER ORDERED** that no costs pertaining to the hearing of this matter shall be payable by any of the parties.

9. **IT IS FURTHER ORDERED** that upon hearing the arguments and submissions for and against an award in favour of the Applicant, the tribunal finds that no cost awards will be ordered.

10. **IT IS FURTHER ORDERED** that this Order is binding on the Applicant and the landowners and on their executors, heirs, successors or assigns.

Reasons for this Order are attached

DATED this 25th day of June, 2007

Original signed by

Lorne F. G. Carter,
Deputy Mining and Lands Commissioner

File No. OG 001-07

Lorne F. G. Carter	)	Monday, the 25th, day
Deputy Mining and Lands Commissioner	)	of June, 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 June 25, 2007)

AND IN THE MATTER OF

Any application pursuant to Ontario Regulation 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 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**");

(Amended June 25, 2007)

AND IN THE MATTER OF

All and singular those parcels, lots or tracts of land and premises, comprised of 51.20 acres more or less, lying within Tracts #3 and #6 and geographically described as the Southwest Quarter of the North Half and the Northwest Quarter of the South half of Lot 25, concession 5, Geographic Township of Humberstone, City of Welland, Regional Municipality of Niagara, Province of Ontario and further described on Schedule "A" attached hereto and forming part of this Order (the "Spacing Unit");

(Amended June 25, 2007)

. . . . 2

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: Peter Gugliemli and Joanne Gugliemli comprised of approximately 5.25 acres, Vincenzo Dipalo and Elisa Dipalo comprising of approximately 5.88 acres, Fischtein Investments Limited and Poynts Estates Limited (c.o.b. "Branson Heights") comprising of approximately 2.69 acres, Stanley Davies and Josephine Davies comprising of approximately 17.41 acres, and those lands belonging to Robert Frederick Davies comprising of approximately 19.97 acres (Pooled Lands).

(Amended June 25, 2007)

B E T W E E N:

ROBERT FREDERICK DAVIES

Applicant

- and -

FISCHTEIN INVESTMENTS LIMITED and
POYNTS ESTATES LIMITED
(c.o.b. "Branson Heights")

[such landowner who has *not* entered into a
Pooling Agreement in favour of the Applicant]

Respondents of the First Part

(Amended June 25, 2007)

- and -

PETER GUGLIEMLI and JOANNE GUGLIEMLI,
VINCENZO DIPALO and ELISA DIPALO,
STANLEY DAVIES and JOSEPHINE DAVIES

[such landowner(s) who have signed into a Pooling Agreement
in principle in favour of the Applicant]

Respondents of the Second Part

(Amended June 25, 2007)

AND IN THE MATTER OF

Clause 14(3) (h) of the O. Reg. 245/97, amended to O. Reg. 75/04 providing that the relationship between the landowners, Respondents of the First Part, the Second Part and the Initial Unit Operator, the Applicant, be governed by a specific Pooling Agreement (Private Well) attached hereto and forming part of this Order under Schedule " B ";

(Amended June 25, 2007)

. . . . 3

AND IN THE MATTER OF

Service of the Order shall include notice on all Landowners within both; the executed and ordered aforesaid Pooling Agreement 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 June 25, 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.

R E A S O N S

This matter was heard by the Tribunal commencing at 10:30 in the forenoon on Tuesday, the 13th day of March, 2007, in the Duke of Connaught Room of the Hilton Hotel at 300 King Street in London, Ontario.

The hearing of the subject matter surrounded the unusual circumstances concerning the use of a private oil/gas well.

Appearances by;

Mr. Christopher A. Lewis, Counsel on behalf of the Applicant, Robert Davies.

Mr. Tim McCullough, Counsel on behalf of the Respondent of the First Part, Fischtein Investments Limited and Poynts Estates Limited (Branson Heights).

No one appeared for or on behalf of the Respondents of the Second Part.

Background

Messrs. Robert Davies and Stanley Davies purchased the17.41 acre property from Mr. Pakrul in 1984, which was subsequently transferred into Mr. Robert Davies sole possession in 1992.

The property contains a natural gas well, owned and operated by Bowman Developments Limited, which dates back to the 1970's. Pakrul was under a Petroleum and Natural Gas Lease and Grant to Bowman Developments Limited by virtue of their October 19th, 1977 agreement.

Mr. R. Davies made enquires concerning the well for his private use. The Ministry of Natural Resources explained that the original well operator, Bowman Developments Limited,

. . . . 4

was a defunct company (bankrupt) and the responsibility of the well was now that of the landowner. The Ministry's approach at the point in time was to have the well plugged/capped.

Mr. R. Davies made application to the Ministry for a private use well licence, which was granted through a hearing in February, 2006 provided certain remedies and conditions are met.

Mr. Davies attempted to get the four landowners affected, within the Ministry designated spacing unit, signed into a consent to pooling agreement. He was successful in getting three landowners to agree. The Ministry upon receiving the signed consent agreements took issue with the format and content requiring that proper agreements to govern the relationship of the operator and the landowner.

The Respondent landowner, Fischtein Investments Limited, was not in agreement with the original consent, not wishing to encumber their property.

The request for an appointment for hearing and this hearing then ensued.

Issues

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

2. Is the Order justified under the circumstances?

3. What constitutes an agreement to pool for the purposes of a private use well?

4. Given the circumstances, is the awarding of costs warranted?

EVIDENCE

Mr. Robert Frederick Davies identified himself as the Applicant and referred to maps and submissions filed with the application. He stated that the oil/gas well on the property (57 acres) which he purchased in 1992 is approximately three hundred feet from his house and three hundred feet away from Kleiner Road. Mr. Davies referred to the private gas well license and stated that the "Well Specific Spacing Unit" is located within Tracts #3 and #6. He pointed out that he and his father operate a construction and machinery handling business from the same property/location. He clarified the boundaries of the area contained in the original lease between Bowman Developments and the original owner Pakrul (Lessor) and the metes and bounds of the current spacing unit, being Tracts #3 and #6.

Mr. Davies explained that the well is not a large producer. The gas well was initially used from 1989 until 1995 to heat a portion of their shop. Davies' experience with the flow capacity showed that it was capable of supplying one 120,000 BTU furnace, but when two additional heaters (60,000 BTU's each) were added it was inadequate. In 1995 the gas well was

. . . . 5

disconnected from the shop and reconnected to the house for home energy to run the clothes dryer, stove and furnace.

Mr. Davies stated that the vacant property, containing the oil/gas well, was purchased by his father in 1984 from Mr. Pakrul. In 1987 they constructed a Quonset hut to house their business and equipment. In the same year Mr. Pakrul delivered a royalty payment of $72.00 which he explained was received from Bowman Development Ltd. the oil and gas well owners[1]. No one from Bowman ever visited the well or produced from it. In 1989 Davies enquired through his lawyer, Mr. Steve Latinovich, to Bowman Developments about possible private use of the well and to also report that the well was leaking. The lawyer's search came up blank. It appeared as though Bowman Development no longer existed. Mr. Latinovich then advised Davies to go ahead and use the well.

In 2005, the Ministry of Natural Resources inspector, Mr. Leslie McLellan, advised Davies that Bowman Development was a bankrupt company and that the Ministry was tracking down all the wells that it had under licence. He explained that the gas well on the property was known as Bowman Dev. #4, Humberstone 3-25-V and because of the bankruptcy Mr. Davies, as landowner, would have to assume responsibility for all issues concerning the well. On October 31st, 2005, an inspector's order to plug the well was received by Davies.

Mr. Davies appealed the plugging order through Mr. Latinovich. Within the ensuing October 2005 to February 2006, period the Applicant contracted a TSSA Technician to replace the regulators, valves and fittings. This, coupled with some concrete work, completely re-built the wellhead.

On February 20, 2006 a hearing was held concerning the Davies appeal. Mr. Andrew Hewitt, the Ministry representative, issued a replacement order on February 21, 2006 (contained in the Exhibits) based on the reasoning that the operator would like to continue to use the well privately. Mr. Davies noted that five of the six provisions within the order have been fulfilled by the operator within the guidelines provided. The last outstanding item (#2) requires that a fully pooled spacing unit be established in accordance with subsection 8(1) of the **Act**.

Owing to the fact that the well was operational and up to standards, Mr. Davies drafted a consent agreement instead of a full industry standard lease. When the consent agreements were submitted for the signatures, Stanley Davies, his father, readily signed on. Both landowners, Gugliemli and Dipalo, reacted in a concerned fashion noting that they wanted the agreement to be reviewed by a lawyer. Mr. Davies recounted that he instructed them both to take it to a lawyer for review at his expense. The Dipalos had it reviewed and signed. Mr. Gugliemli, an older gentleman, appeared confused with the issues and the agreement for some time. Mr. Davies persisted and Mr. and Mrs. Gugliemli finally signed the agreement in October 2006, after consulting with a lawyer. The landowner, Fischtein Investments Limited, was sent the agreement by fax to their Toronto offices for signature(s) and after providing a copy of the engineering report

. . . . 6

[1] **Well operator identified in Exhibit #1, Oil and Natural Gas Lease and Grant, dated October 19th, 1977 between Mr. Pakrul and Bowman Development Ltd.**

a letter refusing to sign was received by Mr. Davies with no reasons stated. Mr. Davies recounted various telephone conversations with Mr. Fischtein over the summer of 2006, some of which involved the Registrar of the Office of the Mining and Lands Commissioner in conference, to no avail. Mr. Fischtein's position was that he did not want anything registered against his property deed and closed the last telephone conversation requesting an audience at the scheduled upcoming hearing.

Mr. Davies recounted his dealings with the Ministry and how they accepted his arguments that the spacing unit sizing divisible in the Regulations by eight was contradicted in this case based on a division into six units. The resulting decision by the Ministry representative in February/2006 corrected the situation and identified Tracts #3 and #6 as the Spacing Unit lands of approximately 51.2 acres. The Ministry extended the licensing conditions through until January 2007 at which time this hearing was scheduled. Mr. Davies stated that once three of the four landowners signed their consent agreements, he presented them to the Ministry of Natural Resources as evidence of the pooling effort noting that one landowner, Fischtein Investments Limited, was still outstanding. The Ministry took exception with the consent agreements as not being valid and a template document/agreement, devised by the Ministry, was presented to replace the current consent agreements.

Mr. Davies stated that only one set of landowners, Stanley and Josephine Davies, have signed into the new pooling agreement. The pooling agreements with the remaining three landowners are still outstanding and form the subject of this hearing.

Mr. Davies reviewed the formula used to attain the allocation of payments/royalties for each landowner. He outlined the landowner's pro rata entitlement and then qualified his offer over and above the annual calculation. He established an annual heating cost of between $2500 and $5000 based on the annual natural gas costs for neighbouring homeowners with homes of a similar in size (2100 sq. ft.) allowing for future cost increases. He then applied the industry standard royalty of 12.5 % on allocated lands.

He referred to the allocation table (Exhibit #1, Tab # 7) and explained that Stanley and Josephine Davies made up 34.5% of the acreage (17.41 acres) and were entitled to annual payments of $106.25 to a high of $212.50.. He noted that Fischtein Investments Ltd. for their Branson Heights property of 2.69 acres is 5% of the spacing unit and entitled to a payment of between $15.63 and $31.25 per annum. He concluded that the Gugliemli's were entitled to between $31.25 and $62.50 based on their 10% of lands (5.25 acres) and the Dipalo's were entitled to between $34.37 and $68.75 based on their 11% of lands (5.88 acres).

Mr. Davies concluded the allocation explanation noting that his lands make up the balance of the 51.20 aces of the spacing unit being 40% of area and that it is his intention to pay all four of the landowners a premium annual payment of $100 each for the natural gas he captures from the private well. He noted that it is above the required royalty calculations in almost all situations and considered to be payment in advance for natural gas captured for his personal use. The one exception is that of his parents who did not want any royalty payment initially.

. . . . 7

Mr. Christopher Lewis – Submissions

Mr. Lewis stated that the application before the tribunal involves a unique private well. Referring to Ontario Regulation 245/07, as amended[2], he noted that this application involves a well that falls within the definition. The Applicant has been assigned a well licence. The original Petroleum and Natural Gas Lease and Grant between Bowman Developments Ltd. (Lessee) and the original Lessor has expired and the remaining well has reverted to be the responsibility of the current landowner who clearly uses the natural gas for his personal home use and has done so since 1995. subsection 5(1) of the Regulations calls for annual licence and security fees and within the fee table therein it indicates that no fees are payable for a private well, as is the case here.

Once the Bowman lease was determined to be null and void, due to the cessation production and the business bankruptcy, the Ministry took the view that the well has become the responsibility of the landowner and requires either plugging or some other action. In this case, the Applicant (landowner) chose to work the well for personal use and was subsequently issued a conditional well licence. The Applicant has taken the initiative to re-build the well and contracted a certified technician to renew the concrete casings and install new valves, fittings and regulators. At the same time he filed an appeal with the Ministry and went through several decision processes meeting the deadlines imposed upon him. Five of the six conditions governing the operation of the well have been satisfied with the exception of pooling all the lands within the 50 acre spacing unit. The Applicant has provided evidence that he has spent considerable time, money and effort trying to meet the pooling requirements.

Mr. Lewis stated that subsection 10(1) of the **Oil, Gas and Salt Resources Act** is quite clear in that only a person in accordance with a licence is eligible to operate a well. He further submitted that the Regulation[3] states under clause 8(3)(b); that no person shall produce from a gas well that has not been pooled. Clause1 of the Regulation, states that a pooled spacing unit means a spacing unit in which all of the various oil and gas interests have been pooled. Finally, pooling within the regulations is defined as the joining of various gas interests within a spacing unit for the purpose of drilling and producing a well

Mr. Lewis concluded that the well has been drilled and that the only question remaining is the pooling for the purpose of production. It should be noted that the standard industry style lease is not required in this situation, as the well is operational. The Applicant needs this Order to comply with the final requirements in the Ministry's decision and to comply with the

. . . . 8

[2] Ontario Regulation 245/97, amended by O. Reg. 75/04, **DEFINITIONS , subsection 1;**
Private well means,

- **(a) an unplugged well drilled for the purpose of oil or gas exploration or production on land of which the operator owns both the surface and mineral rights, and**
- **(b) if oil or gas is produced from a well, the oil or gas,**
  - **(i) is for the operators private use,**
  - **(ii) is not used in relation to a business or commercial enterprise, and**
  - **(iii) is not sold by the operator**

[3] Ontario Regulation 245/97, amended by O. Reg. 75/04,

Act and the Regulations. The Applicant has been successful in reaching some form of pooling agreement with three of the four landowners. The fourth and last landowner originally indicated a willingness to sign a pooling agreement based on certain concessions, but he ultimately rejected all offers. The Applicant received further rejection of his signed pooling consent agreements from the Ministry and instead received a suggested template agreement designed by the Ministry for these types of private well arrangements.

When voluntary pooling could not be accomplished, the need for a hearing then became apparent.

Mr. Lewis stated that the application has been brought under subsection 8(1) of the **Act,** which empowers this tribunal to order that oil and gas interests within a spacing unit be joined for the purposes of operating and managing a oil/gas well and apportioning the associated costs and benefits. The Applicant is seeking the authority to operate an existing and producing well for which he has been awarded a conditional licence to do so. It is not the intention of the Applicant to impose a Petroleum and Natural Gas Lease and Grant on the landowners however, certain attributes of such a lease are required. In his original consent agreements, the usual protections which precede drilling operations were not included. The current version of the voluntary pooling agreement will follow to a great extent the template provided by the Ministry of Natural Resources. Each landowner will be treated as a landowner receiving payment/royalties and not as a working interest owner.

The landowners are considered to have a royalty interest, as was the case in both the ***Talisman v. St. Pierre*** and ***Portrush*** decisions[4] and described according to the Regulation[5]. The landowners affected by this well will not be subject to a Petroleum and Natural Gas Lease The costs incurred to date to refurbish the well and the costs to maintain the well in the future are to be the borne by the operator (Applicant). In this application considerable time, money and effort was spent attempting to get all the landowners signed onto a pooling agreement.

Mr. Lewis noted that in the aforementioned decisions, a single landowner was effectively a holdout to production from a well. With Mr. Davies' application there is again a single landowner holdout, Fischtein Investments Ltd. (Branson Heights), coupled with the added issue of format changes within the Ministry template agreement which only one of four landowners has signed onto.

. . . . 9

---

[4] Talisman vs. St. Pierre, June 17, 1998, Office of the Mining and Lands Commissioner, file OG 009-98, (unreported) pp.
Portrush Petroleum Corporation vs. David O'Neill Enterprises Limited, February 5, 2007, Office of the Mining and Lands Commissioner, file OG 004-06, (unreported) pp.

[5] Ontario Regulation 245/97, amended by O. Reg. 75/04**; DEFINTIONS, section 1. :**

royalty interest means the interest of an owner of oil or gas rights or the owners interest in the proceeds from the sale of the oil or gas in a situation where the owner has none of the cost of producing the oil or gas;

working interest means the operating interest under an oil and gas lease that is subject to all the costs of drilling, completion and operation under the lease. O. Reg. 245/97, s. 1; O. Reg. 22/00, s. 1.

He noted further that in this application the holdout landowner represents only a five percent portion of land within the spacing unit. Effectively, the Applicant has reached agreement with ninety-five percent of the landowners and if the Ministry of Natural Resources had not tendered the template form of agreement, it is likely all parties would be in agreement.

Mr. Lewis stated that, in fact, the legislation does not mandate a form. The Ministry was somewhat out of order in suggesting the template form of agreement after all of the significant efforts to get pooling agreements signed, as drafted by the applicant's counsel. The differing format put forth by the Ministry appears to be inappropriate, unfair, unreasonable and without legislative basis. There is no need for magic language. The pooling agreement is in essence a form of consent.

No reasons were given for not signing into an agreement by the holdout party in either the ***Talisman v. St. Pierre*** or ***Portrush*** decisions. However, in this application attempts were made to accommodate Fischtein. In the end, there was simply a flat rejection. Fischtein received the application in January and if they had spoken directly or through their solicitor to Mr. Lewis and signed into an agreement, then this hearing would have been unnecessary. Fischtein's motives are questionable. It is very difficult to determine without evidence from Fischtein, or through their counsel, what their reasons were for not signing an agreement. Mr. Lewis noted that the evidence is clear. Fischtein received a draft pooling agreement which was not signed after several attempts by Mr. Davies' counsel to have it completed. Explanations were further offered to Fischtein through the Registrar of the Office of the Mining and Lands Commissioner in telephone conference with the parties, to no avail. Mr. Fischtein through conversations said his real concern with the pooling agreement is that he just did not want a binding encumbrance on his land. In response, a revised pooling agreement was sent out and Fischtein indicated that he was just not interested in signing any agreement.

Mr. Lewis noted that this holdout is legally depriving the Applicant from producing the well in question and providing any benefit to the landowners from pooling. In the ***Portrush*** decision it is stated that;

> 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.

There is a propensity under the **Act** to encourage production provided it can be done safely and in an environmentally sound manner. That is the case here. The Applicant is required to complete the spacing unit pooling to comply with the **Act**, the Regulations and the Ministry of Natural Resources' jurisdiction. The well is in compliance, as noted in the engineering report by Mr. J. MacIntosh (Exhibit #1, Tab #2), wherein he states that the well is safe and environmentally sound, except for a few minor points which have been rectified by the Applicant. The well is physically within the bounds of the Applicant's personally owned lands and is capable of being a producing well. This application is based on allowing production to proceed.

. . . . 10

Subsection 1(3)[6] of the **Act** provides the jurisdiction for this tribunal to deal with this application.

Mr. Lewis suggested that this tribunal has to pay some attention to the Ministry's position in connection with this application. He recounted the Ministry of Natural Resources treatment of the file. They ordered the pooling of a spacing unit determined by the Ministry. They brought forward a guide template pooling agreement. They ensured the well was safe before it could be producing by virtue of the engineering report and the Ministry's decision requirements. The Ministry was served with the application and issued no objections including not objecting to the form of voluntary pooling agreement proposed. They have not objected to nor taken an active part in this hearing. Their position with this application should therefore be seen as one of approval.

Mr. Lewis noted that there is one exception to the original application submission concerning the royalty/payment allocation. The Applicant intends to pay a $100.00 annual payment to his parents, Stanley and Josephine Davies, equal to the other landowners.

The owners of ninety-five percent of the spacing unit area have agreed to some type of voluntary/consent pooling agreement and seventy-five percent of all interested parties have consented to pooling.

The purpose of the **Act** is to allow the safe production of a resource and this can be achieved. The Applicant will participate in the conservation and use of a resource that would otherwise go unused and alternatively be purchased from a local utility. The landowners within the spacing unit will receive compensation ($100 each annually) which compensates them for their correlative rights. The compensation has been considered based on reasonably simple figures and forecasts allowing for front end loading of the payment to the landowners advantage. Any errors of calculation for the future are considered in favour of the landowners. Alternatively, if the well is shut-in, no one will receive any benefits either as a landowner or operator.

The Applicant is seeking an Order that will approve and impose the tendered voluntary pooling agreement to run continuously until the operator advises the landowners otherwise, as indicated in the agreement.

Mr. Lewis pointed out that every order should have a provision requiring registration on title because an Order is not just for the lives or the tenure of the parties to this hearing. It can affect the rights of successors in title. Unless the Order is registered it could potentially die the moment the first property is transferred.

. . . . 11

---

[6] **Oil Gas and Salt Resources Act, R.S.O., 1990**, as subsequently amended, at Subsection 1(3):

The Commissioner shall do the following:

1. In reviewing and adjudicating applications for pooling and unitization orders, have regard to,
   - (i) the conservation of Ontario's oil and gas resources,
   - (ii) the orderly, efficient and economic development of those resources, and
   - (iii) the protection of correlative rights.

Mr. Lewis concluded that service of any Order should be sent by ordinary mail from the Office of the Mining and Lands Commissioner and that the Order require the Applicant to register a copy of the Order against the title to all of the lands within the spacing unit so that successors in interest to both the Applicant and any of the respondents have notice under the **Lands Titles Act** of the pooling order and the agreement that binds their lands.

Mr. T. McCullough (Counsel for the Respondent of the First Part) – Submissions

Mr. McCullough outlined the attempts by the Applicant to have his client, Fischtein Investments Limited, signed onto a pooling agreement. He stated that his client requested changes to the original agreement and that registration not be imposed on the title of lands. He stated that this is a different type of application involving a private well and his client is inexperienced in matters concerning the oil and natural gas industry. He stated that it was unlikely landowners in general understand the ramifications of natural gas or oil exploration and what the government is trying to achieve.

The principal of Fischtein Investments Ltd. was never provided with a copy of the voluntary pooling agreement, just the consent format. Other interested parties (respondents) have not executed a voluntary pooling agreement and Mr. McCullough's client was of the opinion that there is no compliance with the requirements set down by the Ministry. It was clear that the Ministry does not recognize the agreements that have been signed. The fact that they have provided the template agreement to be signed and only one party has signed the pooling agreements proves non-compliance.

Mr. McCullough maintained that Fischtein was an innocent landowner. The Ministry requires a form of pooling agreement that was not originally included in the consent form. Without an appropriate pooling agreement it is difficult to say whether agreements would have been reached today. The other Respondents did not attend this hearing and their position is uncertain. This exercise was necessary and costs should not be awarded in favour of the Applicant. If the tribunal chooses to award costs it should be equally divided amongst the Respondents. He noted that in both the ***Talisman*** and the ***Portrush*** cases, no costs were awarded against the Respondents.

Mr. McCullough noted that his client accepts of the Order, provided that the amendments to the Order as set out in Exhibits #5 and #6 are included.

He further conceded that registration of the Order on title by the Applicant is his legal right. He noted that it is appropriate in these circumstances that when the Order is made, that the amount/payment to be paid to the landowners each year be included in the body of the Order.

Mr. McCullough questioned whether successor owners of the lands would be receiving the $100 annual payment when in fact the royalty calculations could/would exceed that amount.

Mr. McCullough verified that it is Applicant's intentions to pay a $100 royalty/payment at the outset of the agreement.

. . . . 12

Mr. Lewis – Submission for Costs

Mr. Lewis outlined that pursuant to sections 126 and 127 of the **Mining Act**, the tribunal has the power to award costs against any party and may direct that costs be assessed by an assessment officer or that a lump sum be paid in lieu of such costs.

Mr. Lewis noted that in the ***Talisman v. St. Pierre*** decision by the Commissioner, that a clause had been added to the Notice of Hearing that from that point onward, parties would be advised that if they did not attend, the hearing costs may be awarded against them.

In the subsequent ***Portrush*** decision, a similar message was reflected in the findings;

> 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 … such notice at page 3;
>
> > *AND TAKE NOTICE that if you do not participate at the 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 emphasized his point that a message has to go out that people can not just simply say and do what they want. If the applicant and this tribunal had heard from Fischtein through testimony, or if Fischtein had shown an interest in the matter, then his concerns might be understood. The Applicant is trying to pool for the purpose of getting a private well into production and does not have the resources of a corporation looking to make thousands of dollars from a major oil or natural gas find.

The Applicant, through his testimony, noted that costs/spending to date was between $9,000 and $10,000, plus legal costs of $3,000. Another $5,000 can be added/expected to complete these matters.

Mr. Lewis submitted that if Fischtein had responded in a responsible manner to the application, the necessity for a hearing may well have been avoided. In fairness to future applications the notice has to have significance particularly in situations where it is a private well and someone is a holdout in the process. Costs become a burden to the Applicant, which should not be the case. Mr. Lewis suggested that an award of roughly one-half the Applicant's out-of-pocket expenses, $4,000, be awarded against Fischtein Investments Limited (Branson Heights). Fischtein is the only Respondent that the Applicant takes issue with in this application.

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

. . . . 13

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 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 under subsections 14(1)and(2)[8] of the Regulations, clearly define the development of oil and gas pooled resources.

The tribunal finds that the intent of the **Act** is to focus on oil and gas exploration and production and that the Regulations focus on the wise management and conservation of those resources. Mr. Lewis 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.

Alternatively, rather than a clear directive stating the purpose of the **Act**, the tribunal is satisfied, considering 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 of hydrocarbons from under these lands was to go untouched, the economic benefits to operators, employees, royalty interests and the economy overall would never be realized.

The **Mining Act,** under clause 1(1)(d)[9] identifies hydrocarbon deposits or natural gas as *mineral resources*[10]. 14

---

[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.

[9] **Mining Act, R.S.O. 1990, c.m.14, CONTENTS;**
Purpose
2. The purpose of this **Act** is to encourage prospecting, staking and exploration for the development of mineral resources… 1996, c. , Sched. O, s. 2.

The foregoing discussion is by no means conclusive. The tribunal notes that the purpose of the **Act** is certainly in evidence.

Is the Order justified under the circumstances?

The tribunal finds that the application for an Order is justified. At issue is the need for the Applicant to comply with the spacing unit patterns established by the Ministry of Natural Resources in order to meet conditions placed on an awarded well licence. There are overriding considerations such as; the correlative rights of landowners, benefits to both the landowners and the operator and meeting the standards set down by the Regulations.

Subsection 1 of Ontario Regulation 245/97, as amended to O. Reg. 75/04, provides for a private use well. The creation of the Spacing Unit from the pooling of lands is found in the **Act** under subsection 8(1).

The tribunal takes the position that the lands within the designated spacing unit are those of the well operator and are capable of producing which meets the requirements of subsection 1 of the Regulations. The explorable lands have been attached to a certain spacing unit which has been awarded to Mr. Robert Davies by the Ministry of Natural Resources process.

In-turn, the Regulation is explicit with regard to the use of captured oil or gas. Only one positive caveat exists for the operation of a private gas well. The well is for the private use of the operator. All other caveats indicate that a private well is not for sale and is not to be used for a business or commercial enterprise. This application meets the stated criteria. There are issues at play that the tribunal has taken into account in drafting the Order. There is a difference from the original intent of the legislation where exploration is encouraged and the commercial use or sale of the captured substances was the norm. Also at issue is the agreement format in that it is not a full Petroleum and Natural Gas Lease and Grant. The Order takes a step forward to clarify the private well agreement where industry standards and wording in the past have dictated agreement content.

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 some uncertainties. Legislation is given the task of protecting everyone’s interests and establishing criteria for procedure and process.

The tribunal finds the hydrocarbon substance was owned by its previous captor, Bowman Developments and then assumed by Robert Davies as a result of the company abandoning the well by way of insolvency. The rule of capture is recognized in Ontario with several supporting precedent;

. . . . 15

---

[10] **Mining Act, R.S.O. 1990, c.m.14, DEFINITIONS;**

Minerals means all naturally occurring metallic and non-metallic minerals, including natural gas, petroleum, coal, salt,...

> *Hardwicke*[11] phrased the "rule of capture" as, "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"
>
> The Privy Council in *Borys v. Canadian Pacific Railway and Imperial Oil Limited*[12], stated that:
>
> > 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.
>
> *Kelley v. Ohio Oil Co*[13] offers 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.

Integral 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 agreement and those who do not. Protection is extended to all parties in 100 per cent of a spacing unit area. Those in executed agreements are protected and awarded rentals and royalties for their lands and share in the worth of the produced hydrocarbon resources. Those landowners not yet in a pooling agreement 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 O. Reg. 245/97, amended by O. Reg. 75/04 is designed for the purpose of protecting correlative rights.

The Statutes and regulations outline the regard for correlative rights of landowners through spacing unit designations, reasonable set-back requirements and compensation methods.

. . . . 16

---

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

[12] [1953] 2 D.L.R. 65, (1952-53) 7 W.W.R. (N.S.) 546, 550 (J.C.P.C.)

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

The tribunal is aware of the correlative rights of landowners in rendering a decision. In this Application the tribunal finds that eighty percent of the landowners with an executed agreement is a substantial number. The protection of their interests and those of the operator by this Order clarifies the pooling efforts and requirements.

The one party not yet signed onto a pooling agreement will be subject to a compulsory order joining their interests with the operator. Furthermore, the correlative rights of all five of the landowners will be protected given this pooling Order.

The tribunal notes that the Office of the Mining and Lands Commissioner has provided several publications on the terminology of the oil and gas industry and an explanation of Correlative Rights[14].

The tribunal is satisfied that the parties to this application were presented with notices for pooling and service of the appointment for hearing. Regular mail and personal contact by the Applicant over an approximate one year period is duly noted. The appointment for hearing notice served on the Respondents (landowners) of the Second Part (while considered a courtesy notice for those already in pooling agreements) may be further justified in this case given the changes in the agreement format and the depth of the Order. In the case of the Respondent of the First Part ongoing notice and service was affirmed through the mail, facsimile transmissions and various telephone conversations.

What constitutes an agreement to pool?

The intent of a Pooling Agreement (private well) is to protect the Lessee's rights and powers over the said lands and to award compensation from the production of oil and/or natural gas from under the landowners lands.

The tribunal finds that the ordered pooling agreement does not present any onerous terms or conditions foreign or uncommon to the industry. Nonetheless, a challenge to any one of the documents is certainly possible. It is the tribunal's opinion that the specimen agreement submitted is consistent with wording used in the industry and that it covers pooling.

. . . . 17

---

[14] **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.

The tribunal relies on the documentation submitted by the Applicant for adoption within the Order. All petroleum and gas leases or agreements have to contain core elements. Based on the writings of the learned scholar Ballam[15], pertaining to the "Oil and Gas Lease in Canada", the following is reproduced from his book;

> 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[16].

Differences exist in the industry regarding the petroleum and natural gas lease and grant as do the various pooling agreements involved in this spacing unit. The tribunal does not prefer one or the other. The oil and gas 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 which are focused on continuing exploration and economic development. This situation is different in that the well is for the private use of the operator. Nonetheless, the agreements contain the intent to contract with terms of dissolution and compensation.

The tribunal has taken the industry standard measures into account when drafting the Order. The tribunal accepts the industry standard of a 12.5 % annual royalty as the basis for the allocation to landowners. Further the Order calls for an annual accounting of the volume use from the private well by the operator and has allocated a dollar value based on a comparison of area supplier natural gas rates for the same period. While this is not a net of costs figure at the wellhead, it does recognize the price fluctuation in the marketplace and fair market value for natural gas.

The Order recognizes the one hundred dollar payment allocation to each landowner in conjunction with the royalty calculations and that it will travel/transfer with the lands in the case of the landowner's holdings. In addition and upon weighing future considerations, the royalty as stated will be for $100 per annum or a12.5% royalty per annum whichever is greater.

The tribunal finds that by virtue of the revised agreement format and changes to the allocation schedule and the agreement modifications that all parties will enter a new agreement through this Order. The previous favourable pooling agreements with three landowners will be documented as a schedule (E) to the appropriate Pooling Agreement (private well). All landowners will require notice of the Order in the interest of correlative rights and future considerations.

. . . . 18

[15] Ibidem

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

The agreements are not a complete Petroleum and Natural Gas Lease and Grant. The tribunal is not considering a comparison for variations or exclusions and is accepting the pooling agreement as submitted. Any modifications, additions or improvements to the pooling agreement format submitted are clearly for the purposes of identification and consideration of the known facts.

The Order identifies the pooling interests within the restricted spacing unit provided by the Ministry decision. The Regulation restricts the use of the private natural gas well to an individual's personal home needs and is very specific in that it is not for sale or economic development by the operator. The licence identifies and restricts use to a particular individual which may or may not be transferable to a successor. The Order gives way to these caveats and serves to bind the interests and provide the terms of consideration.

Mr. Lewis suggested that the Ministry may have stepped outside their mandate in providing an agreement template and dismissing the already signed and agreed upon pooling agreements with three of the landowners.

The tribunal finds that Ministry efforts to standardize the agreement format, were undertaken with good intent. The Ministry recognized this special circumstance and that perhaps an appropriate agreement did not currently exist. The timing of the finished template introduction may have been inappropriate given the Ministry's reaction to not accepting agreements devised and signed in good faith between a clear majority of the landowners and the proposed operator. The agreement in this Order may serve as a precedent and perhaps survive a reasonable test of time.

Costs

The tribunal finds that there will be no costs payable by any of the parties pertaining to this matter.

The tribunal heard submissions and arguments from Counsel for the Applicant that a cost award in favour of the Applicant should be made and that the aforementioned notice in the appointment should serve as a deterrent in future applications for holdout respondents/landowners.

Costs are often awarded based on matters wherein one of the parties in opposition attempts to significantly delay the course/process or to negotiate in bad faith. The Respondent of the First Part, Fischtein, showed little interest in the pooling process and expressed a concern for his property and his rights. The Applicant in this process was expected to go the extra mile with explanations and incurred costs. Overall confusion and the delays from the Ministry process may have driven a wedge against settling a pooling agreement between the Respondent of the First Part and the Operator.

In this case and others, it has become apparent that the size of the royalty reward is less than significant. The Respondent's reaction may have been, to not pay much attention to related paperwork and requests. Notably, the tribunal finds that the law and the Ministry regulations and standards require documentation.

. . . . 19

Further communication difficulties are likely, owing to the limited exposure most people have to the **Oil, Gas and Salt Resources Act** and the Ministry regulations. Very few parties to leases and pooling agreements are aware of terms such as; rule of capture, correlative rights, spacing unit or the difference between pooling and unitization, as well as, further complications understanding a unique private use well.

The industry has specific challenges and the Applicant is not a seasoned landsman nor are the Dipalos or Gugliemlis familiar with the law. This can lead to uncertainty and confusion for those involved in the process. Mr. Davies is to be commended for taking the ball and running with it where few would not have ventured past the early road blocks.

The tribunal is making this Order based on the evidence, facts, and the compliance provisions.

~