

IN MEMORIAM: GORDON EDWARD KAISER

Gordon Edward Kaiser passed away peacefully on May 16, 2024, surrounded by his family following a brief illness. Gordon was a highly recognized and revered expert in the field of Canadian energy regulation. He made significant contributions to energy policy, the law, and the public interest, with a work ethic and unique style that garnered him the respect of his colleagues.

Born in Victoria, Canada, on March 9, 1944, Gordon spent his early years growing up in numerous cities across Canada before entering St Michael's College at the University of Toronto in 1963, where he completed his undergraduate degree in economics, and Queen's University in 1966, where he obtained his law degree and a Master of Economics. To pay for school he worked as a porter for CN Rail and prided himself on being able to survive an entire shift on a single Oh Henry! candy bar.

Specializing in competition and energy regulatory law for over forty years, he appeared in all levels of Canadian courts, including the Supreme Court of Canada, and as counsel in regulatory hearings in six Canadian provinces and four Federal Tribunals. Gordon also was a bold entrepreneur, pushing innovation in the early days of the telecommunications industry. In the early 1990s, he bought a fledgling subsidiary of telecom giant Nokia and built a California-based paging company, CUE, which represented the largest American FM subcarrier network at the peak of the paging industry.

Combining his education as a lawyer and economist, Mr. Kaiser held many important and influential positions as a lawyer, adjudicator, arbitrator, and market monitor. He acted for many important public institutions including the Attorney General of Canada, the Commissioner of Competition, the Alberta Utilities Commission, and the Ontario Independent Electricity System Operator. Mr. Kaiser was adjunct professor at both Queen's University and the University of Toronto; authored three books: *Competition Law in Canada*, *Energy Law and Policy*, and *the Guide to Energy Arbitration*; and served as Vice-Chair of the Ontario Energy Board from 2004- 2010.

Through his work as Vice-Chair of the Ontario Energy Board, Mr. Kaiser distinguished himself and gained the respect of his peers and the public through his leadership in advancing the public interest. Two decisions authored by Mr. Kaiser are noteworthy.

The first is a decision from the Ontario Court of Appeal in the Toronto Hydro dividend case. The Court upheld Mr. Kaiser's reasons and ordered that future dividend payments from the utility to the municipality of Toronto be approved by a majority of Toronto Hydro's independent directors. This decision raised a number of interesting issues, the most significant being the role of the regulatory compact and how it informs directors' duties. The Court agreed with Mr. Kaiser that when there is a potential clash between a utility's obligations to its shareholders and its obligations to ratepayers, the decision should be approved by a majority of independent directors. The principle, championed by Mr. Kaiser, is that constraints may be imposed on utilities and their directors because they have an obligation not only to the shareholder but also to the public at large.

The second decision involved the Ontario Energy Board's ability to set special rates for low-income consumers, sometimes called "lifeline rates." In a split decision, the Ontario Energy Board ruled that the Board lacked jurisdiction. Mr. Kaiser authored the dissenting opinion later upheld by the Court of Appeal in ruling that the Board did have jurisdiction to set low-income rates. Mr. Kaiser's interpretation of the law created a lasting legacy of affordable gas and electricity rates for poorer consumers in Ontario.

After stepping down from the Ontario Energy Board, Mr. Kaiser founded Energy Arbitration Chambers, a firm of independent arbitrators based in Ottawa, Calgary, and Toronto specializing in energy and infrastructure disputes. Mr. Kaiser served as Alberta's Market Surveillance Administrator from 2018-2020.

Mr. Kaiser's leadership in advancing energy law extended beyond his significant contributions to the regulatory framework. During the last two decades, Bob Heggie (currently Chief Executive at the Alberta Utilities Commission) had the privilege of co-chairing two initiatives with Mr. Kaiser to advance the understanding of energy law and policy in Canada.

First was his pioneering work to establish the CAMPUT Energy Regulation Course. CAMPUT is Canada's analogue to NARUC in the United States. Held annually at his alma mater Queen's University, the weeklong course has educated over 1,400 regulators since its inception. At his heart, Mr. Kaiser was a teacher and a perfect role model for the generation of students who had the honor of being taught by him.

Mr. Kaiser also spearheaded the Canadian Energy Law Forum, held annually across the country. Founded in 2007, under his stewardship, the Forum brought energy regulatory lawyers from Canada and the U.S. (including Joe Kelliher, Bob Fleishman, and Scott Hempling) together to discuss key cases, issues, and developments in the Canadian energy regulatory framework.

The forum inspired Mr. Kaiser to work with others to establish (and later serve as a co-editor of) the Energy Regulation Quarterly (ERQ): Canada's leading energy law journal.

Gordon facilitated for many years robust conversations among regulators, the legal community, utility executives, and policymakers. There was much agreement in Canada that too often energy regulatory decisions came down and no one reflected on their implications, much less their merits. He was instrumental in building support for the idea of an ERQ from the beginning. Drawing on his incredible network of friends and acquaintances, Gordon was key to soliciting content, bending arms as few others could to get pieces written from experts across the country and abroad. He also made a point of personally contributing on a regular basis. The EBA's Energy Law Journal in 2019, 2021, and 2022 published Mr. Kaiser's annual review of Canadian energy law developments.

Mr. Kaiser served on the EBA's Northeast Chapter Board from 2013-2014, the first Canadian so named. He also served on the EBA Board from 2014-2017, the first Canadian so named.

Always the trailblazer, Mr. Kaiser was the driving force behind EBA's decision in 2019 to establish a Canadian Chapter. He was the first Chapter President; when he passed, Mr. Kaiser was the Chapter's Vice President.

The EBA presents the State/Provincial Regulatory Practitioner Award to those who represent clients before U.S., or Canadian provincial, regulatory agencies and whose advocacy has produced significant results or recognition. Originally known as the "state" practitioner award, a few years ago, the EBA renamed the award to include its Canadian members (by referencing "Provincial"). Since 2010, the EBA has presented it only to lawyers from the U.S. The EBA presented the award to Mr. Kaiser posthumously in October 2024 – the first Canadian so honored.

Gordon is survived by his loving spouse of eighteen years, Charlene Bain, who stood by him through triumphs and challenges, sharing in his joys and supporting him through his endeavors. Gordon's remarkable spirit, intellect, and generosity opened her world and provided their lives together with endless opportunities and unforgettable experiences. Gordon is also mourned by his five children: Christine (Chris Bentley), Kelly (Kevin Bean), Gordon Jr., their mother Terry, Jennifer (Alen Sadeh), Colleen, and their mother Sandra. Gordon took extraordinary pride in the achievements of his children and provided them with unwavering support.

Gordon was a force of nature; it showed in how he got things done. Working with Gordon often involved the unexpected, and he relished meeting over a good meal and fine red wine. He will be missed, deeply.