COURT FILE NUMBER	B301-276975
COURT	COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
	IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c B-3, AS AMENDED
	AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF BLUE SKY RESOURCES LTD.
DOCUMENT	**RESPONDING WRITTEN SUBMISSION OF HIS MAJESTY THE KING IN RIGHT OF ALBERTA AS REPRESENTED BY THE MINISTER OF ENERGY AND MINERALS**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

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Hearing via Webex before the Honourable Justice Bourque on the Calgary Commercial List, on January 14, 2026, commencing at 10:00 a.m.

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I. OVERVIEW

Canadian Natural Resources Limited (**Canadian Natural**) argues that Alberta Energy is legally precluded from collecting outstanding royalties from Crown leaseholders, notwithstanding that these leaseholders expressly agreed to pay any royalties associated with their leases and to comply with the provisions of the *Mines and Minerals Act*.

Canadian Natural makes numerous arguments to support their position. Many of these are echoed by Cenovus Energy Inc. (**Cenovus**). Cenovus also makes additional arguments of its own.

Alberta Energy has addressed Canadian Natural and Cenovus' arguments in this submission. However, this issue is not nearly as complex as the respective submissions may make it seem.

Canadian Natural's submission that the "owner of the natural gas" is "first and foremost" liable for royalties is not supported by the language of the *Natural Gas Royalty Regulations* that Canadian Natural relies on. However, more fundamentally, Canadian Natural ignores the provisions in the very regulations that it relies on that expressly provide that nothing in them relieves a Crown lessee from its agreement to pay royalties.

Similarly, Canadian Natural's submissions that the Crown lessees are, at most, only jointly liable to pay outstanding royalties fail to mention the second half of section 20(2.1) of the *Mines and Minerals Act* that does not support its position.

Section 20(2.1)(a) *and (b)* of the *Mines and Minerals Act*, providing for joint *and several* liability of Crown lessees, was added to the *Mines and Minerals Act* in 2003 to address situations exactly like this one. Under section 20(2.1), and the respective Crown leases, Alberta Energy has the right to pursue outstanding royalties from Crown lessees separate and apart from any claim against an insolvent party and these claims are not impacted by NOI proceedings.

II. FACTS

Crown Petroleum and Natural Gas Rights in Alberta

1. The Crown in right of Alberta (**Alberta Crown**) owns approximately 81% of the mineral rights in the Province of Alberta. The Minister of Energy and Minerals, through Alberta Energy, administers and manages Alberta's mineral resources on behalf of all Albertans.[1]

[1] Affidavit of Wayne Taljit sworn December 12, 2025 (**Taljit Affidavit**), para. 5.

2. The Alberta Crown no longer develops its own petroleum and natural gas minerals (**Crown PNG**). Instead, industry develops Alberta's Crown PNG.[2]

3. The Alberta Crown offers industry the opportunity to develop Crown PNG primarily through public offerings: industry can bid for Crown PNG rights. Alberta Energy then issues a PNG lease (**Crown Lease**) to the successful bidder or bidders.[3]

4. A Crown Lease grants the lessee, or lessees where there are multiple lessees, the exclusive right to drill for, and recover, Crown PNG within the Crown Lease area. A Crown Lease does not grant mineral ownership, which remains with the Alberta Crown.[4]

The Applicant's Commitments

5. In or about November 2021, Canadian Natural Resources Limited (**Canadian Natural**) and Blue Sky Resources Ltd. (**Blue Sky**) became co-lessees of Crown Lease No. 0593060434. Under Crown Lease 0593060434, each of Canadian Natural and Blue Sky acquired "the exclusive right to drill for, win, work and recover the Leased Substances, together with the right to remove from the Location any Leased Substances won, worked or recovered".[5]

6. In return, each of Canadian Natural and Blue Sky each expressly agreed to:

    i) "[P]ay the royalty reserved under this Lease in accordance with the Mines and Minerals Act" (**Crown Royalties**); and

    ii) "[C]omply with the provisions of the Mines and Minerals Act".[6]

7. Canadian Natural and Blue Sky each also expressly agreed that the provisions of the *Mines and Minerals Act*[7] "shall be deemed to be incorporated into the Lease" and, subject to notice and an opportunity to cure its default, if either of Canadian Natural or Blue Sky failed to

[2] Taljit Affidavit, para. 6.
[3] Taljit Affidavit, para. 7.
[4] Taljit Affidavit, para. 8.
[5] Taljit Affidavit, para. 9, Exhibit B.
[6] Taljit Affidavit, para. 9, Exhibit B, section 5(b) and section 3(1)(a).
[7] *Mines and Minerals Act*, RSA 2000, c M-17 (**MMA**).

comply with the MMA, Canadian Natural and Blue Sky expressly agreed that the Minister could cancel the lease.[8]

8. The above lease used for illustrative purposes only, as multiple leases implicated in this proceeding. All Crown Leases at issue in this proceeding contain similar language and expressly incorporate the MMA's provisions as terms of the Crown Lease.[9]

The Administration of Crown Royalties

9. The oil and gas industry is complex, involving a host of private arrangements between companies to develop Crown PNG. A Crown Lease might have multiple lessees, a well might have several participants or an operator chosen by those participants. To optimize production from a field, companies can combine their wells and produce the minerals as a unit (via unit agreement).[10] The Crown does not typically interfere with private contractual arrangements, trusting that industry will choose an efficient framework.

10. To reduce complexity and the administrative burden on industry, Alberta Energy allows lessees to identify a "royalty client" for the purpose of making ongoing royalty payments for gas volumes produced from their leased mineral rights. Gas royalty volumes are assigned to the royalty client based on agreements made privately between industry (e.g., lessees and the royalty client). Once gas volumes are assigned, the associated royalty charge is created and is billed to the royalty client. The royalty client pays royalties on behalf of lessees, despite the lessees bearing the ultimate responsibility for royalty obligations. Often, a Crown Lease will have multiple royalty clients, whose proportionate royalty obligations are based on their production (as determined by industry and submitted to Alberta Energy).[11]

Blue Sky Non-Payment of Royalties as Royalty Client

11. Blue Sky was identified as a royalty client on a number of Crown Leases. On June 30, 2025, Alberta Energy invoiced Blue Sky, as the identified royalty client, for outstanding royalties (**Outstanding Royalties**). Blue Sky did not make the requested payment. In response, Alberta

[8] Taljit Affidavit, para. 9, Exhibit B, section 3(2) and section 6(1)(c).
[9] Taljit Affidavit, paras. 9 and 10, Exhibit A, and paras. 18 to 20.
[10] Taljit Affidavit, para. 25.
[11] Taljit Affidavit, para. 26.

Energy sent a notice of non-payment on July 10, 2025, and follow-up notices of non-payment on August 12 and September 23, 2025, each notifying Blue Sky of missed deadlines and requesting payment of the Outstanding Royalties.[12]

Notice to Lessees of Royalty Client Failure to Pay Outstanding Royalties

12. When the parties identified as royalty clients do not respond to requests for outstanding payments, Alberta Energy sends the relevant lessees (the parties who have agreed they are liable for Crown Royalties under the Crown Leases and the MMA) a leaseholder recourse default letter (**Default Letter**) notifying them of their royalty client's failure to pay Crown Royalties and outlining the remedial actions that Alberta Energy may pursue against the lessees.[13]

13. On September 25, 2025, Alberta Energy sent a Default Letter to all lessees on Crown Leases where Blue Sky is a royalty client (**Lessees**), some of whom are co-lessees with Blue Sky, outlining the Outstanding Royalties under the Crown Leases.[14] In response to paragraph 2 of Canadian Natural's submissions where Canadian Natural states that, "Alberta Energy defaulted all third party lessees on the PNG Leases", Alberta Energy did not do so. Alberta Energy did not exercise any of the potential remedies set out in the Default Letter. It simply notified the Lessees of the Outstanding Royalties, requested payment, and outlined the potential remedies available to Alberta Energy for non-payment of the Outstanding Royalties.[15]

Response to the Default Letter

14. Most of the Lessees paid their proportionate share of the Outstanding Royalties. Some Lessees, including Canadian Natural, made payments under protest.[16]

15. Alberta Energy accepted these payments and agreed to stay any further enforcement against the Lessees until resolution of this matter.[17]

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[12] Taljit Affaivit, para. 35, Exhibits E, F, G and H.
[13] Taljit Affidavit, paras. 35 and 36.
[14] Taljit Affidavit, para. 37, Exhibit I ; Supplemental Affidavit of Wayne Taljit sworn January 8, 2026, para. 10.
[15] Taljit Affidavit, paras. 36 and 37, Exhibit I.
[16] Taljit Affidavit, paras. 39 to 42; Affidavit of Erin Lunn sworn November 14, 2025 (**Lunn Affidavit**), paras. 15, 25 and 26 and Exhibits I to L.
[17] Taljit Affidavit, para. 43.

III. ISSUES

16. Is Alberta Energy prevented from recovering the Outstanding Royalties from the Lessees until after the Blue Sky NOI Proceedings are completed?

IV. ARGUMENT

Introduction

17. Canadian Natural appears to admit that it is liable for the Outstanding Royalties on its Crown Leases.[18] However, it argues that Alberta Energy is required to first pursue the Outstanding Royalties via Blue Sky's NOI Proceedings before any remaining amounts are payable by the Lessees.

18. Alberta Energy will address each of Canadian Natural's (and where appropriate Cenovus') arguments below. As an overarching response, Alberta Energy submits that Canadian Natural and Cenovus' premise, that Alberta Energy must first pursue Outstanding Royalties via the NOI Proceedings before the Lessees, is flawed. Canadian Natural and Cenovus rely on this flawed premise as follows: that (i) that Blue Sky is primarily liable for the Outstanding Royalties, (ii) the Lessees are only jointly liable for the Outstanding Royalties, and (iii) the Lessees are better described as only "involuntary, statutory obligors of *another's* obligation."[19]

19. This argument incorrectly characterizes both the Crown Leases and the provisions of the MMA. First, there is nothing "involuntary" about either Canadian Natural or Cenovus' obligations under the Crown Leases. Each of them voluntarily: (i) acquired their respective Crown Leases interests, (ii) expressly agreed to pay the Crown Royalties due under their Crown Leases, (iii) expressly agreed that the provisions of the MMA were incorporated into the terms of each of the Crown Leases, and (iv) expressly agreed to comply with those provisions.

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[18] Brief of the Applicant, Canadian Natural Resources Limited, dated January 5, 2025 (**Canadian Natural Argument**), para. 9.
[19] Canadian Natural Argument, para. 37.

20. Second, as discussed in detail below, a party's obligations under a contract (e.g., a Crown Lease), can be a joint obligation with another party, a separate (several) obligation from another party, or joint and several.

21. Canadian Natural argues that it has joint, *indivisible* liability for the Outstanding Royalties and therefore cannot be pursued separately from Blue Sky.[20]

22. This characterization of Canadian Natural and Cenovus' liability as Lessees under Crown Leases and the MMA is incorrect. The combined effect of subsections 20(2.1)(a) *and 20(2.1)(b)* of the MMA (the latter of which is not addressed by either Canadian Natural or Cenovus), makes clear that Alberta Energy may pursue separate proceedings against any Lessee for Crown Royalties.

23. Alberta Energy requested payment of the Outstanding Royalties from the Lessees under their respective Crown Leases. These Lessee obligations are separate and distinct from Blue Sky's individual liability, and enforcement of these obligations is separate from pursuing Blue Sky in the NOI Proceedings.

The Lessees are Liable for the Outstanding Royalties

24. Canadian Natural argues that under provisions of the MMA and the *Natural Gas Royalty Regulation, 2009* (**NGRR 2009**)[21] and the *Natural Gas Royalty Regulation, 2017* (**NGRR 2017**)[22] the owner of the natural gas is liable for associated royalties.[23] It submits that this conclusion is consistent with the general maxim that "he who enjoys the benefit ought also to bear the burden" and that "no one is liable for the debts of another."[24] Canadian Natural argues this structure also accords with the process prescribed under section 16 of NGRR 2009 and section 17 of NGRR 2017 for the invoicing and payment of royalties.[25]

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[20] Canadian Natural Argument, para. 3.
[21] *Natural Gas Royalty Regulation, 2009*, Alta Reg 221/2008 (**NGRR 2009**).
[22] *Natural Gas Royalty Regulation, 2017*, Alta Reg 211/2016 (**NGRR 2017**).
[23] Canadian Natural Argument, paras. 22 to 30.
[24] Canadian Natural Argument, para. 29.
[25] Canadian Natural Argument, para. 30.

25. Canadian Natural's submissions rely on a misinterpretation of NGRR 2009 and NGRR 2017 and ignore the provisions of NGRR 2009 and NGRR 2017 that expressly preserve the liability of Lessees for Crown Royalties.

26. Properly construed, NGRR 2009 and 2017 are administrative in nature and address how Crown Royalties are determined and paid in the normal course.

27. Alberta Energy agrees with Canadian Natural that the Crown retains title to, and an ownership interest in, the portion of production equal to its specific royalty entitlement until title to that royalty share is transferred in accordance with NGRR 2009 or NGRR 2017.[26]

28. Alberta Energy also agrees with Canadian Natural that liability for payment of Crown Royalties is triggered at the point of title transfer of the Crown's royalty share of the mineral.[27]

29. However, Alberta Energy disagrees with Canadian Natural's conclusion that section 15 of NGRR 2009 and section 16 of NGRR 2017 establish liability for royalty compensation as being an obligation of "the owner of the lessee's share of the natural gas".[28]

30. Section 15 of NGRR 2009 and section 16 of NGRR 2017 are identical except for their numbering. The portions of section 15 of NGRR 2009 that Canadian Natural relies on read:

> **Liability for royalty compensation**
>
> **15(1)** The Crown's title to the Crown's royalty share of natural gas and gas products is automatically transferred
>
> (a) at the point immediately downstream from the royalty calculation point for the natural gas or gas products, or
>
> (b) in the case of sulphur,
>
> (i) at the place where it is solidified at the site of the gas processing plant or reprocessing plant at which it is obtained, or
>
> (ii) at the place where it leaves the gas processing plant or reprocessing plant at which it is obtained, where it leaves the plant in liquid form without having first been

[26] Canadian Natural Argument, para. 25.
[27] Canadian Natural Argument, para. 26.
[28] Canadian Natural Argument, para. 27.

solidified, to the person who is, in relation to that royalty share, the owner of the lessee's share of the natural gas or gas products.

(2) When the Crown's title to the Crown's royalty share of natural gas or a gas product is transferred pursuant to subsection (1), *royalty compensation is payable to the Crown in accordance with this Regulation* in respect of that royalty share. (emphasis added)

31. Properly read, section 15 of NGRR 2009 and section 16 of NGRR 2017 set out: (i) when title to the Crown's royalty share is transferred; (ii) who title is transferred to; and (iii) when title is transferred royalty compensation is payable in accordance with the respective regulation. Section 15 of NGRR 2009 and section 16 of NGRR 2017 do not say anything about assigning liability for Crown Royalties to the owner of the produced natural gas. To the contrary, they say royalty compensation is payable in accordance with the respective regulation.

32. Contrary to Canadian Natural's submissions, section 16 of NGRR 2009 and section 17 of NGRR 2017 also do not confirm the liability of the owner of the natural gas for payment of Crown Royalties.[29] Sections 16 and 17 provide for the issuance of invoices for royalty compensation to the "royalty client" and payment of invoices by the "royalty client." All parties agree that a "royalty client" can be different than the owner of the natural gas or a lessee.[30] Therefore, sections 16 and 17 do not support Canadian Natural's claim that the owner of the natural gas is the primary party liable for Crown Royalties. The royalty client pays Crown Royalties in the normal course of business.

33. Regardless of the administrative provisions established under NGRR 2009 and NGRR 2017, NGRR 2009 and NGRR 2017 are expressly subordinate to the liability of lessees to pay royalties to the Crown. Section 2 of both NGRR 2009 and NGRR 2017, omitted from Canadian Natural or Cenovus' submissions, expressly provide that nothing in either regulation impacts the responsibility of a lessee to pay Crown Royalties pursuant to an agreement as defined in the MMA.

Lessee's liability unaffected

2 Nothing in this Regulation operates to relieve a lessee from

[29] Canadian Natural Argument, para. 30.
[30] Canadian Natural Argument, para. 32.

(a) the lessee's liability to the Crown under an agreement for the payment of royalty, or

(b) the lessee's liability under this Regulation to pay royalty compensation to the Crown.

34. It is trite law that regulations are subordinate to the statute pursuant to which they are made,[31] the language of section 2 codifies this principle.

35. The circumstances of the Lessees under the Crown Leases and MMA bear no resemblance to the general maxims cited and relied on by Canadian Natural and Cenovus. These maxims are inapplicable given the clear language in the Crown Leases and MMA. The Crown Leases and MMA, both of which are expressly agreed to by the Lessees, clearly delineate ultimate responsibility for Crown Royalties. Even if, in the ordinary course, one party is initially identified or invoiced for the for the royalties (e.g., the royalty client), rights of collection against Lessees are preserved, and the ultimate payor is not necessarily the royalty client.

36. Canadian Natural concedes that the royalty client can be different from the owner or the lessee. The suggestion implicit in paragraph 34 of Canadian Natural's submission that somehow it has no idea who is drilling wells on its Crown Leases and has no oversight or visibility into production runs counter to the commercial realities of the oil and gas sector.

37. In fact, as part of the licensing requirements for a well, an applicant for a well license must provide both the mineral rights lease number for Crown minerals as well as documentation evidencing authorization from the mineral rights Lessee(s).[32] So, Canadian Natural consents to every party operating within their Crown Leases.

38. Even if Canadian Natural is correct in its interpretation of the NGRRs and lessees are not always liable at first instance unless they are also an owner, such conclusion does not displace the clear language in section 20(2.1) of the MMA. This section makes all lessees jointly and severally responsible for MMA obligations accruing under a Crown Lease.

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[31] Elmer A Driedger, Subordinate Legislation, 1960 38-1 *Canadian Bar Review 1*, 1960 CanLIIDocs 26, at page 6, citing *Belanger v. The King* (1916) 54 SCR 265.

[32] Alberta Energy Regulator: Directive 056, Section 4.9.8 103.

39. The interpretation urged by Canadian Natural also ignores the fact the Crown has privity of contract solely with the Lessees.

40. In support of its position that section 20(2.1) must be interpreted narrowly Canadian Natural relies on *Terra Energy* wherein Justice Romaine considered section 91.1 of the MMA which was said to be "closely analogous" to section 20(2.1).[33] *Terra Energy* is distinguishable on its face. In the present case there is no question that Crown Royalties have accrued and are presently owed to the Crown. In *Terra Energy*, the claimed Crown Royalties were contingent at the time of transfer of the Crown Leases to Enercapita, against whom the claims were advanced pursuant to section 91.1. There is no such contingency here, and the Crown Royalties are fully crystalized against Blue Sky and the Lessees.

41. In the present case a demand for payment was made to the Lessees. Cenovus and Canadian Natural, both Lessees, accept that they are ultimately responsible for the Outstanding Royalties. The language in section 20(2.1) of the MMA is plain, clear and unambiguous, particularly when read in conjunction section 2 of the NGRR 2009 and NGR 2017, both of which expressly provide that the lessee is responsible for all royalties owing under an agreement.

42. Lessees are not, contrary to Canadian Natural's assertion, involuntary, statutory obligors of another's obligations. Sophisticated parties such as Canadian Natural voluntarily enter into Crown Leases knowing that the obligations in section 20(2.1) exist as part of the overall regulatory framework that applies to the production of oil and gas in Alberta.

The MMA Imposes Joint and Several Liability on the Lessees, Not Just Joint Liability

43. Canadian Natural argues that the MMA imposes joint – not joint and several – liability on the Lessees.[34]

44. The three forms of liability - joint, several, and joint and several - were succinctly described in *Royal Bank of Canada v. King*:[35]

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[33] Canadian Natural Argument, para 35 and 36.
[34] Canadian Natural Argument, paras. 50 and 52 to 54.
[35] *Royal Bank of Canada v. King*, 1982 CanLII 1177 (ABKB), para. 18.

[18] Halsbury's Laws of England, 4th ed., vol. 9, p. 423, clearly and succinctly describes the nature of multiple promises as follows:

> 616. General. Any number of persons may join in making or accepting a promise; and a promise made by several persons may be joint, several, or joint and several.
>
> (1) *Joint promises.* Joint liability arises where two or more persons jointly promise to do the same thing; for instance, B and C jointly promise to pay £100 to A. In the case of a joint promise, there is only one obligation, namely that each of B and C is liable for the performance of the whole promise but payment of £100 by one discharges the other. Joint liability is subject to a number of strict and technical rules of law which are discussed below.
>
> (2) *Several promises.* Several liability arises where two or more persons make separate promises to another; for instance B and C each promise to pay £100 to A. In this case, the several promises by B and C are cumulative, thus A may recover £200, and payment of £100 by one of them does not discharge the other. There are therefore two separate contracts, one between A and B, and the other between A and C, and there is no privity between B and C.
>
> (3) *Joint and several promises.* Joint and several liability arises where two or more persons join in making a promise to the same person, and at the same time each of them individually makes the same promise to that same promisee; for instance B and C jointly promise to pay £100 to A, but both B and C also separately promise A that £100 will be paid to him by either B or C. Joint and several liability is similar to joint liability in that the co-promisors are not cumulatively liable, so that payment of £100 by B to A discharges C; but it is free of most of the technical rules governing joint liability.

45. Joint, and joint and several, liability share some characteristics (e.g., the joint liability part). Under joint liability, since two or more parties make the same promise to the same person, the joint co-promisors are not cumulatively liable. However, there are also fundamental differences between the two forms of liability.

46. At common law, in the case of joint liability, since there is only one promise made by two or more people, if one joint obligor is released, this releases all joint obligors.[36] Conversely, if an obligation is joint *and* several, the release of one obligor does not release the others.[37]

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[36] *Royal Bank of Canada v. Riverbanks Gourmet Café & Market Inc.*, 2002 ABQB 50 (***Riverbanks***), paras. 22 to 24; Report on Shared Liability, Law Reform Commission of BC (**LRC 88**, August 1986), Section B.1(b).
[37] *Riverbanks*, supra, para. 24.

47. Similarly, at common law, judgment against one or more persons jointly liable with others bars any subsequent action against the others.[38] Conversely, where shared liability is joint and several, judgment against one does not bar action against others. A debtor can pursue other severally liable parties separately and only satisfaction of the amount owing will discharge others who share liability.[39]

48. Canadian Natural argues, based on an incomplete reproduction of section 20(2.1) of the MMA, that the liability of the Lessees to pay royalties is "joint – *not* joint and several".[40] In support of this, Canadian Natural purports to set out what section 20(2.1) of the MMA says:

> Section 20(2.1) states: "[w]here 2 or more persons are recorded with the Department as lessees of an agreement, those lessees in relation to the Crown are jointly responsible for the obligations and liabilities that arise under that agreement …"[41]

49. While this quote appears to support Canadian Natural's thesis, it is incomplete and wholly ignores section 20(2.1)(b). In total, section 20(2.1) actually states:

> **(2.1)** Where 2 or more persons are recorded with the Department as lessees of an agreement,
>
> (a) those lessees in relation to the Crown are jointly responsible for the obligations and liabilities that arise under that agreement, notwithstanding that the agreement was issued before, on or after the coming into force of this subsection, and
>
> (b) *a judgment in favour of the Crown against one or more of those lessees or a release by the Crown in favour of one or more of those lessees does not preclude the Crown from obtaining judgment against the other lessees in the same or a separate proceeding*. (emphasis added)

50. This is the classical definition of joint and several liability at common law. Sections 20(2.1)(a) and (b) are conjunctive, expressing one model of liability. Lessees' liability is joint under section 20(2.1)(a) (lessees' liability is cumulative), and several under section 20(2.1)(b) (e.g., each lessee can be pursued independently).

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[38] LRC 88, Section B.2.(c)(i).
[39] LRC 88, Section B.2.(c)(ii).
[40] Canadian Natural Argument, para. 50.
[41] Canadian Natural Argument, para. 49.

51. Ultimately, since the provisions of the MMA are expressly incorporated into the Crown Leases, the meaning of section 20(2.1) is a question of statutory interpretation.

52. Since 2003, the MMA has enforced joint and several liability against lessees. For more than twenty years the standard form Crown Lease has expressly incorporated these provisions, which are well known to industry.

53. The express inclusion of joint and several liability is deliberate and reflective of the MMA's overarching objective: ensuring that Albertans benefit from the extraction of Crown minerals belonging to all Albertans, as administered by the Crown on their behalf.

54. The express incorporation in plain language of joint and several liability in section 20(2.1) and its incorporation into Crown Leases is more than sufficient to overcome the legal principle relied on by Canadian Natural that no person ought to be responsible for the debts of another person. The *Terra Energy* case cited as authority for Canadian Natural's position is clearly distinguishable for the reasons discussed above. The Outstanding Royalties are due and payable, and the Lessees have agreed to pay these under each of their Crown Leases.

55. Narrowing construction of section 20(2.1) of the MMA, as suggested by Canadian Natural; is not appropriate. The language is clear and precise on its face. The Supreme Court of Canada has recently confirmed that the plain language of a statute (in this case section 20(2.1)) remains the anchor of the interpretative exercise under modern statutory interpretation.[42]

56. The express language of section 20(2.1)(a) *and* (b), when read in the ordinary sense and within the overall scheme of the MMA, confirms the Legislature's intent to hold Lessees ultimately liable for Crown Royalties, even if, in the ordinary course, the Crown *first* attempts collection from a designated royalty client under NGRR 2009 and NGRR 2017.

57. Even if the plain language of section 20(2.1) is somehow unclear, reviewing the section according to modern statutory interpretation confirms that section 20(2.1) was intended to create joint and several liability for Lessees, furthering the MMA's objective of ensuring that

[42] *Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Directrice de la protection de la jeunesse du CISSS A*, 2024 SCC 43, at para 24.

Albertans benefit from development of their minerals via royalty payments.[43] As pointed out in Canadian Natural's submissions, section 91.1 of the MMA is analogous to section 20(2.1). Notably, both sections were added to the MMA at the same time, further confirming the Legislature's intention to provide Alberta Energy with extensive tools for collecting Crown Royalties.

58. The Hansard accompanying the inclusion of section 20(2.1) in the MMA indicates that section 20(2.1) was added to the MMA for the express purpose of statutorily codifying joint and several liability of lessees. This codification ensures the Crown would not have to argue common law precedents where a lessee defaults on a royalty payment.[44]

59. The concept that the Crown ought to be held whole is reflected in a number of other provisions in the MMA, including providing the Minister with the authority to examine relevant records of the parties responsible for submitting records for up to 5 years[45] and allowing up to 5½ years for the recalculation of outstanding royalty amounts.[46] Further, certain claims under the MMA are expressly exempt from the *Limitations Act*, allowing time for recalculations to take place.[47]

60. Additionally, and in accordance with the provisions of the *Interpretation Act*, the MMA must be construed as being remedial, and shall be given the fair, large and liberal construction and interpretation that best ensures the attainment of the objective of the legislation.[48]

61. Canadian Natural's argument that section 20(2.1) must be interpreted narrowly ignores the fact that the Lessees have voluntarily agreed to be bound by the provision as an express term of the Crown Lease and by operation of the MMA.

Participation in NOI Proceedings and "Cure Costs"

62. Alberta Energy submits that the above submissions are a complete answer to Canadian Natural's application. The Lessees are liable for the Outstanding Royalties and are jointly and

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[43] *Terra Energy Corp (Re)*, 2023 ABKB 236, at para. 72.
[44] Alberta, Legislative Assembly, Alberta Hansard, Legislature 25, Session 3 (2003-2004), (March 3, 2003) at 215, (March 27, 2003) at 794-795, (May 5, 2003) at 1429-1431.
[45] MMA, s.38(6).
[46] MMA, s.38(6).
[47] MMA, s.39.1.
[48] *Interpretation Act*, RSA 2000, c I-8, s. 10.

severally liable for the Outstanding Royalties. Alberta Energy issued the Default Letter to the Lessees under their separate liability from Blue Sky, whether Blue Sky *qua* royalty client or BlueSky *qua* Lessee, and notified and requested payment of the Outstanding Royalties from the Lessees under their joint and several liability for these amounts, independently of any claim against Blue Sky. However, Alberta Energy wishes to make some submissions in response to the remainder of Canadian Natural and Cenovus' submissions.

63. Canadian Natural argues that Alberta Energy's ability to collect royalties within Blue Sky's NOI Proceedings places Alberta Energy in a "privileged position" given its ability to approve Crown Lease transfers and to demand the payment of "cure costs" as part of this process. Alberta's position within the NOI Proceedings is based on the underlying contractual arrangements and statutory provisions allowing for the production of the Crown's minerals, expressly agreed to by the Lessees. There is nothing inequitable or inherently unfair about the arrangement which is well known to industry participants, voluntarily entered into, and applies equally to all parties.

64. Canadian Natural argues that Alberta Energy's ability to refuse a transfer of any Crown Lease until all of the Crown Royalties existing thereunder are paid in full is inaccurate.[49] The Outstanding Royalties consist of arrears owing on Crown Leases where Blue Sky is a party to a particular lease, as well as arrears owing in cases where Blue Sky is not a party to the Crown Lease, but was identified as the royalty client, reflecting the fact that the royalty client is not always a lessee for the initial purpose of payment of royalties under the respective NGRRs.[50]

65. This exact scenario is why the joint and several liability provisions in the MMA exist. They are intended to allow Alberta Energy to pursue lessees for outstanding royalties outside of the administrative structure of the NGRR in those cases where there is a risk that the full value of Alberta's royalty share will not be collected.

66. The statutory and contractual imposition of joint and several liability aligns with the policy choices of by Alberta Energy discussed at paragraph 34 of Mr. Taljit's Affidavit. In the ordinary course, collection of Crown Royalties follows the structure of the NGRRs (i.e., first collection

[49] Canadian Natural Argument, para. 43.
[50] Canadian Natural Argument, paras 31 and 33.

from royalty clients), yet that procedure is underlain by the ultimate responsibility of, and ability of Alberta Energy to collect from, Lessees.

67. If Blue Sky is not a Lessee, the full value of the Outstanding Royalties is not payable as cure costs and there is no certainty full collection is possible within the insolvency proceeding, as those Leases may not be sold or transferred (the point at which Canadian Natural contends Alberta Energy is guaranteed full payment). If transfer of such leases did take place, and payment was not of the full amount, Lessees like Canadian Natural would assuredly argue that their liability was extinguished by operation of a vesting order, as done by Canadian Natural in the *Spartan Delta*[51] case cited by Canadian Natural in its submissions.

68. Notably, Canadian Natural's argument omits to mention that Alberta Energy was successful in obtaining leave to appeal the decision of Justice Gill in the *Spartan Delta* case[52]with the matter currently set to be heard by the Court of Appeal on April 16, 2026. In granting leave to Alberta Energy, Justice Feth concluded that Alberta Energy had met its burden of establishing sufficiently serious and arguable issues warranting a full appeal before a panel of the Court of Appeal.[53]

Alberta Energy Retains Broad Discretion to Collect Royalties

69. Canadian Natural argues that Alberta Energy's position is somehow contrary to its own policies and procedures, notably Information Letter 2024-32 and affidavit evidence filed in the *CLEO* proceeding confirming that Alberta Energy is entitled to cure costs.

70. Alberta Energy agrees with Canadian Natural that it is entitled to cure costs in the ordinary course in those cases where the leasehold interest of an insolvent is transferred through an insolvency process.[54]

71. However, Information Letter 2024-32 is policy, not law, and merely clarifies that Alberta Energy expects that receivers will ensure that all agreements are in good standing before

[51] Canadian Natural Argument, para. 72 and 73.
[52] *Spartan Delta Corp. v. Alberta (Energy and Minerals)*, 2025 ABCA 181.
[53] Ibid at para 30.
[54] Taljit Affidavit, paras 65 to 68.

Alberta Energy will consider approving agreement transfers and confirms that Alberta Energy freezes Crown assets subject to insolvency actions.[55]

72. IL 2024-32 does not address, nor does it limit the royalty collection measures available to Alberta Energy outside insolvency proceedings.[56] Alberta Energy retains operational discretion to seek recovery of royalties outside of an insolvency proceeding in order to ensure that the Crown maximizes the recovery of royalites.

73. Canadian Natural's suggestion that non-payment of Crown Royalties is limited to two cases in the last six years because there were only two cases referred to in the Taljit Affidavit is incorrect.[57] The two examples were provided merely as examples of the difficulties Alberta Energy has faced in light of increasing insolvencies in the industry and the increasingly sophisticated attempts by insolvency professionals to avoid the payment of Crown Royalties discussed in the Taljit Affidavit.[58]

74. Alberta Energy requires a robust set of tools to ensure the collection of revenues owed to Albertans[59] along with the operational discretion to pursue royalty arrears as appropriate based on the circumstances of a particular case. The frequency with which Alberta Energy's involvement has been required in protracted legal proceedings such as *CLEO* and *Spartan Delta* aptly demonstrates that the transfer requirement does not guarantee recovery. Despite the ability to demand cure costs at the point of lease transfer in insolvency proceedings, Albertans being made whole is far from certain.

75. The potential availability of cure costs in cases where an insolvent is named as a lessee does not guarantee full recovery of all outstanding royalites. Moreover, and as discussed above, there is far less certainty of collection in cases where the arrears are linked to a royalty client who is also not a lessee, as that royalty client has no lease interest to transfer, therefore Alberta Energy has no transfer to process.

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[55] Lunn Affidavit, Exhibit T.
[56] Taljit Affidavit, para 65.
[57] Canadian Natural Argument, para 60.
[58] Taljit Affidavit, para 91.
[59] Taljit Affidavit, para 94.

The Liability of the Lessees is not Subject to the Stay

76. Except for Blue Sky, the liability of the Lessees is not subject to the stay under section 69 of the *Bankruptcy and Insolvency Act*.

77. As addressed above, the Default Letter and, if necessary, any further proceedings against the Lessees are independent, separate processes. The Lessees have expressly agreed to this framework by signing their Crown Leases which incorporate the provisions of the MMA.

78. Alberta Energy has confirmed that it is not taking any action against Crown Leases where Blue Sky is a Lessee during the NOI Proceedings.[60]

The Single Proceeding Model Does Not Apply Here

79. Canadian Natural argues that Alberta Energy's "attempted circumvention of the NOI Proceedings offends the single proceeding model".[61]

80. Alberta Energy has not attempted to, nor is it attempting to, circumvent the NOI Proceedings. Alberta Energy respects the NOI Proceedings and as noted, has expressly acknowledged that the actions it otherwise could have taken against Blue Sky are stayed as a result of the NOI Proceedings. Instead, Alberta Energy is pursuing the independent commitments of Canadian Natural and other Lessees under the Crown Leases and section 20(2.1) of the MMA, commitments not caught by the stay of proceedings.

81. The Supreme Court of Canada has considered the single proceeding model on four occasions. First, in *Newfoundland and Labrador v. Abitibi Bowater Inc*, the Court described the role of the single proceeding model as follows:[62]

> [21] One of the central features of the *CCAA* scheme is the single proceeding model, which ensures that most claims *against a debtor* are entertained in a single forum. Under this model, the court can stay the enforcement of most claims *against the debtor's assets* in order to maintain the *status quo* during negotiations with the creditors. When such negotiations are successful, the creditors typically accept less than the full amounts of their claims. Claims have not necessarily accrued or been liquidated at the outset of the

[60] Taljit Affidavit, paras. 45 to 48, Exhibit I.
[61] Canadian Natural Argument, paras. 71 to 77.
[62] *Newfoundland and Labrador v. Abitibi Bowater Inc*, 2012 SCC 67, para. 21.

insolvency proceeding, and they sometimes have to be assessed in order to determine the monetary value that will be subject to compromise. (emphasis added)

82. Then, in *Century Services Inc. v. Canada (Attorney General)*, the Court's most cited decision addressing the single proceeding model, the Supreme Court stated as follows:

> [22] While insolvency proceedings may be governed by different statutory schemes, they share some commonalities. The most prominent of these is the single proceeding model. The nature and purpose of the single proceeding model are described by Professor Wood in Bankruptcy and Insolvency Law:
>
> > They all provide a collective proceeding that supersedes the usual civil process available to creditors to enforce their claims. The creditors' remedies are collectivized in order to prevent the free-for-all that would otherwise prevail if creditors were permitted to exercise their remedies. In the absence of a collective process, each creditor is armed with the knowledge that if they do not strike hard and swift to seize *the debtor's assets*, they will be beat out by other creditors. [pp. 2-3]
>
> The single proceeding model avoids the inefficiency and chaos that would attend insolvency if each creditor initiated proceedings to recover its debt. Grouping all possible actions against the debtor into a single proceeding controlled in a single forum facilitates negotiation with creditors because it places them all on an equal footing, rather than exposing them to the risk that a more aggressive creditor will realize its claims *against the debtor's limited assets* while the other creditors attempt a compromise. With a view to achieving that purpose, both the CCAA and the BIA allow a court to order all actions *against a debtor* to be stayed while a compromise is sought.[63] (emphasis added)

83. This language was repeated by the Court in *Alberta (Attorney General) v. Moloney*.[64]

84. Finally, in *Peace River Hydro Partners v. Petrowest Corp*., the Court stated:

> (a) *Single Proceeding Model*
>
> [54] The central role of courts in ensuring the equitable and orderly resolution of insolvency disputes is reflected in the "single proceeding model".
>
> [55] This model favours the enforcement of stake holder rights through a centralized judicial process. The legislative policy in favour of "single control" is reflected in Canadian bankruptcy, insolvency, and winding-up legislation (Century Services, at paras. 22-23).

[63] *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60, para. 22.
[64] *Alberta (Attorney General) v. Moloney*, 2015 SCC 51, para. 33.

> The single proceeding model is intended to mitigate the inefficiency and chaos that would result if each stakeholder in an insolvency initiated a separate claim to enforce its rights. In other words, the single proceeding model protects the clear "public interest in the expeditious, efficient and economical clean-up of the aftermath of a financial collapse" (Sam Lévy & Associés Inc. v. Azco Mining Inc., 2001 SCC 92, [2001] 3 S.C.R. 978, at para. 27, citing Stewart v. LePage (1916), 53 S.C.R. 337). This Court has held that s. 183(1) of the BIA confers a "broad scope of authority" on superior courts to deal with most bankruptcy disputes, as "[a]nything less would unnecessarily complicate and undermine the economical and expeditious winding up of the bankrupt's affairs" (Sam Lévy, at para. 38).[65]

85. Alberta Energy respectfully submits that Canadian Natural is attempting to misapply the single proceeding model. As the Supreme Court of Canada has made clear on multiple occasions, the single proceeding model is meant to ensure that there is not a multiplicity of claims against an insolvent debtor, thereby ensuring that claims against the insolvent debtor are dealt with as much as possible within a single proceeding.

86. The single proceeding model is not intended to apply in the converse (i.e., to require that all claims against solvent third parties connected in any way to the insolvent debtor must be dealt with in the debtor's insolvency action). To do so would prohibit, for example, a lender from pursuing a guarantor outside of the principal debtor's insolvency proceedings even absent a stay to that effect. Similarly, it would require a landlord to pursue judgment against a third-party lessee in an insolvency proceeding where a subsequent assignee of the lease has become insolvent.

87. Alberta Energy submits that claims concerning third party liability do not impact the concern about a multiplicity of proceedings against an insolvent debtor and it is an unwarranted (and undesirable) application of the single proceeding model to require all creditors to bring applications against solvent third parties in an insolvency proceeding only because those third parties happen to be jointly and severally liable with an insolvent party.

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[65] KB Decision, AR p. 40, lines 11 to 34; *Peace River Hydro Partners v. Petrowest Corp.*, 2022 SCC 41, paras. 54 and 55 (***Peace River Hydro Partners***).

88. There is no authority to support the proposition that the single proceeding model bars actions against solvent third parties, including the Lessees, who are jointly and severally liable for the Outstanding Royalties.

Section 20(2.1) Does not Frustrate or Alter the BIA's Purpose of Equitable Distribution

89. Cenovus argues, based on the incorrect assertion that Lessees are only jointly liable, that Alberta's reliance on section 20(2.1) of the MMA to collect the Outstanding Royalites is a "run around" the insolvency process to obtain payment of Blue Sky's unsecured indebtedness[66] which makes it unconstitutional based on the application of federal paramountcy.[67]

90. This argument is bound to fail. For the reasons discussed above, the liability of lessees to a Crown Lease is properly characterized as joint and several. As such, Alberta Energy retains the authority to collect royalties from solvent lessees despite Blue Sky having entered into insolvency proceedings.

91. Moreover, the doctrine of paramountcy has no application even if Cenovus were correct. There is no clear operational conflict between the MMA and the BIA, nor does the MMA frustrate the purpose of the BIA.

92. Even if the MMA was found to allow Alberta to alter priorities, this would represent a valid exercise of provincial power and would not offend the general principle of equitable distribution as suggested by Cenovus.[68] The decision of the Supreme Court of Canada in *Redwater*, relied on by Cenovus in its submissions[69] confirms that the burden of establishing paramountcy rests with the party alleging the conflict. This burden is not easy to satisfy as the doctrine of paramountcy is to be applied with restraint and any conflict must be defined narrowly to ensure that "each level of government may act freely as possible within its respective sphere of constitutional authority." A harmonious interpretation is favoured over an interpretation that results in incompatibility, as parliament intends its laws to co-exist with

[66] Cenovus Argument, para 41.
[67] Cenovus Argument, paras. 41 to 43.
[68] Cenovus Argument, para. 43.
[69] Cenovus Argument, para. 42.

provincial law.[70] Respectfully, Cenovus's argument does not come close to meeting this burden.

93. Cenovus has also failed to give notice of its constitutional argument as required.[71]

V. RELIEF SOUGHT

94. Alberta Energy respectfully requests that this Honourable Court dismiss Canadian Natural's application with costs.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 9TH DAY OF JANUARY 2026

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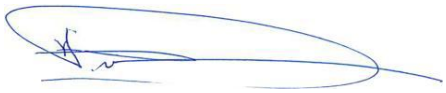
By: 

Evan W. Dixon
Counsel for Alberta Energy

[70] *Orphan Well Association v Grant Thornton Ltd*, 2019 SCC 5, para. 66.
[71] *Judicature Act*, RSA 2000, c J-2, s. 24.

TABLE OF AUTHORITIES

TAB	REFERENCE
LEGISLATION	
	Interpretation Act, RSA 2000, c I-8.
	Judicature Act, RSA 2000, c J-2.
	Mines and Minerals Act, RSA 2000, c M-17.
	Natural Gas Royalty Regulation, 2009, Alta Reg 221/2008.
	Natural Gas Royalty Regulation, 2017, Alta Reg 211/2016.
CASE LAW	
1	*Alberta (Attorney General) v. Moloney*, 2015 SCC 51.
2	*Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60.
3	*Elmer A Driedger, Subordinate Legislation, 1960 38-1 Canadian Bar Review 1,* 1960 CanLIIDocs 26.
4	*Newfoundland and Labrador v. AbitibiBowater Inc*, 2012 SCC 67.
5	*Orphan Well Association v Grant Thornton Ltd*, 2019 SCC 5.
6	*Peace River Hydro Partners v. Petrowest Corp.*, 2022 SCC 41.
7	*Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Directrice de la protection de la jeunesse du CISSS A*, 2024 SCC 43.
8	*Royal Bank of Canada v. King*, 1982 CanLII 1177 (ABKB).
9	*Royal Bank of Canada v. Riverbanks Gourmet Café & Market Inc.*, 2002 ABQB 50.
10	*Spartan Delta Corp. v. Alberta (Energy and Minerals)*, 2025 ABCA 181.
11	*Terra Energy Corp (Re)*, 2023 ABKB 236.
SECONDARY SOURCES AND MATERIALS PREVIOUSLY FILED	
12	Alberta Energy Regulator: Directive 056, February 7, 2025.
	Affidavit of Erin Lunn, sworn on November 14, 2025.
	Affidavit of Wayne Taljit, sworn on December 12, 2025.

13	Alberta, Legislative Assembly, Alberta Hansard, Legislature 25, Session 3.
	Supplemental Affidavit of Wayne Taljit, sworn on January 8, 2026.
	Brief of the Applicant, Canadian Natural Resources Limited, dated January 5, 2025.
14	Report on Shared Liability, Law Reform Commission of BC, LRC 88, August 1986).

TAB 1

Attorney General of Alberta *Appellant*

v.

Joseph William Moloney *Respondent*

and

Attorney General of Ontario,
Attorney General of Quebec,
Attorney General of British Columbia,
Attorney General for Saskatchewan and
Superintendent of Bankruptcy *Interveners*

Procureur général de l'Alberta *Appelant*

c.

Joseph William Moloney *Intimé*

et

Procureur général de l'Ontario,
procureure générale du Québec,
procureur général de la Colombie-Britannique,
procureur général de la Saskatchewan et
Surintendant des faillites *Intervenants*

Indexed as: Alberta (Attorney General) *v.* Moloney

2015 SCC 51

File No.: 35820.

2015: January 15; 2015: November 13.

Present: McLachlin C.J. and Abella, Rothstein, Cromwell, Moldaver, Karakatsanis, Wagner, Gascon and Côté JJ.

Répertorié : Alberta (Procureur général) *c.* Moloney

2015 CSC 51

N° du greffe : 35820.

2015 : 15 janvier; 2015 : 13 novembre.

Présents : La juge en chef McLachlin et les juges Abella, Rothstein, Cromwell, Moldaver, Karakatsanis, Wagner, Gascon et Côté.

ON APPEAL FROM THE COURT OF APPEAL FOR ALBERTA

Constitutional law — Division of powers — Federal paramountcy — Bankruptcy and insolvency — Property and civil rights — Judgment debt owed to province constituted claim provable in debtor's bankruptcy — Debtor obtained absolute discharge in bankruptcy — Federal legislation governing bankruptcy providing for debtor's release from all claims provable in bankruptcy upon discharge — Whether provincial legislation providing for continuing suspension of debtor's driver's licence and motor vehicle permits until payment of judgment debt constitutionally inoperative by reason of doctrine of federal paramountcy — Test for determining whether operational conflict exists — Whether federal and provincial legislation can operate side by side without conflict — Whether operation of provincial law frustrates purpose of federal law — Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, s. 178(2) — Traffic Safety Act, R.S.A. 2000, c. T-6, s. 102.

EN APPEL DE LA COUR D'APPEL DE L'ALBERTA

Droit constitutionnel — Partage des compétences — Prépondérance fédérale — Faillite et insolvabilité — Propriété et droits civils — Dette constatée par jugement envers la province constituant une réclamation prouvable lors de la faillite du débiteur — Libération absolue de faillite accordée au débiteur — Loi fédérale sur la faillite prévoyant que le débiteur est libéré de toutes réclamations prouvables en matière de faillite à sa libération — La loi provinciale prévoyant le maintien de la suspension du permis de conduire du débiteur et de ses certificats d'immatriculation jusqu'à ce qu'il acquitte la dette constatée par jugement est-elle inopérante du point de vue constitutionnel en raison de la doctrine de la prépondérance fédérale? — Analyse permettant de décider s'il existe un conflit d'application — La loi fédérale et la loi provinciale peuvent-elles coexister sans conflit? — L'application de la loi provinciale entrave-t-elle la réalisation de l'objet de la loi fédérale? — Loi sur la faillite et l'insolvabilité, L.R.C. 1985, c. B-3, art. 178(2) — Traffic Safety Act, R.S.A. 2000, c. T-6, art. 102.

parties recognized the validity of the relevant provisions of the *BIA* and the *TSA*. Before this Court, they again conceded the validity of both laws. The only question is whether their concurrent operation results in a conflict. This requires analyzing the legislative schemes at issue at the outset so as to reach a proper understanding of the provisions that are allegedly in conflict.

(a) *The Bankruptcy and Insolvency Act*

[32] Parliament enacted the *BIA* pursuant to its jurisdiction over matters of bankruptcy and insolvency under s. 91(21) of the *Constitution Act, 1867*. The *BIA*, notably through the specific provisions discussed below, furthers two purposes: the equitable distribution of the bankrupt's assets among his or her creditors and the bankrupt's financial rehabilitation (*Husky Oil*, at para. 7).

[33] The first purpose of bankruptcy, the equitable distribution of assets, is achieved through a single proceeding model. Under this model, creditors of the bankrupt wishing to enforce a claim provable in bankruptcy must participate in one collective proceeding. This ensures that the assets of the bankrupt are distributed fairly amongst the creditors. As a general rule, all creditors rank equally and share rateably in the bankrupt's assets: s. 141 of the *BIA*; *Husky Oil*, at para. 9. In *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60, [2010] 3 S.C.R. 379, at para. 22, the majority of the Court, per Deschamps J., explained the underlying rationale for this model:

> The single proceeding model avoids the inefficiency and chaos that would attend insolvency if each creditor initiated proceedings to recover its debt. Grouping all possible actions against the debtor into a single proceeding controlled in a single forum facilitates negotiation with creditors because it places them all on an equal footing, rather than exposing them to the risk that a more aggressive creditor will realize its claims against the debtor's limited assets while the other creditors attempt a compromise.

Avoiding inefficiencies and chaos, and favouring an orderly collective process, maximizes global

l'une de l'autre. Dès le début des procédures, les parties ont reconnu la validité des dispositions pertinentes de la *LFI* et de la *TSA*. Elles ont de nouveau admis la validité de ces deux lois devant la Cour. La seule question en litige est de savoir si leur application concurrente crée un conflit. Pour bien comprendre les dispositions qui entreraient en conflit, il faut tout d'abord analyser les régimes législatifs en cause.

a) *La Loi sur la faillite et l'insolvabilité*

[32] Le Parlement a adopté la *LFI* en vertu de la compétence en matière de faillite et d'insolvabilité que lui confère le par. 91(21) de la *Loi constitutionnelle de 1867*. La *LFI*, notamment par le jeu des dispositions analysées ci-après, vise deux objectifs : le partage équitable des biens du failli entre ses créanciers et la réhabilitation financière du failli (*Husky Oil*, par. 7).

[33] Le modèle de la procédure unique permet de réaliser le premier objectif de la faillite, soit le partage équitable des biens du failli. Selon ce modèle, les créanciers du failli qui souhaitent faire valoir une réclamation prouvable en matière de faillite doivent participer à une seule procédure collective, ce qui permet de garantir le partage équitable des biens du failli entre ses créanciers. En règle générale, tous les créanciers sont sur un pied d'égalité, les biens du failli étant partagés au prorata entre eux : art. 141 de la *LFI*; *Husky Oil*, par. 9. Dans *Century Services Inc. c. Canada (Procureur général)*, 2010 CSC 60, [2010] 3 R.C.S. 379, par. 22, la juge Deschamps, au nom des juges majoritaires de la Cour, explique la raison d'être de ce modèle :

> Le modèle de la procédure unique vise à faire échec à l'inefficacité et au chaos qui résulteraient de l'insolvabilité si chaque créancier engageait sa propre procédure dans le but de recouvrer sa créance. La réunion — en une seule instance relevant d'un même tribunal — de toutes les actions possibles contre le débiteur a pour effet de faciliter la négociation avec les créanciers en les mettant tous sur le même pied. Cela évite le risque de voir un créancier plus combatif obtenir le paiement de ses créances sur l'actif limité du débiteur pendant que les autres créanciers tentent d'arriver à une transaction.

Faire échec à l'inefficacité et au chaos, et favoriser un processus collectif ordonné, permet de maximiser le

recovery for all creditors: *Husky Oil*, at para. 7; R. J. Wood, *Bankruptcy and Insolvency Law* (2009), at p. 3.

[34] For this model to be viable, creditors must not be allowed to enforce their provable claims individually, that is, outside the collective proceeding. Section 69.3 of the *BIA* thus provides for an automatic stay of proceedings, which is effective as of the first day of bankruptcy:

69.3 (1) Subject to subsections (1.1) and (2) and sections 69.4 and 69.5, on the bankruptcy of any debtor, no creditor has any remedy against the debtor or the debtor's property, or shall commence or continue any action, execution or other proceedings, for the recovery of a claim provable in bankruptcy.

(See *R. v. Fitzgibbon*, [1990] 1 S.C.R. 1005, at pp. 1015-16.)

[35] Yet there are exceptions to the principle of equitable distribution. Section 136 of the *BIA* provides that some creditors will be paid in priority. These creditors are referred to as "preferred creditors". There are also creditors that are paid only after all ordinary creditors have been satisfied: ss. 137(1), 139 and 140.1 of the *BIA*. Furthermore, the automatic stay of proceedings does not prevent secured creditors from realizing their security interest: s. 69.3(2) of the *BIA*; *Husky Oil*, at para. 9. A court may also grant leave permitting a creditor to begin separate proceedings and enforce a claim: s. 69.4 of the *BIA*. These exceptions reflect the policy choices made by Parliament in furthering this purpose of bankruptcy.

[36] The second purpose of the *BIA*, the financial rehabilitation of the debtor, is achieved through the discharge of the debtor's outstanding debts at the end of the bankruptcy: *Husky Oil*, at para. 7. Section 178(2) of the *BIA* provides:

(2) Subject to subsection (1), an order of discharge releases the bankrupt from all claims provable in bankruptcy.

recouvrement global pour tous les créanciers : *Husky Oil*, par. 7; R. J. Wood, *Bankruptcy and Insolvency Law* (2009), p. 3.

[34] Pour assurer la viabilité de ce modèle, les créanciers ne doivent pas être autorisés à faire valoir leurs réclamations prouvables individuellement, c'est-à-dire hors du cadre de la procédure collective. L'article 69.3 de la *LFI* prévoit donc la suspension automatique des procédures engagées contre le failli, laquelle prend effet le premier jour de la faillite :

69.3 (1) Sous réserve des paragraphes (1.1) et (2) et des articles 69.4 et 69.5, à compter de la faillite du débiteur, ses créanciers n'ont aucun recours contre lui ou contre ses biens et ils ne peuvent intenter ou continuer aucune action, mesure d'exécution ou autre procédure en vue du recouvrement de réclamations prouvables en matière de faillite.

(Voir *R. c. Fitzgibbon*, [1990] 1 R.C.S. 1005, p. 1015-1016.)

[35] Il existe toutefois des exceptions au principe du partage équitable. Suivant l'art. 136 de la *LFI*, certains créanciers, les « créanciers privilégiés », sont payés en priorité. Il y a aussi des créanciers qui ne sont payés qu'après désintéressement de tous les créanciers ordinaires : par. 137(1), art. 139 et 140.1 de la *LFI*. De plus, la suspension automatique des procédures n'empêche pas les créanciers garantis de réaliser leur garantie : par. 69.3(2) de la *LFI*; *Husky Oil*, par. 9. Un tribunal peut également autoriser un créancier à introduire une procédure distincte et à contraindre le failli à payer une réclamation : art. 69.4 de la *LFI*. Ces exceptions reflètent les choix de politique générale effectués par le législateur pour permettre la réalisation de cet objectif de la faillite.

[36] Le fait que le débiteur soit libéré de ses dettes à la fin de la faillite permet de réaliser le deuxième objectif de la *LFI*, la réhabilitation financière du débiteur : *Husky Oil*, par. 7. Le paragraphe 178(2) de la *LFI* est rédigé en ces termes :

(2) Une ordonnance de libération libère le failli de toutes autres réclamations prouvables en matière de faillite.

TAB 2

Century Services Inc. *Appellant*

v.

Attorney General of Canada on behalf of Her Majesty The Queen in Right of Canada *Respondent*

Indexed as: Century Services Inc. *v.* Canada (Attorney General)

2010 SCC 60

File No.: 33239.

2010: May 11; 2010: December 16.

Present: McLachlin C.J. and Binnie, LeBel, Deschamps, Fish, Abella, Charron, Rothstein and Cromwell JJ.

ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH COLUMBIA

Bankruptcy and Insolvency — Priorities — Crown applying on eve of bankruptcy of debtor company to have GST monies held in trust paid to Receiver General of Canada — Whether deemed trust in favour of Crown under Excise Tax Act prevails over provisions of Companies' Creditors Arrangement Act purporting to nullify deemed trusts in favour of Crown — Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, s. 18.3(1) — Excise Tax Act, R.S.C. 1985, c. E-15, s. 222(3).

Bankruptcy and insolvency — Procedure — Whether chambers judge had authority to make order partially lifting stay of proceedings to allow debtor company to make assignment in bankruptcy and to stay Crown's right to enforce GST deemed trust — Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, s. 11.

Trusts — Express trusts — GST collected but unremitted to Crown — Judge ordering that GST be held by Monitor in trust account — Whether segregation of Crown's GST claim in Monitor's account created an express trust in favour of Crown.

Century Services Inc. *Appelante*

c.

Procureur général du Canada au nom de Sa Majesté la Reine du chef du Canada *Intimé*

Répertorié : Century Services Inc. *c.* Canada (Procureur général)

2010 CSC 60

N° du greffe : 33239.

2010 : 11 mai; 2010 : 16 décembre.

Présents : La juge en chef McLachlin et les juges Binnie, LeBel, Deschamps, Fish, Abella, Charron, Rothstein et Cromwell.

EN APPEL DE LA COUR D'APPEL DE LA COLOMBIE-BRITANNIQUE

Faillite et insolvabilité — Priorités — Demande de la Couronne à la société débitrice, la veille de la faillite, sollicitant le paiement au receveur général du Canada de la somme détenue en fiducie au titre de la TPS — La fiducie réputée établie par la Loi sur la taxe d'accise en faveur de la Couronne l'emporte-t-elle sur les dispositions de la Loi sur les arrangements avec les créanciers des compagnies censées neutraliser ces fiducies? — Loi sur les arrangements avec les créanciers des compagnies, L.R.C. 1985, ch. C-36, art. 18.3(1) — Loi sur la taxe d'accise, L.R.C. 1985, ch. E-15, art. 222(3).

Faillite et insolvabilité — Procédure — Le juge en cabinet avait-il le pouvoir, d'une part, de lever partiellement la suspension des procédures pour permettre à la compagnie débitrice de faire cession de ses biens en faillite et, d'autre part, de suspendre les mesures prises par la Couronne pour bénéficier de la fiducie réputée se rapportant à la TPS? — Loi sur les arrangements avec les créanciers des compagnies, L.R.C. 1985, ch. C-36, art. 11.

Fiducies — Fiducies expresses — Somme perçue au titre de la TPS mais non versée à la Couronne — Ordonnance du juge exigeant que la TPS soit détenue par le contrôleur dans son compte en fiducie — Le fait que le montant de TPS réclamé par la Couronne soit détenu séparément dans le compte du contrôleur a-t-il créé une fiducie expresse en faveur de la Couronne?

flexible judicially supervised reorganization process presented in the face of increasingly complex reorganizations, when compared to the stricter rules-based scheme contained in the *BIA*. The "flexibility of the *CCAA* [was seen as] a great benefit, allowing for creative and effective decisions" (Industry Canada, Marketplace Framework Policy Branch, *Report on the Operation and Administration of the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act* (2002), at p. 41). Over the past three decades, resurrection of the *CCAA* has thus been the mainspring of a process through which, one author concludes, "the legal setting for Canadian insolvency restructuring has evolved from a rather blunt instrument to one of the most sophisticated systems in the developed world" (R. B. Jones, "The Evolution of Canadian Restructuring: Challenges for the Rule of Law", in J. P. Sarra, ed., *Annual Review of Insolvency Law 2005* (2006), 481, at p. 481).

ni des avantages qu'offrait, en présence de réorganisations de plus en plus complexes, un processus souple de réorganisation sous surveillance judiciaire par rapport au régime plus rigide de la *LFI*, fondé sur des règles préétablies. La « souplesse de la LACC [était considérée comme offrant] de grands avantages car elle permet de prendre des décisions créatives et efficaces » (Industrie Canada, Direction générale des politiques-cadres du marché, *Rapport sur la mise en application de la Loi sur la faillite et l'insolvabilité et de la Loi sur les arrangements avec les créanciers des compagnies* (2002), p. 50). Au cours des trois dernières décennies, la résurrection de la *LACC* a donc été le moteur d'un processus grâce auquel, selon un auteur, [TRADUCTION] « le régime juridique canadien de restructuration en cas d'insolvabilité — qui était au départ un instrument plutôt rudimentaire — a évolué pour devenir un des systèmes les plus sophistiqués du monde développé » (R. B. Jones, « The Evolution of Canadian Restructuring : Challenges for the Rule of Law », dans J. P. Sarra, dir., *Annual Review of Insolvency Law 2005* (2006), 481, p. 481).

[22] While insolvency proceedings may be governed by different statutory schemes, they share some commonalities. The most prominent of these is the single proceeding model. The nature and purpose of the single proceeding model are described by Professor Wood in *Bankruptcy and Insolvency Law*:

> They all provide a collective proceeding that supersedes the usual civil process available to creditors to enforce their claims. The creditors' remedies are collectivized in order to prevent the free-for-all that would otherwise prevail if creditors were permitted to exercise their remedies. In the absence of a collective process, each creditor is armed with the knowledge that if they do not strike hard and swift to seize the debtor's assets, they will be beat out by other creditors. [pp. 2-3]

The single proceeding model avoids the inefficiency and chaos that would attend insolvency if each creditor initiated proceedings to recover its debt. Grouping all possible actions against the debtor into a single proceeding controlled in a single forum facilitates negotiation with creditors because it places them all on an equal footing,

[22] Si les instances en matière d'insolvabilité peuvent être régies par des régimes législatifs différents, elles n'en présentent pas moins certains points communs, dont le plus frappant réside dans le modèle de la procédure unique. Le professeur Wood a décrit ainsi la nature et l'objectif de ce modèle dans *Bankruptcy and Insolvency Law* :

> [TRADUCTION] Elles prévoient toutes une procédure collective qui remplace la procédure civile habituelle dont peuvent se prévaloir les créanciers pour faire valoir leurs droits. Les recours des créanciers sont collectivisés afin d'éviter l'anarchie qui régnerait si ceux-ci pouvaient exercer leurs recours individuellement. En l'absence d'un processus collectif, chaque créancier sait que faute d'agir de façon rapide et déterminée pour saisir les biens du débiteur, il sera devancé par les autres créanciers. [p. 2-3]

Le modèle de la procédure unique vise à faire échec à l'inefficacité et au chaos qui résulteraient de l'insolvabilité si chaque créancier engageait sa propre procédure dans le but de recouvrer sa créance. La réunion — en une seule instance relevant d'un même tribunal — de toutes les actions possibles contre le débiteur a pour effet de faciliter la négociation avec

rather than exposing them to the risk that a more aggressive creditor will realize its claims against the debtor's limited assets while the other creditors attempt a compromise. With a view to achieving that purpose, both the *CCAA* and the *BIA* allow a court to order all actions against a debtor to be stayed while a compromise is sought.

les créanciers en les mettant tous sur le même pied. Cela évite le risque de voir un créancier plus combatif obtenir le paiement de ses créances sur l'actif limité du débiteur pendant que les autres créanciers tentent d'arriver à une transaction. La *LACC* et la *LFI* autorisent toutes deux pour cette raison le tribunal à ordonner la suspension de toutes les actions intentées contre le débiteur pendant qu'on cherche à conclure une transaction.

[23] Another point of convergence of the *CCAA* and the *BIA* relates to priorities. Because the *CCAA* is silent about what happens if reorganization fails, the *BIA* scheme of liquidation and distribution necessarily supplies the backdrop for what will happen if a *CCAA* reorganization is ultimately unsuccessful. In addition, one of the important features of legislative reform of both statutes since the enactment of the *BIA* in 1992 has been a cutback in Crown priorities (S.C. 1992, c. 27, s. 39; S.C. 1997, c. 12, ss. 73 and 125; S.C. 2000, c. 30, s. 148; S.C. 2005, c. 47, ss. 69 and 131; S.C. 2009, c. 33, s. 25; see also *Quebec (Revenue) v. Caisse populaire Desjardins de Montmagny*, 2009 SCC 49, [2009] 3 S.C.R. 286; *Deputy Minister of Revenue v. Rainville*, [1980] 1 S.C.R. 35; *Proposed Bankruptcy Act Amendments: Report of the Advisory Committee on Bankruptcy and Insolvency*).

[23] Un autre point de convergence entre la *LACC* et la *LFI* concerne les priorités. Comme la *LACC* ne précise pas ce qui arrive en cas d'échec de la réorganisation, la *LFI* fournit la norme de référence pour ce qui se produira dans une telle situation. De plus, l'une des caractéristiques importantes de la réforme dont ces deux lois ont fait l'objet depuis 1992 est la réduction des priorités de la Couronne (L.C. 1992, ch. 27, art. 39; L.C. 1997, ch. 12, art. 73 et 125; L.C. 2000, ch. 30, art. 148; L.C. 2005, ch. 47, art. 69 et 131; L.C. 2009, ch. 33, art. 25; voir aussi *Québec (Revenu) c. Caisse populaire Desjardins de Montmagny*, 2009 CSC 49, [2009] 3 R.C.S. 286; *Sous-ministre du Revenu c. Rainville*, [1980] 1 R.C.S. 35; *Propositions d'amendements à la Loi sur la faillite : Rapport du Comité consultatif en matière de faillite et d'insolvabilité*).

[24] With parallel *CCAA* and *BIA* restructuring schemes now an accepted feature of the insolvency law landscape, the contemporary thrust of legislative reform has been towards harmonizing aspects of insolvency law common to the two statutory schemes to the extent possible and encouraging reorganization over liquidation (see *An Act to establish the Wage Earner Protection Program Act, to amend the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act and to make consequential amendments to other Acts*, S.C. 2005, c. 47; *Gauntlet Energy Corp., Re*, 2003 ABQB 894, 30 Alta. L.R. (4th) 192, at para. 19).

[24] Comme les régimes de restructuration parallèles de la *LACC* et de la *LFI* constituent désormais une caractéristique reconnue dans le domaine du droit de l'insolvabilité, le travail de réforme législative contemporain a principalement visé à harmoniser, dans la mesure du possible, les aspects communs aux deux régimes et à privilégier la réorganisation plutôt que la liquidation (voir la *Loi édictant la Loi sur le Programme de protection des salariés et modifiant la Loi sur la faillite et l'insolvabilité, la Loi sur les arrangements avec les créanciers des compagnies et d'autres lois en conséquence*, L.C. 2005, ch. 47; *Gauntlet Energy Corp., Re*, 2003 ABQB 894, 30 Alta L.R. (4th) 192, par. 19).

[25] Mindful of the historical background of the *CCAA* and *BIA*, I now turn to the first question at issue.

[25] Ayant à l'esprit le contexte historique de la *LACC* et de la *LFI*, je vais maintenant aborder la première question en litige.

TAB 3

THE CANADIAN BAR REVIEW

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SUBORDINATE LEGISLATION*

ELMER A. DRIEDGER†
Ottawa

I. *Nature of Subordinate Legislation.*

A statute, or an Act of Parliament, may be defined as the written will of a sovereign legislative body, solemnly expressed according to the forms necessary to constitute it the law of the territory over which that legislative body has jurisdiction.[1] A statute is a law. We know, however, that there are other written laws in the form of statutes that were not enacted by a sovereign legislative authority. Thus, there are laws made by the executive, that is to say, by the Governor General in Council or by a minister; there are laws made by municipal authorities, and by other bodies, as, for example, the National Harbours Board, the National Capital Commission.

These laws that are not enacted by a sovereign legislature are nevertheless made under the authority of a statute. Unless authorized by statute, neither the executive nor any other authority has the power to make laws.[2] In the *Chemicals Reference*[3] Chief Justice Duff said that "every order in council, every regulation,

*Special lecture given to the law students of Queen's University, Kingston, on October 26, 1959.

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[1] Bouvier's Law Dictionary, 3rd Rev. 3129.

[2] *The Zamora*, [1916] 2 A.C. 77; *The Case of the Proclamations*, (1611), 12 Co. R. 74, 77 E.R. 1352.

[3] [1943] S.C.R. 1, at p. 13.

Food and Drugs Act[18] and it was regarded as having some significance there. That statute conferred authority to make regulations, but did not expressly confer authority to prescribe penalties for breach of a regulation. The statute itself prescribed a penalty only for breach of a provision of the Act. The provision that the regulations should have the "same force and effect as if embodied in this Act" was regarded as incorporating the regulations into the Act for the purpose of making the penalty section applicable to a breach of the regulations. On the other hand, in *Willingdale* v. *Norris*[19] it was held that a provision in an Act prescribing a penalty for breach of the Act extended also to a regulation. Lord Alverstone C.J. said that "If it be said that a regulation is not a provision of an Act, I am of opinion that *Rex* v. *Walker* is an authority against that proposition. I should certainly have been prepared to hold apart from authority that, where a statute enables an authority to make regulations, a regulation made under the Act becomes for the purpose of obedience or disobedience a provision of the Act."[20]

Whether regulations are or are not the same thing as a statute, it is clear that they are subordinate to the statute under which they are made, and if there is any conflict between them, the statute prevails.[21]

Parliament can, of course, by appropriate language, oust the jurisdiction of the courts to enquire into the validity of subordinate legislation. Thus, in *Ex Parte Ringer*[22] the court had under consideration a statute that authorized the making of an order for the compulsory acquisition of land. The statute provided that the order should have no force until it was confirmed by the Board of Agriculture and Fisheries "and an order when so confirmed shall be final and have effect as if enacted in this Act, and the confirmation by the Board shall be conclusive evidence that the requirements of this Act have been complied with, and that the order has been duly made and is within the powers of this Act." The court held that the order, when confirmed, was not subject to review by the courts. A provision of this kind is unusual, and I am not aware of any provision like this in the statutes of Canada.

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[18] R.S.C., 1952, c. 123, s. 3(2).
[19] [1909] 1 K.B. 57.
[20] *Ibid.*, at p. 64.
[21] *Belanger* v. *The King*, *supra*, footnote 13; *Institute of Patent Agents* v. *Lockwood*, *supra*, footnote 12.
[22] (1909), 25 T.L.R. 718.

TAB 4

Her Majesty The Queen in Right of the Province of Newfoundland and Labrador *Appellant*

v.

AbitibiBowater Inc., Abitibi-Consolidated Inc., Bowater Canadian Holdings Inc., Ad Hoc Committee of Bondholders, Ad Hoc Committee of Senior Secured Noteholders and U.S. Bank National Association (Indenture Trustee for the Senior Secured Noteholders) *Respondents*

and

Attorney General of Canada, Attorney General of Ontario, Attorney General of British Columbia, Attorney General of Alberta, Her Majesty The Queen in Right of British Columbia, Ernst & Young Inc., as Monitor, and Friends of the Earth Canada *Interveners*

Sa Majesté la Reine du chef de la province de Terre-Neuve-et-Labrador *Appelante*

c.

AbitibiBowater Inc., Abitibi-Consolidated Inc., Bowater Canadian Holdings Inc., comité ad hoc des créanciers obligataires, comité ad hoc des porteurs de billets garantis de premier rang et U.S. Bank National Association (fiduciaire désigné par l'acte constitutif pour les porteurs de billets garantis de premier rang) *Intimés*

et

Procureur général du Canada, procureur général de l'Ontario, procureur général de la Colombie-Britannique, procureur général de l'Alberta, Sa Majesté la Reine du chef de la Colombie-Britannique, Ernst & Young Inc., en sa qualité de contrôleur, et Les Ami(e)s de la Terre Canada *Intervenants*

INDEXED AS: NEWFOUNDLAND AND LABRADOR *v.* ABITIBIBOWATER INC.

2012 SCC 67

File No.: 33797.

2011: November 16; 2012: December 7.

Present: McLachlin C.J. and LeBel, Deschamps, Fish, Abella, Rothstein, Cromwell, Moldaver and Karakatsanis JJ.

ON APPEAL FROM THE COURT OF APPEAL FOR QUEBEC

Bankruptcy and Insolvency — Provable claims — Contingent claims — Corporation filing for insolvency protection — Province issuing environmental protection orders against corporation and seeking declaration that orders not "claims" under Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36 ("CCAA"), and not subject to claims procedure order — Whether environmental protection orders are monetary claims that

RÉPERTORIÉ : TERRE-NEUVE-ET-LABRADOR *c.* ABITIBIBOWATER INC.

2012 CSC 67

N° du greffe : 33797.

2011 : 16 novembre; 2012 : 7 décembre.

Présents : La juge en chef McLachlin et les juges LeBel, Deschamps, Fish, Abella, Rothstein, Cromwell, Moldaver et Karakatsanis.

EN APPEL DE LA COUR D'APPEL DU QUÉBEC

Faillite et insolvabilité — Réclamations prouvables — Réclamations éventuelles — Demande de protection contre l'insolvabilité par une société — Ordonnances environnementales émises par la province contre la société et demande, par la province, d'un jugement déclarant que les ordonnances ne constituent pas des « réclamations » aux termes de la Loi sur les arrangements avec les créanciers des compagnies, L.R.C. 1985,

protection. Except where otherwise indicated, the provisions I refer to are those that were in force when the stay was ordered.

[21] One of the central features of the *CCAA* scheme is the single proceeding model, which ensures that most claims against a debtor are entertained in a single forum. Under this model, the court can stay the enforcement of most claims against the debtor's assets in order to maintain the *status quo* during negotiations with the creditors. When such negotiations are successful, the creditors typically accept less than the full amounts of their claims. Claims have not necessarily accrued or been liquidated at the outset of the insolvency proceeding, and they sometimes have to be assessed in order to determine the monetary value that will be subject to compromise.

[22] Section 12 of the *CCAA* establishes the basic rules for ascertaining whether an order is a claim that may be subjected to the insolvency process:

12. (1) [Definition of "claim"] For the purposes of this Act, "claim" means any indebtedness, liability or obligation of any kind that, if unsecured, would be a debt provable in bankruptcy within the meaning of the *Bankruptcy and Insolvency Act*.

(2) [Determination of amount of claim] For the purposes of this Act, the amount represented by a claim of any secured or unsecured creditor shall be determined as follows:

(*a*) the amount of an unsecured claim shall be the amount

. . .

(iii) in the case of any other company, proof of which might be made under the *Bankruptcy and Insolvency Act*, but if the amount so provable is not admitted by the company, the amount shall be determined by the court on summary application by the company or by the creditor; . . .

de protection contre l'insolvabilité. À moins d'indication contraire de ma part, les dispositions que je cite sont celles qui étaient en vigueur lorsque la suspension des procédures a été ordonnée.

[21] Une des caractéristiques principales du régime créé par la *LACC* est de traiter la presque totalité des réclamations contre un débiteur suivant une procédure unique devant un même tribunal. En vertu de ce modèle, le tribunal peut ordonner la suspension de la plupart des mesures d'exécution engagées contre les actifs du débiteur de façon à maintenir le statu quo durant la négociation avec les créanciers. Lorsque la négociation réussit, les créanciers consentent habituellement à recevoir moins que le plein montant de leurs réclamations, lesquelles ne sont pas nécessairement exigibles ou liquidées dès le début des procédures d'insolvabilité. Ces réclamations doivent parfois être évaluées afin d'établir la valeur pécuniaire qui fera l'objet du compromis.

[22] L'article 12 de la *LACC* énonce les règles de base pour déterminer si une ordonnance constitue une réclamation pouvant être assujettie au processus applicable en matière d'insolvabilité :

12. (1) [Définition de « réclamation »] Pour l'application de la présente loi, « réclamation » s'entend de toute dette, tout engagement ou toute obligation d'un genre quelconque qui, s'il n'était pas garanti, constituerait une dette prouvable en matière de faillite au sens de la *Loi sur la faillite et l'insolvabilité*.

(2) [Détermination du montant de la réclamation] Pour l'application de la présente loi, le montant représenté par une réclamation d'un créancier garanti ou chirographaire est déterminé de la façon suivante :

a) le montant d'une réclamation non garantie est le montant :

. . .

(iii) dans le cas de toute autre compagnie, dont la preuve pourrait être établie en vertu de la *Loi sur la faillite et l'insolvabilité*, mais si le montant ainsi prouvable n'est pas admis par la compagnie, ce montant est déterminé par le tribunal sur demande sommaire par la compagnie ou le créancier;

TAB 5

Orphan Well Association and Alberta Energy Regulator *Appellants*

v.

Grant Thornton Limited and ATB Financial (formerly known as Alberta Treasury Branches) *Respondents*

and

Attorney General of Ontario, Attorney General of British Columbia, Attorney General of Saskatchewan, Attorney General of Alberta, Ecojustice Canada Society, Canadian Association of Petroleum Producers, Greenpeace Canada, Action Surface Rights Association, Canadian Association of Insolvency and Restructuring Professionals and Canadian Bankers' Association *Interveners*

Orphan Well Association et Alberta Energy Regulator *Appelants*

c.

Grant Thornton Limited et ATB Financial (auparavant connue sous le nom d'Alberta Treasury Branches) *Intimées*

et

Procureure générale de l'Ontario, procureur général de la Colombie-Britannique, procureur général de la Saskatchewan, procureur général de l'Alberta, Ecojustice Canada Society, Association canadienne des producteurs pétroliers, Greenpeace Canada, Action Surface Rights Association, Association canadienne des professionnels de l'insolvabilité et de la réorganisation et Association des banquiers canadiens *Intervenants*

INDEXED AS: ORPHAN WELL ASSOCIATION *v.* GRANT THORNTON LTD.

2019 SCC 5

File No.: 37627.

2018: February 15; 2019: January 31.

Present: Wagner C.J. and Abella, Moldaver, Karakatsanis, Gascon, Côté and Brown JJ.

RÉPERTORIÉ : ORPHAN WELL ASSOCIATION *c.* GRANT THORNTON LTD.

2019 CSC 5

N° du greffe : 37627.

2018 : 15 février; 2019 : 31 janvier.

Présents : Le juge en chef Wagner et les juges Abella, Moldaver, Karakatsanis, Gascon, Côté et Brown.

ON APPEAL FROM THE COURT OF APPEAL FOR ALBERTA

Constitutional law — Division of powers — Federal paramountcy — Bankruptcy and insolvency — Environmental law — Oil and gas — Oil and gas companies in Alberta required by provincial comprehensive licensing regime to assume end-of-life responsibilities with respect to oil wells, pipelines, and facilities — Provincial regulator administering licensing regime and enforcing end-of-life obligations pursuant to statutory powers — Trustee in bankruptcy of oil and gas company not taking responsibility for company's unproductive oil and gas assets and seeking to walk away from environmental liabilities

EN APPEL DE LA COUR D'APPEL DE L'ALBERTA

Droit constitutionnel — Partage des compétences — Prépondérance fédérale — Faillite et insolvabilité — Droit de l'environnement — Pétrole et gaz — Sociétés pétrolières et gazières de l'Alberta tenues par le régime provincial complet de délivrance de permis d'assumer des responsabilités de fin de vie à l'égard de puits de pétrole, de pipelines et d'installations — Organisme de réglementation provincial administrant le régime d'octroi de permis et assurant le respect des obligations de fin de vie en vertu des pouvoirs que lui confère la loi — Syndic de faillite d'une société pétrolière et gazière refusant d'assumer la

the provincial law becomes inoperative to the extent of the conflict (see *Husky Oil Operations Ltd. v. Minister of National Revenue*, [1995] 3 S.C.R. 453, at para. 3).

[65] Over time, two distinct forms of conflict have been recognized. The first is *operational conflict*, which arises where compliance with both a valid federal law and a valid provincial law is impossible. Operational conflict arises "where one enactment says 'yes' and the other says 'no', such that 'compliance with one is defiance of the other'" (*Saskatchewan (Attorney General) v. Lemare Lake Logging Ltd.*, 2015 SCC 53, [2015] 3 S.C.R. 419, at para. 18, quoting *Multiple Access Ltd. v. McCutcheon*, [1982] 2 S.C.R. 161, at p. 191). The second is *frustration of purpose*, which occurs where the operation of a valid provincial law is incompatible with a federal legislative purpose. The effect of a provincial law may frustrate the purpose of the federal law, even though it does "not entail a direct violation of the federal law's provisions" (*Canadian Western Bank v. Alberta*, 2007 SCC 22, [2007] 2 S.C.R. 3, at para. 73). The party relying on frustration of purpose "must first establish the purpose of the relevant federal statute, and then prove that the provincial legislation is incompatible with this purpose" (*Lemare*, at para. 26, quoting *Quebec (Attorney General) v. Canadian Owners and Pilots Association*, 2010 SCC 39, [2010] 2 S.C.R. 536, at para. 66).

[66] Under both branches of paramountcy, the burden of proof rests on the party alleging the conflict. This burden is not an easy one to satisfy, as the doctrine of paramountcy is to be applied with restraint. Conflict must be defined narrowly so that each level of government may act as freely as possible within its respective sphere of constitutional authority. "[H]armonious interpretations of federal and provincial legislation should be favoured over an interpretation that results in incompatibility . . . [i]n the absence of 'very clear' statutory language to the contrary" (*Lemare*, at paras. 21 and 27). "It is presumed that Parliament intends its laws to co-exist with provincial laws" (*Moloney*, at para. 27). As this Court found in *Lemare*, at paras. 22-23, the application of the

que le Parlement légifère en vertu de sa compétence exclusive en matière de faillite et d'insolvabilité. La loi provinciale devient alors inopérante dans la mesure du conflit (voir *Husky Oil Operations Ltd. c. Ministre du Revenu national*, [1995] 3 R.C.S. 453, par. 3).

[65] Au fil du temps, deux formes distinctes de conflit ont été reconnues. La première est le *conflit d'application*, qui survient lorsqu'il est impossible de se conformer en même temps à une loi fédérale valide et à une loi provinciale valide. Il y a conflit d'application lorsqu'« une loi dit "oui" et l'autre dit "non", de sorte que "l'observance de l'une entraîne l'inobservance de l'autre" » (*Saskatchewan (Procureur général) c. Lemare Lake Logging Ltd.*, 2015 CSC 53, [2015] 3 R.C.S. 419, par. 18, citant *Multiple Access Ltd. c. McCutcheon*, [1982] 2 R.C.S. 161, p. 191). La seconde est l'*entrave à la réalisation d'un objet fédéral*, qui se produit lorsque l'application d'une loi provinciale valide est incompatible avec l'objet d'une loi fédérale. L'effet d'une loi provinciale peut contrecarrer la réalisation de l'objet de la loi fédérale, « sans toutefois entraîner une violation directe de ses dispositions » (*Banque canadienne de l'Ouest c. Alberta*, 2007 CSC 22, [2007] 2 R.C.S. 3, par. 73). La partie qui invoque l'entrave à la réalisation d'un objet fédéral « doit d'abord établir l'objet de la loi fédérale pertinente et ensuite prouver que la loi provinciale est incompatible avec cet objet » (*Lemare*, par. 26, citant *Québec (Procureur général) c. Canadian Owners and Pilots Association*, 2010 CSC 39, [2010] 2 R.C.S. 536, par. 66).

[66] Aux deux volets de la prépondérance, la charge de la preuve incombe à la partie qui allègue l'existence du conflit. Il n'est pas facile de s'en acquitter, puisque la doctrine de la prépondérance doit être appliquée avec retenue. Le conflit doit être défini de façon étroite pour que chaque ordre de gouvernement puisse agir aussi librement que possible dans sa sphère de compétence constitutionnelle respective. « [L]es tribunaux doivent donner aux lois provinciale et fédérale une interprétation harmonieuse plutôt qu'une interprétation qui donne lieu à une incompatibilité [. . .] [e]n l'absence d'un texte législatif "clair" à cet effet » (*Lemare*, par. 21 et 27). « On présume que le Parlement a l'intention de faire coexister ses lois avec les lois provinciales » (*Moloney*, par. 27).

doctrine of paramountcy should also give due weight to the principle of co-operative federalism. This principle allows for interplay and overlap between federal and provincial legislation. While co-operative federalism does not impose limits on the otherwise valid exercise of legislative power, it does mean that courts should avoid an expansive interpretation of the purpose of federal legislation which will bring it into conflict with provincial legislation.

Comme le conclut notre Cour aux par. 22 et 23 de l'arrêt *Lemare*, l'application de la doctrine de la prépondérance devrait également tenir dûment compte du principe du fédéralisme coopératif. Ce principe permet l'interaction ainsi que le chevauchement entre les lois fédérales et provinciales. Bien que le fédéralisme coopératif n'impose pas de limites à l'exercice par ailleurs valide du pouvoir législatif, cela signifie que les tribunaux devraient éviter de donner à l'objet de la loi fédérale une interprétation large qui le mettrait en conflit avec la loi provinciale.

[67] The case law has established that the *BIA* as a whole is intended to further "two purposes: the equitable distribution of the bankrupt's assets among his or her creditors and the bankrupt's financial rehabilitation" (*Moloney*, at para. 32, citing *Husky Oil*, at para. 7). Here, the bankrupt is a corporation that will never emerge from bankruptcy. Accordingly, only the former purpose is relevant. As I will discuss below, the chambers judge also spoke of the purposes of s. 14.06 as distinct from the broader purposes of the *BIA*. This Court has discussed the purpose of specific provisions of the *BIA* in previous cases — see, for example, *Lemare*, at para. 45.

[67] La jurisprudence a établi que la *LFI* dans son ensemble est censée favoriser l'atteinte de « deux objectifs : le partage équitable des biens du failli entre ses créanciers et la réhabilitation financière du failli » (*Moloney*, par. 32, citant *Husky Oil*, par. 7). En l'espèce, la faillie est une société qui ne s'extirpera jamais de la faillite. Donc, seul le premier objectif est pertinent. Comme je vais l'expliquer ci-dessous, le juge siégeant en cabinet a également affirmé que l'objet de l'art. 14.06 se distinguait des objets plus larges de la *LFI*. Notre Cour a analysé l'objet de certaines dispositions de la *LFI* dans des décisions antérieures (voir, par exemple, *Lemare*, par. 45).

[68] GTL has proposed two conflicts between the Alberta legislation establishing the disputed powers of the Regulator during bankruptcy and the *BIA*, either of which, it says, would have provided a sufficient basis for the order granted by the chambers judge.

[68] GTL a relevé deux conflits entre la législation albertaine établissant les pouvoirs contestés de l'organisme de réglementation pendant la faillite et la *LFI*, et l'un ou l'autre aurait constitué, selon lui, un fondement suffisant pour l'ordonnance rendue par le juge siégeant en cabinet.

[69] The first conflict proposed by GTL results from the inclusion of trustees in the definition of "licensee" in the *OGCA* and the *Pipeline Act*. GTL says that s. 14.06(4) releases it from all environmental liability associated with the Renounced Assets after a valid "disclaimer" is made. But as a "licensee", it can be required by the Regulator to satisfy all of Redwater's statutory obligations and liabilities, which disregards the "disclaimer" of the Renounced Assets. GTL further notes the possibility that it may be held personally liable as a "licensee". In response, the Regulator says that s. 14.06(4) is concerned primarily with protecting trustees from personal liability in relation to environmental orders, and does not affect the ongoing responsibilities of the bankrupt

[69] Le premier conflit avancé par GTL découle de l'ajout des syndics à la définition de « titulaire de permis » qui figure dans l'*OGCA* et la *Pipeline Act*. GTL affirme que le par. 14.06(4) le soustrait à tout engagement environnemental associé aux biens faisant l'objet d'une « renonciation » valide. Toutefois, comme il est « titulaire de permis », l'organisme de réglementation peut l'obliger à s'acquitter de toutes les obligations et de tous les engagements légaux de Redwater, faisant ainsi abstraction de la « renonciation » aux biens en cause. GTL souligne en outre la possibilité qu'il soit tenu personnellement responsable en tant que « titulaire de permis ». L'organisme de réglementation réplique que le par. 14.06(4) a pour objectif premier de mettre les syndics à l'abri de toute

TAB 6

Peace River Hydro Partners, Acciona Infrastructure Canada Inc., Samsung C&T Canada Ltd., Acciona Infraestructuras S.A. and Samsung C&T Corporation *Appellants*

v.

Petrowest Corporation, Petrowest Civil Services LP by its general partner, Petrowest GP Ltd., carrying on business as RBEE Crushing, Petrowest Construction LP by its general partner Petrowest GP Ltd., carrying on business as Quigley Contracting, Petrowest Services Rentals LP by its general partner Petrowest GP Ltd., carrying on business as Nu-Northern Tractor Rentals, Petrowest GP Ltd., as general partner of Petrowest Civil Services LP, Petrowest Construction LP and Petrowest Services Rentals LP, Trans Carrier Ltd. And Ernst & Young Inc. in its capacity as court-appointed receiver and manager of Petrowest Corporation, Petrowest Civil Services LP, Petrowest Construction LP, Petrowest Services Rentals LP, Petrowest GP Ltd. and Trans Carrier Ltd. *Respondents*

and

Canadian Commercial Arbitration Center, Arbitration Place, Chartered Institute of Arbitrators (Canada) Inc., Insolvency Institute of Canada and Canadian Federation of Independent Business *Interveners*

Peace River Hydro Partners, Acciona Infrastructure Canada Inc., Samsung C&T Canada Ltd., Acciona Infraestructuras S.A. et Samsung C&T Corporation *Appelantes*

c.

Petrowest Corporation, Petrowest Civil Services LP représentée par sa commanditée, Petrowest GP Ltd., faisant affaire sous le nom de RBEE Crushing, Petrowest Construction LP représentée par sa commanditée Petrowest GP Ltd., faisant affaire sous le nom de Quigley Contracting, Petrowest Services Rentals LP représentée par sa commanditée Petrowest GP Ltd., faisant affaire sous le nom de Nu-Northern Tractor Rentals, Petrowest GP Ltd., en sa qualité de commanditée de Petrowest Civil Services LP, Petrowest Construction LP et Petrowest Services Rentals LP, Trans Carrier Ltd. et Ernst & Young Inc. en sa qualité de séquestre et d'administratrice nommée par le tribunal de Petrowest Corporation, Petrowest Civil Services LP, Petrowest Construction LP, Petrowest Services Rentals LP, Petrowest GP Ltd. et Trans Carrier Ltd. *Intimées*

et

Centre canadien d'arbitrage commercial, Arbitration Place, Chartered Institute of Arbitrators (Canada) Inc., Insolvency Institute of Canada et Fédération canadienne de l'entreprise indépendante *Intervenants*

legislation therefore offers stakeholders a wide range of judicial procedures to resolve problems presented by an insolvency (¶¶1.1-1.12).

[53] This procedural flexibility has allowed Canadian courts to become instrumental in (a) providing a forum for the orderly resolution of the competing rights and objectives of individual stakeholders of insolvent business enterprises, and (b) creating mechanisms for the preservation of the value of the insolvent business or its assets for the benefit of all stakeholders (*Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60, [2010] 3 S.C.R. 379, at paras. 2 and 22; McElcheran, at ¶¶1.1-1.14). I elaborate on these two points below.

(a) *Single Proceeding Model*

[54] The central role of courts in ensuring the equitable and orderly resolution of insolvency disputes is reflected in the "single proceeding model".

[55] This model favours the enforcement of stakeholder rights through a centralized judicial process. The legislative policy in favour of "single control" is reflected in Canadian bankruptcy, insolvency, and winding-up legislation (*Century Services*, at paras. 22-23). The single proceeding model is intended to mitigate the inefficiency and chaos that would result if each stakeholder in an insolvency initiated a separate claim to enforce its rights. In other words, the single proceeding model protects the clear "public interest in the expeditious, efficient and economical clean-up of the aftermath of a financial collapse" (*Sam Lévy & Associés Inc. v. Azco Mining Inc.*, 2001 SCC 92, [2001] 3 S.C.R. 978, at para. 27, citing *Stewart v. LePage* (1916), 53 S.C.R. 337). This Court has held that s. 183(1) of the *BIA* confers a "broad scope of authority" on superior courts to deal with most bankruptcy disputes, as "[a]nything less would unnecessarily complicate and undermine the economical and expeditious winding up of the bankrupt's affairs" (*Sam Lévy*, at para. 38).

même [TRADUCTION] « menacer l'existence de communautés entières » (¶1.1). La législation canadienne offre donc aux parties prenantes un vaste éventail de procédures judiciaires pour régler les problèmes qui interviennent en raison de l'insolvabilité (¶1.1-1.12).

[53] Cette souplesse procédurale a permis aux tribunaux canadiens de jouer un rôle important a) en offrant une instance où régler de manière ordonnée les questions relatives aux droits et objectifs concurrents de chacune des parties prenantes d'entreprises commerciales insolvables, et b) en créant des mécanismes permettant de préserver la valeur de l'entreprise insolvable ou de ses actifs au profit de toutes les parties prenantes (*Century Services Inc. c. Canada (Procureur général)*, 2010 CSC 60, [2010] 3 R.C.S. 379, par. 2 et 22; McElcheran, ¶1.1-1.14). J'examine ces deux points ci-après.

a) *Modèle de la procédure unique*

[54] Le rôle central que jouent les tribunaux dans le règlement équitable et ordonné des différends en matière d'insolvabilité se reflète dans le « modèle de la procédure unique ».

[55] Ce modèle favorise la protection des droits des parties prenantes dans le cadre d'un processus judiciaire centralisé. La politique législative favorable au « contrôle unique » se reflète dans la législation canadienne en matière de faillite, d'insolvabilité et de liquidation (*Century Services*, par. 22-23). Le modèle de la procédure unique vise à atténuer l'inefficacité et le chaos qu'il y aurait si chaque partie prenante dans un cas d'insolvabilité présentait une réclamation distincte pour faire valoir ses droits. Autrement dit, ce modèle protège l'« intérêt public [manifeste] à la gestion expéditive, efficace et économique des retombées d'un effondrement financier » (*Sam Lévy & Associés Inc. c. Azco Mining Inc.*, 2001 CSC 92, [2001] 3 R.C.S. 978, par. 27, citant *Stewart c. LePage* (1916), 53 R.C.S. 337). Notre Cour a conclu que le par. 183(1) de la *LFI* confère une « vaste compétence » aux cours supérieures pour trancher la plupart des litiges en matière de faillite, car toute compétence moindre « compliquerait et entraverait inutilement la liquidation économique et expéditive de l'actif du failli » (*Sam Lévy*, par. 38).

TAB 7

SUPREME COURT OF CANADA

CITATION: Quebec (Commission des droits de la personne et des droits de la jeunesse) *v.* Directrice de la protection de la jeunesse du CISSS A, 2024 SCC 43

APPEAL HEARD: March 19, 2024
JUDGMENT RENDERED: December 20, 2024
DOCKET: 40602

BETWEEN:

Commission des droits de la personne et des droits de la jeunesse
Appellant

and

Directrice de la protection de la jeunesse du CISSS A
Respondent

- and -

Attorney General of Quebec, A, B, X,
Canadian Civil Liberties Association and
British Columbia Civil Liberties Association
Interveners

OFFICIAL ENGLISH TRANSLATION

CORAM: Wagner C.J. and Karakatsanis, Côté, Rowe, Martin, Kasirer, Jamal, O'Bonsawin and Moreau JJ.

REASONS FOR JUDGMENT: (paras. 1 to 122)
Wagner C.J. (Karakatsanis, Côté, Rowe, Martin, Kasirer, Jamal, O'Bonsawin and Moreau JJ. concurring)

(Re), [1998] 1 S.C.R. 27, at para. 21; *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42, [2002] 2 S.C.R. 559, at para. 26; *La Presse inc. v. Quebec*, 2023 SCC 22, at para. 22).

[24] In this case, it is important to highlight a few principles that guide the interpretation of s. 91 para. 4 of the *YPA*. First, the *YPA* must be given a large and liberal interpretation that will ensure the attainment of its object and the carrying out of its provisions according to their true intent, meaning and spirit (see *Interpretation Act*, CQLR, c. I-16, s. 41; *Protection de la jeunesse – 123979*, at para. 21). However, just as the text must be considered in light of the context and object, the object of a statute and that of a provision must be considered with close attention always being paid to the text of the statute, which remains the anchor of the interpretive exercise. The text specifies, among other things, the means chosen by the legislature to achieve its purposes. These means "may disclose qualifications to primary purposes, and this is why the text remains the focus of interpretation" (M. Mancini, "The Purpose Error in the Modern Approach to Statutory Interpretation" (2022), 59 *Alta. L. Rev.* 919, at p. 927; see also pp. 930-31). In other words, they may "tell an interpreter just how far a legislature wanted to go in achieving some more abstract goal" (p. 927). As this Court recently noted, an interpreter must "interpret the 'text through which the legislature seeks to achieve [its] objective', because 'the goal of the interpretative exercise is to find harmony between the words of the statute and the intended objective . . .'" (*R. v. Breault*, 2023 SCC 9, at para. 26, quoting *MediaQMI inc. v. Kamel*, 2021 SCC 23,

[2021] 1 S.C.R. 899, at para. 39; see also *Quebec (Attorney General) v. 9147-0732 Québec inc.*, 2020 SCC 32, [2020] 3 S.C.R. 426, at para. 10).

[25] Second, every provision of the *YPA* must be interpreted in accordance with the *Charter of human rights and freedoms*, CQLR, c. C-12 ("*Quebec Charter*"), which is a source of fundamental law. It is especially important to bear in mind s. 39 of the *Quebec Charter*, which enshrines the right of every child "to the protection, security and attention that his parents or the persons acting in their stead are capable of providing". While this Court has already stated in *obiter*, in a case that concerned neither the *YPA* nor the normative scope of s. 39, that this provision "do[es] not directly implicate the state at all" (*Gosselin v. Quebec (Attorney General)*, 2002 SCC 84, [2002] 4 S.C.R. 429, at para. 89), it is clear that this section applies when the state, through a director of youth protection, exercises attributes of parental authority (see, e.g., *YPA*, s. 91 para. 1*(n)*; *Civil Code of Québec*, arts. 186 and 199). There is also no doubt that this section is relevant in interpreting the *YPA*'s provisions, including provisions like s. 91 para. 4 that may affect the state's rights and obligations. Indeed, since 2022, the legislature has expressly referred to s. 39 of the *Quebec Charter* in the preamble to the *YPA*, which only confirms the interpretive value of this provision in explaining the object and purport of any provision of the *YPA* (see *Interpretation Act*, s. 40 para. 1; *Quebec Charter*, s. 53; *Quebec (Commission des normes, de l'équité, de la santé et de la sécurité du travail) v. Caron*, 2018 SCC 3, [2018] 1 S.C.R. 35, at paras. 32-33, quoting *Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Communauté urbaine de Montréal*, 2004 SCC 30, [2004] 1 S.C.R. 789, at para. 20).

TAB 8

Alberta Court of Queen's Bench
Royal Bank of Canada v. King
Date: 1982-07-23

J. T. Henderson, for plaintiff.

J. D. Oluk, for defendants.

(Edmonton No. 8003-19447)

23rd July 1982.

[1] MILLER J.:— The issue in this case is whether personal guarantees signed by the defendants are cumulative in nature or whether they relate only to a specific line of credit advanced by the bank at the time the guarantees were executed. A collateral issue is whether parol evidence can be introduced to contradict or limit the terms of the written guarantee agreement.

[2] In or about September 1977 the defendants caused to be incorporated a limited company under the name of Lustre Industries Ltd. (hereinafter called "Lustre") for the purposes of carrying on a business of manufacturing and marketing steel storage buildings. The defendants King and Ross were the only shareholders and officers of Lustre. They each contributed a small amount of capital to get Lustre started in business. Prior to starting this venture, the defendants were working as real estate agents.

[3] Also in September 1977 the defendants approached the Royal Bank of Canada (hereinafter called "the bank") through their branch office located at 11733 - 95 Street, Edmonton, Alberta, for the initial purpose of opening up a bank account in the name of Lustre. They dealt at all times material with the bank's manager, a Mr. Gramlich. For the first few months of operation Lustre was able to function on the capital injected by the defendants. However, in December 1977 and January 1978 the defendants decided that Lustre needed some additional operating funds and the defendant Ross approached Gramlich to see if the bank would extend a line of credit to Lustre. After reviewing the situation that existed at that time, Gramlich advised the defendants that the bank would be willing to set up a revolving line of credit for Lustre of up to $5,000, but only on condition that the defendants King and Ross personally guarantee the repayment of this sum by Lustre to the bank. Gramlich made it abundantly clear to King and Ross that the credit of $5,000 was the maximum amount which the bank was prepared to loan Lustre at that point in time and that no additional loans or overdraft privileges above the sum of $5,000 would be extended without further negotiations.

[13] The bank, under the personal guarantees given, demanded payment of the sum of $5,000 from each defendant on 25th June 1980.

[14] In summary, the bank alleges that up to the date of trial on 21st January 1982 there was owing under the original revolving line of credit loan a principal balance of $3,500, plus accrued interest calculated at prime plus 3 per cent, totalling $2,061.90. In addition, the balance outstanding on the Wald cheque transaction owing by Lustre as of 12th March 1980, after all adjustments and recoveries were made and credited, was $3,557.28. Before allowing any interest on this latter sum, the total of these two items amounts to $9,119.18.

[15] Mr. Henderson, acting for the bank, takes the position that each guarantee agreement imposes a separate and independent obligation of each defendant up to a maximum of $5,000, or a total between the two defendants of $10,000. He argues that the document itself specifically refers in para. 1, supra, to joint and several guarantee(s) and that it must be construed to mean several promises if there are other guarantees in existence covering the same primary debtor. In other words, he urges that each $5,000 guarantee, in this case, stands on its own and gives the bank recourse against both defendants up to the total sum of $10,000.

[16] Mr. Oluk, on behalf of the defendants, takes the position that the two guarantees were only given by the defendants as collateral security to the Lustre promissory note for $5,000, as this was the only credit which the bank was prepared to advance to Lustre at the time the guarantees were given and consequently, the maximum total exposure between both defendants was $5,000. Additionally, he argues that the $5,000 personal guarantees were only to be used to cover the indebtedness owing under the terms of the promissory note in the amount of $5,000 and no other indebtedness of Lustre. If this view is correct, he argues that according to the bank records this loan secured by the promissory note was, at one point, paid down to $1,500, which is the amount the defendants admit owing to the bank, plus interest on this principal balance.

[17] In order to determine the root question at issue in this case, I must decide the exact nature of the two guarantees which the defendants signed in this case.

[18] Halsbury's Laws of England, 4th ed., vol. 9, p. 423, clearly and succinctly describes the nature of multiple promises as follows:

> 616. General. Any number of persons may join in making or accepting a promise; and a promise made by several persons may be joint, several, or joint and several.
>
> (1) *Joint promises.* Joint liability arises where two or more persons jointly promise to do the same thing; for instance, B and C jointly promise to pay £100 to A. In the case of a joint promise, there is only one obligation, namely that each of B and C is liable for the performance of the whole promise but payment of £100 by one discharges the other. Joint liability is subject to a number of strict and technical rules of law which are discussed below.
>
> (2) *Several promises.* Several liability arises where two or more persons make separate promises to another; for instance B and C each promise to pay £100 to A. In this case, the several promises by B and C are cumulative, thus A may recover £200, and payment of £100 by one of them does not discharge the other. There are therefore two separate contracts, one between A and B, and the other between A and C, and there is no privity between B and C.
>
> (3) *Joint and several promises.* Joint and several liability arises where two or more persons join in making a promise to the same person, and at the same time each of them individually makes the same promise to that same promisee; for instance B and C jointly promise to pay £100 to A, but both B and C also separately promise A that £100 will be paid to him by either B or C. Joint and several liability is similar to joint liability in that the co-promisors are not cumulatively liable, so that payment of £100 by B to A discharges C; but it is free of most of the technical rules governing joint liability.

[19] Following these guidelines, it seems clear that in order for the bank to succeed in its claim of imposing a maximum liability of $5,000 upon each of two defendants, it must be shown that the guarantees were “several promises” and, therefore, cumulative in nature.

[20] As the parties reduced their arrangement to writing, one must first look carefully at the written agreement as set out in the guarantee forms.

[21] Paragraph 9 of the guarantee provides as follows:

> 9. This Guarantee is *in addition to* and not in substitution for any other Guarantee by whomsoever given, at any time held by the Bank, and any present or future obligation to the Bank incurred or arising otherwise than under a Guarantee, of the undersigned or any of them of of [sic] any other obligant, whether bound with or apart from the customer; excepting any Guarantee surrendered for cancellation on delivery of this instrument. (The italics are mine.)

[22] The guarantee agreement itself is replete with references to a joint and several guarantee with others guaranteeing the debt of Lustre to the bank. It seems very clear from the wording that the bank intended to have the right to proceed against any or all guarantors up to the sum mentioned in the guarantee itself, in this case $5,000. It must also be noted that the opening paragraph of the guarantee specifically uses the phrase “present or future” when referring to debts of Lustre which are being guaranteed.

TAB 9

Royal Bank of Canada v. Riverbanks Gourmet Café & Market Inc., 2002 ABQB 0050

Date: 20020116
Action No. 0003 11540

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF EDMONTON

BETWEEN:

ROYAL BANK OF CANADA

Plaintiff

- and -

RIVERBANKS GOURMET CAFÉ & MARKET INC., AND SHERRY FLEMING

Defendants

REASONS FOR JUDGMENT
of the
HONOURABLE MR. JUSTICE DONALD LEE

APPEARANCES:

Grant W.D. Cameron
Drummond, Phillips & Sevalrud
for the Plaintiff

Timothy A. Stonhouse
Stonhouse & Downie
for the Defendant

[16] The Defendant Sherry Fleming acknowledges executing the Business Banking Loan Agreement in her personal capacity. However, she denies the execution on behalf of the corporate Defendant, Riverbanks. On this basis, the Defendant Sherry Fleming suggests that the agreement is not enforceable against her in her personal capacity.

[17] The Defendant suggests that the execution on behalf of the corporation is not valid given that it is not her signature. Further, or in the alternative, the Defendant suggests that the execution on behalf of the corporation is not valid given that she was not a Director or Officer of the same, and had no capacity or authorization to execute documents on its behalf.

[18] I conclude that these arguments can not now be advanced as against the Plaintiff.

[19] The loan has been advanced and the corporate Defendant received the benefit of it. The Appellant in her capacity as director and officer of the restaurant's landlord Pelland Corporation also indirectly benefited from the loan funds.

[20] The loan then went into default. The Plaintiff sued the corporate Defendant by way of Statement of Claim on June 16, 2000. The corporation did not deny the execution of the Business Banking Loan Agreement. The corporation did not suggest the signature was forged, or that the signature was unauthorized.

[21] Even if there was a forgery or unauthorized signature, this is the corporation's defence, not the Defendant's. A Judgment was entered against the corporation on this basis on September 12, 2000. The Judgment has not been appealed or set aside.

[22] Even if the Court is prepared to assess the liability of the Defendant Sherry Fleming in light of the argument that the Business Banking Loan Agreement was not properly executed by the corporation Riverbanks, a joint and several obligant is still fully liable even if a document is not enforceable against another joint and several obligant.

[23] The British Columbia Court of Appeal addressed this issue in ***Bank of Montreal* v. *Koszil***, [1985] B.C.J. No. 2097. This British Columbia case dealt with the kiting of cheques. One a significant debt was incurred, the Bank required two debtors to execute a Promissory Note and certain mortgage security. The agreements were executed on a joint and several basis. The agreements were not enforceable against one of the debtors for unrelated reasons. The issue then arose as to whether or not the Bank could pursue the remaining joint and several obligant in this context.

[24] The Court stated as follows at paragraph 29:

> To release one joint obligor is to release all joint obligors, but, as in the case of the joint and several promissory note, the release of one of the joint and several mortgagors does not release the other.

TAB 10

In the Court of Appeal of Alberta

Citation: Spartan Delta Corp v Alberta (Energy and Minerals), 2025 ABCA 181

Date: 20250522
Docket: 2501-0104AC
Registry: Calgary

Between:

Spartan Delta Corp. and Canadian Natural Resources Limited

Respondents

-and-

His Majesty the King in right of Alberta as Represented by the Minister of Energy and Minerals

Applicant

Reasons for Decision of
The Honourable Justice Kevin Feth

Application for Leave to Appeal

Reasons for Decision of
The Honourable Justice Kevin Feth

Introduction

[1] His Majesty the King in Right of Alberta ("Alberta Energy") applies for directions clarifying whether leave to appeal is required, and if so, for permission to appeal a chambers decision that found Alberta Energy is precluded from collecting certain royalty arrears associated with Bellatrix Exploration Ltd (Bellatrix).

Background

[2] The chambers application in the court below was brought by Spartan Delta Corporation (Spartan), which purchased Bellatrix's interest in Crown mineral leases pursuant to insolvency proceedings under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 [CCAA], and an Approval and Vesting order dated May 8, 2020 ("Vesting Order"). The Crown leases were jointly shared by Bellatrix and other co-lessees, including Canadian Natural Resources Limited (CNRL), as provided for under the *Mines and Minerals Act*, RSA 2000, c M-17 [MMA], and allowed Bellatrix to extract oil and gas from Crown land, subject to royalties owed to the Province.

[3] The Purchase and Sale Agreement ("Agreement") between Bellatrix and Spartan provided that Spartan would assume all liabilities related to the Bellatrix Crown leases from the closing date onwards (post-filing), while Bellatrix retained those liabilities prior to the Agreement including payment of Crown lease royalties (pre-filing). The CCAA Monitor certified that the purchase and sale transaction closed on June 1, 2020. Pursuant to the transaction, the Monitor retained an $8.5 million holdback to cover any post-filing liability claims against Beatrix up to the closing date, including any royalty arrears owed under the Crown leases.

[4] Under the MMA and its regulations, a lessee can provide data in relation to a royalty period up to three years after the end of the period, and Alberta Energy has a further 2.5 years to review that data for recalculations. On June 11, 2020, Alberta Energy sent a letter citing Bellatrix in default for royalties owed to the Crown for a period prior to closing. In October 2021, Alberta Energy determined that Spartan was not liable for Bellatrix's royalty arrears, and that it would not pursue payment or take any collection action against Spartan for those arrears. Shortly thereafter, it further advised the Monitor that Bellatrix's royalty deposit of $710,392.13 was sufficient to cover the debt owed by Bellatrix.

[5] The holdback monies were ultimately released and a CCAA termination order issued on July 7, 2022. The Monitor terminated the CCAA proceedings on September 21, 2022. Pursuant to

the Vesting Order however, Spartan retained the right to seek further directions from the Court of King's Bench.

[6] In November 2024, Alberta Energy issued notices to Spartan and several of Spartan's working interest partners (co-lessees) in the Crown mineral leases, including CNRL, seeking payment of alleged Bellatrix royalty arrears. CNRL was alleged to owe $255,848.88. Spartan brought an application in the Court of King's Bench pursuant to the Vesting Order, seeking relief including that Alberta Energy be precluded from collecting any payments in relation to the Bellatrix royalty arrears, and return to third party co-lessees any offset credits or payments in that regard.

[7] Alberta Energy responded that while it was not pursuing payment against Bellatrix or Spartan, it had the right to pursue third parties for arrears under the leases because the interests of the co-lessees were not conveyed under the Agreement to Spartan, and the Vesting Order did not release the third parties from joint liability under the MMA.

[8] The chambers judge found that Alberta Energy's claims related to the Bellatrix royalty arrears were unenforceable for three primary reasons: "Firstly, the claims are barred by the clear wording of the vesting order. Secondly, the claims undermine the integrity and finality of the Bellatrix CCAA process. And thirdly, the claims are not supported by the provisions of the *Mines and Minerals Act*."

[9] In particular, the chambers judge found that paragraphs 4 and 11 of the Vesting Order applied to bar Alberta Energy's claim to pre-filing royalties. The chambers judge further determined that Alberta Energy was on the CCAA notice list, knew about the $8.5 million holdback for post-filing claims including royalties and in October 2021, after being approached by the Monitor, Alberta Energy confirmed that the Bellatrix deposit was "sufficient to offset the debt owed" and the Monitor may proceed "with the closing of the estate."

[10] As to his second finding regarding the integrity and finality of the CCAA process, the chambers judge relied on ***Peace River Hydro Partners v Petrowest Corp***, 2022 SCC 41, 475 DLR (4th) 1, and the Supreme Court of Canada's reiteration of the importance of a "single procedure model" centralizing all claims related to debtor's insolvency before a single court. Here the Monitor supervised the process for all of Bellatrix's liabilities, "including pre-filing royalty arrears" and "a post-filing liability process involving a holdback." The chambers judge concluded:

> ... Alberta Energy should have raised the issue of pre-filing royalty arrears during the [CCAA] process. It appears it elected not to do so. Third parties, like CNRL, relied on the processes established in the CCAA proceedings to assess the respective risks and rights ... the collection actions taken by Alberta Energy

> undermined the integrity of the Bellatrix CCAA process and also offend fundamental principles of fairness.

[11] Thirdly, the chambers judge found that while s 20(2.1) of the MMA provides that registered participants on a lease are jointly responsible for obligations and liabilities under the lease, "no such liabilities and obligations currently exist with respect to the Bellatrix royalty arrears. They were expunged by the vesting order", and particularly paragraph 11 which bars any further claims on the purchased assets. He also accepted the submissions of Spartan and CNRL that the royalty arrears had not existed on the filing date but were at most a "contingent liability" which only fully materialized after an audit was conducted post-filing; thus, the Vesting Order operated to prevent the Bellatrix royalty arrears from "crystallizing".

[12] The chambers judge found one additional reason barring Alberta Energy from pursuing the royalty arrears. He determined that Alberta Energy's "active participation" in the CCAA proceedings, including approval of the transfer of Bellatrix's mineral lease agreements and its written release in "October 2021 prior to the release of the holdback, constitute[d] an estoppel or waiver by acquiescence of any claims for royalties".

[13] Spartan's application was granted, and Alberta Energy was precluded from collecting any payments related to the Bellatrix royalty arrears and was ordered to immediately return any credits.

Proposed issues for appeal

[14] Alberta Energy has identified three issues for appeal in this application:

a) The effect of an insolvency vesting order with respect to obligations of solvent co-lessees who are jointly and severally liable under the MMA;

b) The effect of an alleged estoppel by representation or promise to the debtor and/or Monitor with respect to separate claims against solvent third parties; and

c) Interpretation of the MMA and its interaction with insolvency processes.

Is leave to appeal required?

[15] Pursuant to s 13 of the CCAA, leave is required to appeal an order or decision made under that statute:

Leave to appeal

> 13. Except in Yukon, any person dissatisfied with an order or a decision made under this Act may appeal from the order or decision on obtaining leave of the judge appealed from or of the court or a judge of the court to which the appeal lies and on such terms as to security and in other respects as the judge or court directs.

[16] As set out in ***Hurricane Hydrocarbons Ltd v Komarnicki***, 2007 ABCA 361 at paras 14- 15, 425 AR 182, the requirement of leave is intended to further the objectives and purpose of the CCAA, which is to enable insolvent companies to carry on business or otherwise deal with their assets in a planned manner considered by their creditors and by the court, in order to resolve matters and bring finality. Requiring leave to appeal "similarly reinforces the finality of orders made under a CCAA proceeding and prevents continuing litigation where there are no serious or arguable grounds of significance to the parties." As such, the "scope of CCAA proceedings has been interpreted expansively ... because the objective is to include proceedings that may work against the interests of creditors and render impossible the achievement of effective arrangements." See also ***Sandhu v MEG Place LP Investment Corporation***, 2012 ABCA 91 at paras 14-17; ***Aurora v Safeguard Real Estate Investment Fund LP***, 2012 ABCA 58 at paras 2-7; ***Luscar Ltd v Smoky River Coal Ltd***, 1999 ABCA 62 at para 20, 237 AR 83.

[17] Alberta Energy argues that leave is not required because the chambers judge's decision was not made in the context of supervising a restructuring or liquidation under the CCAA, citing ***Essar Steel Algoma Inc (Re)***, 2016 ONCA 138 [***Essar***]. More specifically, the chambers judge was not exercising his discretion under the CCAA because the insolvency process had long-since finished, and the chambers judge was merely interpreting the Agreement, the Vesting Order and the MMA.

[18] A s 13 analysis is "purpose-focused": ***Essar*** at para 33. When considering whether leave to appeal an order or decision is required, this Court must "ascertain whether the order was made in a CCAA proceeding in which the judge was exercising his or her discretion in furtherance of the purposes of the CCAA ... If the order resulted from such an exercise of judicial decision-making, then it is an order 'made under' the CCAA for the purposes of s. 13". This necessarily includes whether the issue before the judge raised questions about the "finality" of a CCAA order.

[19] ***Essar*** listed various indicia in considering whether a decision was "made under" the CCAA. The list is non-exhaustive and includes whether:

a) the decision was necessarily incidental to a proceeding under the CCAA or any order made thereunder;

b) the decision required the interpretation of a previous order made under the CCAA proceeding;

c) the decision "determined rights arising under an agreement that arose out of and that was related entirely to the CCAA proceeding": ***Re Hemosol Corp***, 2007 ONCA 124 at para 3;

d) CCAA considerations informed the decision or exercise of discretion by the chambers judge;

e) the claim is being prosecuted by virtue or as a result of the CCAA;

f) the notice of motion and reasons of the chambers judge explicitly state that the matter is a CCAA proceeding; and,

g) there was an independent originating process in the court below.

Many of these indicia are present in this matter.

[20] I conclude that leave is required under s 13 of the CCAA. While Alberta Energy correctly submits that the CCAA insolvency process is complete, Spartan's application came before the chambers judge by way of Part 17 of the Vesting Order issued under that CCAA process, and which specifically reserved Spartan's right as the "Purchaser" of Bellatrix's assets, including its interest in Crown mineral leases, to apply for "further advice, assistance and direction" from the court about the Vesting Order. There was no independent originating process in this matter.

[21] As acknowledged by Alberta Energy, the chambers judge's decision interprets the Vesting Order issued under the CCAA, and Alberta Energy took no issue in the court below with the application being a CCAA proceeding and the chambers judge's jurisdiction thereunder. The chambers judge's analysis also interpreted the CCAA, including that the "Court's broad authority under the CCAA ensures that all disputes, claims, and matters related to insolvency are dealt with expeditiously in the best interests of the debtor's creditors" under a "single procedure model". Further, the parties to the application before this Court are the same parties involved in the CCAA proceedings, including Alberta Energy, and the chambers judge's decision arguably affects the certainty and finality of the commercial reorganization that was approved through the CCAA process and the Vesting Order, and upon which parties to that proceeding rely.

Test for leave to appeal

[22] As recently reiterated in ***Henenghaixin Corp v Long Run Exploration Ltd***, 2025 ABCA 58 at paras 11-12, an applicant seeking leave to appeal under s 13 of the CCAA must establish

serious and arguable grounds of real and significant interest to the parties. The proposed grounds are considered under the following four criteria:

a) whether the issues raised by the proposed appeal are significant to the practice;

b) whether the issues are of significance to the action itself;

c) whether the appeal is *prima facie* meritorious or, on the other hand, whether it is frivolous; and

d) whether the appeal will unduly hinder the progress of the action.

[23] Generally, decisions made by judges supervising CCAA proceedings are entitled to significant deference and will only be interfered with if the judge acted unreasonably, erred in principle or made a manifest error. Appellate courts exercise their discretion to grant leave sparingly.

Analysis

[24] The respondents fairly concede that the issues identified by Alberta Energy are of significance to the practice and will not otherwise unduly hinder the progress of the CCAA proceeding. They maintain however that the appeal is not *prima facie* meritorious.

[25] I agree that this application comes down to whether serious and arguable grounds for appeal have been established. At its core, Alberta Energy's argument is that while the Vesting Order released any possible royalty claims against the assets purchased by Spartan from Bellatrix, its claims for royalty arrears against Bellatrix's third-party co-lessees were not released under the Vesting Order or the CCAA and are otherwise enforceable under the MMA. Alberta Energy maintains that it has the right to pursue those arrears against the co-lessees' interests not sold under the Agreement, and the chambers judge erred in finding otherwise.

[26] Alberta Energy further argues that its claim for arrears did not offend the single procedure model of the CCAA, which was never meant to prohibit claims against solvent third parties, but rather to process all actions against the debtor. It maintains that third party liability does not impact such concerns and to require creditors to bring actions against solvent third parties under the CCAA umbrella or to foreclose such actions on the same basis is an unwarranted expansion of the single procedure model.

[27] In contrast, the respondents maintain that no reason arises to challenge the finding of the chambers judge that the Vesting Order barred or "expunged" Alberta Energy's claims to Bellatrix royalties in their entirety. Bellatrix's interest in the Crown mineral leases were purchased assets

under the Agreement, and the royalties arise therefrom; as a result, *any* claims for those royalties arising from the pre-filing period are barred by the Vesting Order. Further, they state that the chambers judge's reliance on s 20(2.1) of the MMA was correct. That provision must be narrowly construed in creating joint responsibility among co-lessees for any liabilities, and there are no current liabilities with respect to the Bellatrix royalties due to the Vesting Order. While the co-lessees are admittedly still liable for their own obligations and royalty accounts, this dispute is about Bellatrix's lease interests which have been dealt with under the CCAA.

[28] At the hearing of this application, all parties agreed that the Vesting Order in this matter is in fairly standard form. This is in keeping with the respondents' concession that the issues raised in this appeal are of importance to the practice. The parties also agreed that a clear dispute exists between the Alberta Crown and sophisticated participants in the oil and gas industry on the language used in the Vesting Order, and how it should be interpreted together with the CCAA and the obligations and liabilities created in the MMA.

[29] No one disagrees that the interpretation of this standard form Vesting Order is in issue, and that what it means for third party co-lessees and pre-filing arrears is significant. The respondents raise issues of finality when it comes to both CCAA proceedings and the reach of the Vesting Order in this matter, and the concern that Alberta Energy is improperly trying to extend the time to collect on an extinguished claim. As they note, third parties who participate in good faith in CCAA proceedings assess their own risk based on the representations made therein and the orders that result. However, those very points also serve to inform the importance of granting permission to appeal for a full panel to assess the interpretation of this Vesting Order, and the critical interplay of the CCAA and the MMA.

[30] I have considered the specific arguments raised by Alberta Energy on the merits and the respondents' counter-arguments. I find that Alberta Energy has met its burden of establishing sufficiently serious and arguable issues warranting a full appeal before a panel of this Court.

Conclusion

[31] The application is allowed and permission to appeal is granted on the following issues:

1. Did the chambers judge err in finding that the Alberta Crown's claims for pre-filing Bellatrix royalty arrears are not recoverable from the other co-lessees under the lease agreements because of the Vesting Order?

2. Did the chambers judge err in finding that the Alberta Crown's claims for post-filing Bellatrix royalty arrears are not recoverable from the other co-lessees under the lease agreements?

[32] As a final note, I must comment on the excessive amount of application material that was placed before this Court. All parties are reminded that relevance and efficiency guide the selection of materials submitted on a leave application. An indiscriminate "document dump" of the materials filed in the court below, rather than curating them for the specific issues raised by the application, wastes judicial resources and prolongs proceedings. This Court has repeatedly admonished the practice of including irrelevant and excessive materials, including the written arguments filed in the court below. Such a practice can lead to costs awards.

Application heard on May 8, 2025

Reasons filed at Calgary, Alberta
this 22nd day of May, 2025

Feth J.A.

Appearances:

J. Reynaud
M. Zouravlioff
K. Bansaccal (no appearance)
for the Respondent Spartan Delta Corp.

E. Paplawski
for the Respondent Canadian Natural Resources Limited

D.S. Nishimura
T.A. Batty (no appearance)
for the Applicants

TAB 11

Court of King's Bench of Alberta

Citation: **Terra Energy Corp (Re), 2023 ABKB 236**

Date: 20230421
Docket: BK01 094722
Registry: Calgary

In the Matter of the Bankruptcy of Terra Energy Corp.

Enercapita Energy Ltd

Applicant

Judgement
of the
Honourable Justice B.E. Romaine

I. Introduction

[1] The core issue in this application is the scope of section 91.1 of the *Mines and Minerals Act*, RSA 2000, c M-17 (MMA), which stipulates that, upon registration of a transfer of an interest under an agreement, any obligation or liability arising under the agreement that existed before the registration of the transfer continues to run with the interest or location transferred, and the transferee and transferor become jointly responsible for sub obligation or liability.

[2] The Crown interprets this provision widely with respect to the calculation of royalty arrears arising from a post-transfer audit. The applicant successor lessee of such an interest submits that section 91.1 is limited by its plain and unambiguous language.

[3] Other issues include whether the *Limitations Act*, RSA 2000, C L-12 or the limitations provision under section 39.1(2) of the MMA apply to this application, the scope of the Crown's set-off power under section 46(4) of the MMA and whether the Crown has established the existence and appropriate allocation of royalty arrears.

being responsible for the Terra arrears that came into existence after the registration of the transfer of the leases; and (b) the interpretation of section 91.1 posited by Alberta Energy is inequitable and contrary to commercial realities and practicalities.

[69] This interpretation of section 91.1 arises from the plain meaning of the words of the section, the modern approach to statutory interpretation set out by the Supreme Court in ***Rizzo & Rizzo Shoes Ltd. (Re)***, [1998] 1 SCR 27 at para 21:

> Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.

[70] Alberta Energy submits that the Terra arrears were "in existence and were owing to Alberta Energy at the time the leases were transferred", that they were "subsequently discovered through to audit process", and that they were "always in existence, they simply had not been recorded". Alberta Energy incorrectly asserts that an Enercapita witness admitted the accuracy of this.

[71] While an obligation to pay Crown royalties may arise upon extraction of the mineral in question, that obligation is to pay royalties net of the Crown's share of allowable expenses of production. The Crown's position that the obligation to pay royalties always existed and just had to be properly identified fails to take into account that the amount of the obligation or liability depends a) upon the gross amount of royalties, and b) allowable deductions that ensure that the Crown pays the costs of production of its royalty share. In the existing system, that obligation is identified by producers' filings with respect to production and allowable deductions that appear to stand unchallenged unless the Crown decides to conduct an audit. The "obligation or liability" that must exist before section 91.1 applies is not merely the gas royalties that may be payable to the Crown, but such royalties net of allowable deductions.

[72] This interpretation of section 91.1 is not inconsistent with the object of the MMA, to see that Albertans benefit from resource extraction in the form of royalties paid to the provincial Crown, net of the Crown's share of allowable expenses. This object can be attained by ensuring that claims for cost allowances that would reduce the Crown's royalty share of gas and gas products are reviewed and/or audited before the Crown consents to a transfer.

[73] While legislation is to construed as remedial and given the fair, large and liberal construction and interpretation that best answers the attainment of its objects, section 91.1 cannot be interpreted to extended beyond its plain meaning and inherent limitations.

[74] As noted previously, Mr. Taljit characterized the arrears as "crystallizing" on a date after the transfer was approved. In a June 22, 2018 letter to Enercapita counsel from Alberta Energy counsel, Alberta Energy counsel referred to the arrears as "a contingent liability attached to the Leases under section 38 of the MMA". I agree that, at the time of the registration of the transfers, a contingent liability attached to the leases transferred.

[75] While Alberta Energy suggests that the cases cited by Enercapita with respect to a "contingent liability" are distinguishable on their facts, the references to the nature of a contingent liability in these cases do not depend on the factual context:

TAB 12

Alberta Energy Regulator

Directive 056

Release date: February 7, 2025

Effective date: February 7, 2025

Replaces previous edition issued February 8, 2024

Energy Development Applications and Schedules

Contents

4.9.5 Well Detail

99) The licensee must submit a survey plan. For CBM wells completed above the base of groundwater protection, the survey plan or an additional map must meet the requirements of *Directive 035*.

4.9.6 Surface Casing Requirements

100) The licensee must submit

a) a *Directive 008* "Surface Casing Depth Calculation" form, pressure survey, and pressure gradient documentation, including supporting information for the reduction type selected;

b) documentation confirming that the applicable criteria will be met for deep surface casing or surface casing exemptions, including any supporting information;

c) documentation showing the base of groundwater and a description of the method proposed to protect the groundwater; and

d) documentation that requirement 25 in section 7 has been met.

101) If a surface casing variance has been granted, the licensee must submit a copy of the approval issued by the AER that shows the presubmission application was reviewed and found to be acceptable.

4.9.7 Well Classification

102) If a drill cuttings variance has been granted before the well licence application is filed, the licensee must submit a copy of the approval issued by the AER.

4.9.8 Rights for All Intended Purposes

103) The licensee must submit

a) the mineral rights lease number for Crown minerals,

b) documentation that authorization has been obtained from the mineral rights lessee or owner for water injection or water source wells,

c) documentation that an appropriate agreement or authorization has been obtained for the evaluation of Crown minerals for the activity applied for, or

d) documentation that authorization has been obtained for Freehold minerals.

TAB 13

Legislative Assembly of Alberta

Title: **Monday, March 3, 2003** **1:30 p.m.**
Date: 03/03/03
[The Speaker in the chair]

head: **Prayers**

The Speaker: Good afternoon and welcome back. Hon. members, would you please remain standing after the conclusion of the prayer for the singing of our national anthem.

Let us pray. O Lord, guide us all in our deliberations and debate that we may determine courses of action which will be to the enduring benefit of our province of Alberta. Amen.

Now would you please participate in the singing of our national anthem in the language of your choice. We'll be led by Mr. Paul Lorieau.

Hon. Members:

O Canada, our home and native land!
True patriot love in all thy sons command.
With glowing hearts we see thee rise,
The True North strong and free!
From far and wide, O Canada,
We stand on guard for thee.
God keep our land glorious and free!
O Canada, we stand on guard for thee.
O Canada, we stand on guard for thee.

The Speaker: Please be seated.

head: **Introduction of Guests**

The Speaker: The hon. Minister of Community Development.

Mr. Zwozdesky: Thank you, Mr. Speaker. It's indeed a great pleasure for me to rise and introduce to you and through you to all members of this House several bright, young, alert, attentive, and very inquisitive students from one of the best schools in Mill Creek, and that would be Julia Kiniski. I would ask that they rise with their teacher, Mr. Don Douglas, and other helpers to receive the very warm welcome of all members of this Assembly. Thank you for coming.

The Speaker: The hon. Minister of Economic Development.

Mr. Norris: Thank you very much, Mr. Speaker. I, too, want to rise on this beautiful Alberta day and welcome some of the best and brightest in the province of Alberta from the riding of Edmonton-McClung, students from Good Shepherd school. They're accompanied here today by their teacher/group leaders Mrs. Doreen Neuls and Ms Val Newgard, as well as parent helpers Ms Lise Prosser and Mrs. Pat Davidson. I would like them to rise and please receive the warm welcome of the gallery. Welcome to the Legislature.

The Speaker: The hon. Member for West Yellowhead.

Mr. Strang: Thank you very much, Mr. Speaker. On behalf of our Member for Wetaskiwin-Camrose I would like to introduce 35 students from the Battle River home and school camp and their group leader, Mr. Richard Schultz. At this time I'd like to have them rise and receive the warm welcome of this Assembly.

Thank you.

The Speaker: The hon. Member for Redwater.

Mr. Broda: Thank you, Mr. Speaker. It's my pleasure to rise today to introduce to you and through you to the members of the Assembly 25 energetic students from Sturgeon composite high school. They are accompanied by their teachers Mr. Norman Zweifel and Mr. Ron Haskell. They're seated in both members' and public galleries. I'd please ask them to rise and receive the traditional warm welcome of this Assembly.

The Speaker: The hon. Minister of Revenue.

Mr. Melchin: Thank you, Mr. Speaker. It's my pleasure today to introduce to you and through you to members of the Assembly nine visitors from Alberta Revenue who are taking part in a public service orientation tour. This is to acquaint everybody a little more with the operations of the Legislative Assembly. I'll ask them to stand: John Mathias, Warren Regehr, Jennifer Smart, Brandy Stefanyk, Kim Le, Irena Luciw, Tanya Holmes, Doug Stratton, and Justin Chow.

The Speaker: The hon. Member for Edmonton-Meadowlark.

Mr. Maskell: Thank you, Mr. Speaker. It is my pleasure today to introduce to you and through you three guests who are seated in the members' gallery. Last Thursday a new Canadian play, *Einstein's Gift*, premiered on the Citadel's Maclab stage, and my guests are here as a result of the premiere. My first guest is Vern Thiessen, who is artistic associate of dramaturgy, and play development at the Citadel Theatre. He's president of the Playwrights Guild of Canada and a board member of the Edmonton Arts Council. His play *Einstein's Gift* received its world premiere at the Citadel Theatre. This talented Albertan, a grad of the U of A, has written for stage, radio, and television for over 15 years.

My second guest is Bob Baker, artistic director of the Citadel Theatre, a position he's held since 1999. He's been nominated for and been the recipient of numerous awards including the Sterling and Dora. As a result of his strong leadership, the Citadel Theatre is considered by many Canada's leading theatre.

Finally, my third guest is Sol Rolingher, QC, officer of the Order of St. John, recipient of the Queen's jubilee medal, and known by many in this Assembly. He's a senior partner in the 108-year-old law firm of Duncan & Craig, which counts in its namesake the first Minister of Justice of the province of Alberta in 1905, Charles Cross, and the first mayor of the city of Edmonton in 1904, William Short. Mr. Rolingher has many public faces, including that of a member of the board of governors at the Citadel Theatre.

Gentlemen, would you please rise and receive the warm traditional welcome of this Assembly.

The Speaker: The hon. Member for Calgary-West.

Ms Kryczka: Thank you, Mr. Speaker. This afternoon I am really very pleased to introduce to you and through you to this Assembly – a moment ago there were two people sitting up there that I was going to introduce, but I will refer to the second person anyway. I would like to say that in Calgary-West we produce only the best. The person who has left momentarily, Gord Olsen, is an outgoing executive director of the southern Alberta office of the Premier, and I suspect he's out maybe already doing work as a consultant. That would be his next career. The person that is left sitting there, very important to us, brings wonderful people and business skills to his new job as executive director of the southern Alberta office of the Premier. I'm sure that everyone he works with, whether politicians or citizens, will feel that they were well heard. Rich Jones, would you please – and you are; see how keen he is – rise and receive the warm welcome of this Assembly.

Energy Conservation

Mr. MacDonald: Thank you, Mr. Speaker. Today I rise to recognize the humble sweater, that comfortable yet underappreciated garment that helps Albertans with high utility bills now that the government's deregulation policies have failed. The government would not protect Albertans from high home heating bills. Even the Minister of Energy, upon realizing that his own act contains fatal flaws, has found solace in the dark blue sweater. The sweater, insists the minister, will comfort Albertans because they currently cannot afford their sky-high utility bills. The sweater has picked up right where the government's energy policies have left many Albertans, freezing in the dark.

I would like to say that we are a hardy breed here in Alberta, much like the rough fescue grass, and I think it appropriate to suggest that the humble sweater one day be recognized as Alberta's official garment. The sweater can then be honoured along with the other official emblems: the official arms, the official flag, the official flower, the official dress tartan, the official bird, the official stone, the official tree. I think that the sweater would be in proud company.

Thank you, Mr. Speaker.

The Speaker: The hon. Member for Edmonton-Glengarry.

Polish Veterans' Society

Mr. Bonner: Thank you, Mr. Speaker. On Saturday evening the Polish Veterans' Society gathered to celebrate its 65th anniversary. The society was originally formed by a group of 100 veterans from World War I. Later, World War II veterans, their families, and interested members of the general public were able to join the society. I know that the original members would be proud of the society's accomplishments over the past 65 years and that all of them would certainly agree that their optimism and vision has continued.

Approximately 30 years ago the society built a senior citizens' home and a few years later added an attached banquet hall. The building of this complex demonstrates their commitment to their community. Over the years it has provided a comfortable home for many seniors, and through their fund-raising efforts they've been able to assist the residents with subsidized rents.

In the span of 65 years the Polish Veterans' Society has been consistent in its dedication to the Polish community. They have enriched the lives of many by their efforts. Congratulations on your anniversary, and may the next 65 years be as successful as the first.

Thank you.

The Speaker: The hon. Member for Calgary-Fort.

Cultural Diversity

Mr. Cao: Well, thank you, Mr. Speaker. Today I rise to recognize a celebrity event in Calgary. Nowhere else in the world but in our Alberta do we celebrate cultural diversity with gusto. Nowhere else but in Alberta can we visually, acoustically, and linguistically immerse ourselves in many parts of the world within a short evening. Indeed, just a moment after enjoying the rich culture from the subcontinent of India, we crossed the Pacific to the lands of Columbia, El Salvador, and Chile, with their fiesta spirits and colours. Then we crossed the Atlantic to enjoy the colourful, festive traditions of Hungary, Poland, and Switzerland. Then we went to Spain, with its heartfelt rhythm of the flamenco. We are brought back to Calgary with the sound of the Calgary Police Service Pipe Band.

Cultural diversity has enriched our province, our nation. Crossing the ethnic boundaries, sharing the cultures, provides solidarity and understanding among our fellow Albertans. Culturally speaking, this is what we call the Alberta advantage.

I want to thank the hundreds of Albertans who delivered outstanding performances. Please keep growing the flower garden of Alberta's culture.

head: Presenting Petitions

The Speaker: The hon. Member for Edmonton-Riverview.

Dr. Taft: Thank you, Mr. Speaker. I have today a petition – it's in order – signed by over 1,500 Albertans which says:

> We, the undersigned residents of Alberta, petition the Legislative Assembly to consider increasing base funding to post-secondary education to ensure that every qualified Albertan is able to attend University.

Thank you.

head: Introduction of Bills

The Speaker: The hon. Member for Calgary-Bow.

Bill 18
Energy Statutes Amendment Act, 2003

Ms DeLong: Thank you, Mr. Speaker. I request leave to introduce Bill 18, the Energy Statutes Amendment Act, 2003.

The Mines and Minerals Act and the Freehold Mineral Rights Tax Act will be amended by this bill. The amendments will provide legislative clarity for investors as well as ensure the rules are clear and effective if someone drilling a well trespasses onto minerals for which they don't have the rights.

Finally, the bill will allow the government to enhance its tenure and collections practices, thereby ensuring that Alberta continues to have the best land tenure and royalty systems in the world.

Thank you.

[Motion carried; Bill 18 read a first time]

The Speaker: The hon. Government House Leader.

Mr. Hancock: Thank you, Mr. Speaker. I'd move that Bill 18 be moved onto the Order Paper under Government Bills and Orders.

[Motion carried]

The Speaker: The hon. Member for Bonnyville-Cold Lake.

Bill 21
Ombudsman Amendment Act, 2003

Mr. Ducharme: Thank you, Mr. Speaker. I request leave to introduce Bill 21, the Ombudsman Amendment Act, 2003.

This bill will allow the Ombudsman to more thoroughly investigate complaints and will allow for the expansion of his jurisdiction to include other government agencies not currently covered by legislation.

[Motion carried; Bill 21 read a first time]

The Speaker: The hon. Government House Leader.

Mr. Hancock: Thank you, Mr. Speaker. I'd move that Bill 21 be moved onto the Order Paper under Government Bills and Orders.

[Motion carried]

Legislative Assembly of Alberta

Title: **Thursday, March 27, 2003** **1:30 p.m.**
Date: 2003/03/27
[The Speaker in the chair]

head: **Prayers**

The Speaker: Good afternoon. At the conclusion of the prayer would you please join me in a moment of silence.

Let us pray. O Lord, we humbly give our gratitude for the life of your faithful and trusty servant, Edward Glancefield "Ted" Hole, husband of our beloved Lieutenant Governor, Lois Elsa Hole.

We give thanks for his love of family and his gift of friendship, for his grace, dignity, and courage, for his humour, generosity, and sheer love of life.

We remember his family and all who mourn.

Would you please join me now in a moment of silence. Amen.

Please be seated.

head: **Introduction of Visitors**

The Speaker: The hon. Member for Spruce Grove-Sturgeon-St. Albert.

Mr. Horner: Thank you, Mr. Speaker. It is my pleasure to rise on behalf of my constituents, yourself, Mr. Speaker, and the Member for Redwater and introduce through you to all members of this House two of Alberta's elected municipal officials. I had the opportunity to have lunch with these individuals today, where we discussed regional issues of mutual interest. As far as I know, they are not paid lobbyists, but I bought them lunch anyway. I would like to ask that His Worship Mayor Lloyd Bertschi of Morinville and Councillor Don Rigney of Sturgeon county rise in your gallery and receive the traditional warm welcome of this Assembly.

head: **Introduction of Guests**

The Speaker: The hon. Minister of Transportation.

Mr. Stelmach: Thank you, Mr. Speaker. Today it is a great privilege to introduce to you and through you to members of this Assembly constituents from Vegreville-Viking seated in the members' gallery. All the people that I will introduce share a common thread of community-building, unbelievable hours of volunteering, all individually talented and skilled, and one thing that can be said about all of them is that they all put the needs of others ahead of their own.

I will ask the following people to rise and receive the welcome of this Assembly as I call their names, and these are all recipients of the Queen's golden jubilee medal. The first person I'd like to introduce is Mrs. Elsie Kawulych from Vegreville. Next are Mrs. Georgina Hauca from Willingdon, Mr. Jack Roddick from Viking, an unbelievably talented pianist Mr. Christopher Kupchenko from Brosseau, Mrs. Mae Adamyk from St. Michael, Mrs. Yvonne Brown from Tofield, my former bus driver, Mr. George Morie from Andrew, and Mr. Jerrold Lemko, volunteer fire captain of Vegreville volunteer fire brigade. I will ask all of the recipients and their accompanying family members and support members to rise and receive the traditional warm welcome of this Assembly.

The Speaker: The hon. Deputy Speaker.

Mr. Tannas: Thank you, Mr. Speaker. It's my pleasure today to introduce to you and through you to the members of the Assembly 40 members of the Girl Guides of Canada, Alberta Council, who are participating in the Alberta Girls' Parliament. They are accompanied today by head adviser Edie Jubenville and leaders Sherry Gurjar, Claudette Vague, and Bernadette O'Connor. They're seated in the public gallery this afternoon, and I'd ask them to please rise and receive the warm traditional welcome of the Assembly.

Mr. Ouellette: Mr. Speaker, it gives me great pleasure to stand up on behalf of the hon. Member for Wainwright and introduce to you and through you to all members of the Assembly 19 of the brightest children in Alberta, from Allan Johnstone school in Hardisty. I did get a chance to speak with them before we came into the House, and they're a great grade 6 class. They're accompanied by their teacher, Mr. Dawson; the school secretary, Mrs. MacKinnon; Mrs. Dewald, the teacher's aide; Mrs. Balaban, a parent; and John Bruketa, the bus driver. I would like them all to rise and receive the warm welcome of the House. They're seated in the visitors' gallery.

The Speaker: On this day 47 years ago the hon. Member for Vermilion-Lloydminster arrived in the world, and we will now recognize him for an introduction.

Mr. Snelgrove: It seemed longer, Mr. Speaker.

Thank you, Mr. Speaker. I'm pleased to introduce to you and through you to the members of this Assembly three visitors from the Vermilion-Lloydminster constituency. Mrs. Dawn Garnier and her husband, Stan, run a very successful ranching operation near Dewberry. As well as being great neighbours and terrific community supporters, they've been very actively involved in the rodeo industry. In fact, they've participated in Australia and New Zealand both as participants and timers. Dawn is accompanied by her daughters Danelle and Skye. Danelle works as a teacher's aide in Heinsburg, and Skye will graduate from high school in May. Both of these young women work on the family ranch, are involved in rodeo, 4-H, and community sports. They have risen. I wish you would all join me in congratulating them on their attendance and welcoming them to the Assembly.

The Speaker: The hon. Member for Redwater.

Mr. Broda: Thank you, Mr. Speaker. It's my pleasure to rise today and introduce to you and through you to the members of the Assembly one very special individual, my daughter Cindy Broda. After spending a year in Tokyo and three years in Italy, it's certainly great to have her back home. Accompanying her is her good friend Adi White from Belfast, Ireland. Adi will be leaving next week for Ireland and then to the Caspian Sea, where he's second officer navigating a ship in subsea surveying of oil and gas fields around the world. They're both seated in the members' gallery, and I'd ask them to please rise and receive the warm welcome of this Assembly.

The Speaker: The hon. Member for Lac La Biche-St. Paul.

Mr. Danyluk: Thank you very much, Mr. Speaker. I am pleased to introduce to you and through you to members of this Assembly a constituent from Lac La Biche-St. Paul and a good friend of mine. Mr. Johnny Lypowy has the distinction of being the longest serving employee of AFSC, a total of 36 years, and I can attest to the fact that he's still running at full choke. Johnny has been a major rancher in the constituency. Unfortunately, the drought has had quite an impact on his herd, and he has recently had to sell his cattle due to shortage of feed. His contributions to the community and the

Statements, and occasionally it's okay to say positive things during question period as well. So perhaps this might be viewed more as a point of clarification. I certainly do not personally think that there's any cause for a point of order, but I'll leave it up to your wisdom to decide that in your own good way, Mr. Speaker.

Thank you.

The Speaker: Well, it sounds like a love-in to me, but what the Blues actually say – this affords an opportunity for a lesson; how's that? The hon. Member for Edmonton-Centre says in her lines: "will the Premier agree that at a . . ." Just remember those words: "will the Premier agree that at". Then the Premier coming back at one point in his response:

> Mr. Speaker, I would point out: is the hon. Member for Edmonton-Ellerslie suggesting, for instance, that her husband lose his livelihood because he is a consultant along with a former member of this Legislature, this government caucus, Jon Havelock, and a former member of I believe the Liberal caucus, Peter Sekulic. With all due respect he does a marvelous job. We hire him, the private sector hires him, nonprofit organizations hire him, and he does a wonderful job in representing whatever he has to represent.

Well, sounds to me like quite an endorsement. But the interesting thing about this – there is no point of order, by the way, in the one raised, but there could have been two points of order raised out of this. So, hence, the lesson.

Now, the hon. Member for Edmonton-Centre said: "Will the Premier agree that at a . . ." Now, it's quite clear that the rules prohibit the seeking of opinions, and they are certainly not permissible under the rules. *House of Commons Procedure and Practice* at page 427 and *Beauchesne's* 409(3) would prohibit the seeking of an opinion in a question. The question might have been ruled out of order.

Now, the hon. Member for Edmonton-Ellerslie might also have risen on a point of order basically saying that it is totally unacceptable to name a person in this Assembly who is not present and not able to defend themselves, but then that would have ruled out virtually all the tablings today, too, because everybody who made a tabling today mentioned somebody's name.

Dr. Taft: With permission. For information.

The Speaker: No, no, no. There's no such thing as for information.

The preambles and the personal references are very clear in the *House of Commons Procedure and Practice* at page 524 and *Beauchesne's* paragraph 493(4).

So while there was no point of order on the point of order raised, there could very easily have been two points of order raised, and all I'd say is: just give some careful consideration to this swinging sword that's sharp on both sides. It cuts both ways.

head: **Orders of the Day**

head: **Government Motions**

Spring Recess

10. Mr. Zwozdesky moved on behalf of Mr. Hancock:
Be it resolved that when the Assembly adjourns on Thursday, March 27, 2003, at the regular hour of 5:30 p.m., it shall stand adjourned until Monday, April 7, 2003, at 1:30 p.m.

The Speaker: Hon. members, as per Standing Order 18(2) and 18(3) such a motion is not debatable.

[Government Motion 10 carried]

head: **Government Bills and Orders**
head: Second Reading

Bill 22
Child and Family Services Authorities Amendment Act, 2003

[Adjourned debate March 10: Dr. Massey]

The Speaker: The hon. Minister of Children's Services to close the debate.

Ms Evans: Thank you, Mr. Speaker. Just taking leave to speak to second reading and to close debate on Bill 22. This amendment is a very straightforward amendment. It removes the stipulation of the maximum number of members that may sit on a child and family services authority board. With the number of regions going from 18 to 10, this will allow us to ensure adequate community representation on the boards. I feel very confident that when this bill passes, we will be able to ensure the governance and the consistency of representation through the differing needs of each region.

Therefore, I am pleased to move second reading of Bill 22.

[Motion carried; Bill 22 read a second time]

Bill 18
Energy Statutes Amendment Act, 2003

The Speaker: The hon. Member for Calgary-Bow.

Ms DeLong: Thank you very much, Mr. Speaker. Today I'm pleased to rise and move second reading of the Energy Statutes Amendment Act, 2003.

Alberta is known and respected worldwide for its land tenure and royalty collection systems. It is a fact that other jurisdictions from around the world regularly come to Alberta to learn about our tenure and royalty systems. These systems ensure industry competitiveness and provide Albertans with a fair return for the development of their resources. Revenue from the oil and gas industry is critical to this province's economic prosperity. For the 2001-2002 fiscal year the Department of Energy collected $6.227 billion in bonuses, royalties, and rent on behalf of the people of Alberta.

[The Deputy Speaker in the chair]

Mr. Speaker, these amendments will improve the management and administration of the Crown's mineral rights and will optimize benefits to Albertans. One key element in Alberta's success in this area is certainty. Investors want and need to know what the rules are before they make their investments. Those rules are generally laid out clearly in legislation and regulations; however, there are always areas where those rules have not kept up to date with changes in technology or markets. Some are also found in the common law, which investors may not always find or which may not be as clear as legislation. This bill clarifies some important points that are existing policy or are existing common law in the view of the government and are how this province currently practises. This will provide certainty and reduce any uncertainty as to who is entitled to what or under what regulations they pay their royalties on production.

The bill makes it clear which Crown mineral rights leaseholder has the rights to natural gas in areas with coal or with oil sands. Natural gas found separated from the bitumen in the oil sands at original conditions is part of the natural gas lease, while any additional gas that evolves from the bitumen as it is produced is part of the oil sands lease. In other words, natural gas produced out of sandstone, shale, coal, or other rock is part of the natural gas lease.

3:00

These are the policies of the government today and the practices of government and industry. They will now be there in black and white for any investor to see when they decide on an oil sands, natural gas, or coal project. You may note that the holder of a coal lease today can produce natural gas for safety reasons to remove it from a mining development. That safety precaution is continued.

One of the cornerstones of Alberta's land tenure system is that industry has access to a fair and level playing field. It becomes unfair if someone trespasses on unsold Crown minerals by drilling a well into them deliberately or in error. Doing that can result in that person having more information than other potential bidders or even producing minerals that they have no right to. Current provisions to deal with trespass have not always been an effective deterrent. A significant and effective deterrent is required because these situations are difficult to detect and can result in revenue loss to the Crown both as a direct result of the wrongful recovery of Crown minerals and also as a result of lower bonuses paid to the Crown for mineral agreements. You can imagine the effect of someone's bidding strategy if as a result of trespassing they already know that it's a dry hole. The proposed amendments to the Mines and Minerals Act will improve the Crown's ability to respond when someone explores for or produces Crown minerals without authority.

Mr. Speaker, one of the main objectives is to ensure that our good corporate citizens can continue to do business in Alberta for the economic benefit of all Albertans. In keeping with our desire to provide certainty to investors, these amendments will do just that. As such, another key amendment is an enhancement to the provisions around collection of royalties. This bill will codify joint liability of Crown leases and provide procedural flexibility to remove the administration of collections. It will also allow the minister to redirect funds owed to a person and apply that money to any outstanding debts that person might have to another branch of the government, expand and clarify the application of provisions related to royalty and tax recalculation by the Crown, and also ensure that a company cannot transfer their interests to a lease to absolve themselves of a debt. Any debt will flow through to the transferee.

Another significant change to these acts deals with the Limitations Act. The recent Limitations Act has created some doubt as to how time limits imposed by that act for initiating legal actions in court impact existing time limitations provided under the Mines and Minerals Act and the Freehold Mineral Rights Tax Act. This bill excludes or specifies time limitations for initiating legal actions under the acts from the limitation periods specified in the Limitations Act. The time periods under these acts to complete calculations and assessments of royalty, mineral tax, and related interest or penalties are well understood and accepted by the industry and the Crown and were designed with industry business practices in mind as well as this government's business needs of ensuring complete and accurate payment of royalties, taxes, and penalties. The existing periods, generally four years, are not exceptional, and they have generally worked well through the years. The bill will exempt these practices from the Limitations Act.

Issues of trespass can take years to detect. The bill specifies specific limitations once a trespass has been documented. Issues of mineral ownership, primarily between the federal government and Alberta, can also take years to resolve. The bill exempts these cases from the Limitations Act.

Mr. Speaker, gas storage helps smooth peaks and valleys in production activity and gas prices while enhancing security of supply. The bill will reduce administrative barriers and barriers of uncertainty to entering into storage arrangements. This legislation allows the use of depleted oil and gas reservoirs for storage but speaks generally in terms of recovery of minerals. This bill amends the act to make it clearer for people interested in developing storage that there is legislation for use of these reservoirs for storage purposes. The bill also clarifies that use of a reservoir for storage continues the leases granting the rights to the reservoir.

Mr. Speaker, in 1949 all coal mines were required to sell coal to Alberta residents for their domestic needs at market prices at their plant gate. At that time, coal was a common domestic fuel. This in theory requires all coal mines to have the equipment and processes to be able to do this today even if no one is asking for it. This bill continues the requirement but provides the ministerial discretion as to which coal mines need to be able to sell coal for domestic needs.

Finally, the Fees and Charges Review Committee has asked the government to comply with an Ontario court ruling to specify where money collected as a penalty is properly identified. In fact, Mr. Speaker, these amendments will do just that.

Thank you very much, Mr. Speaker.

The Deputy Speaker: The hon. Member for Edmonton-Gold Bar.

Mr. MacDonald: Thank you, Mr. Speaker. It's with interest that I rise this afternoon to participate in the debate on Bill 18, the Energy Statutes Amendment Act, 2003. Certainly, I appreciate the words from the hon. Member for Calgary-Bow in regard to this amendment act.

We're talking about the Mines and Minerals Act and the Freehold Mineral Rights Tax Act, and certainly there is merit in providing clarity in the rules for all investors in this province. When we consider the influence and the amount of money that is being invested by the energy industry from around the world in this province, it's certainly a strong vote of confidence not only now but well into the future for the energy industry in this province. We have to be very careful. I believe I was looking at Economic Development, their department and their annual report from last year, and close to half of the activity in this province was generated from the oil industry and the gas industry, and that's reason enough to provide clarity in the rules for investors.

Whenever you compare this province and this country to other jurisdictions around the world and whenever there are investors that say: oh, well, if we don't get our way, we're going to move on . . . We have a very stable, secure investment climate in this province. You look at the situation around the globe. You look at the current situation in the Middle East, particularly in Iraq and in Kuwait, Saudi Arabia, large oil-producing nations. Then you compare them to us. Certainly we have modest reserves when you count up their reserves, but people want to do business here, and it's our political stability that provides that.

If you look at Venezuela and those arguments made last year, late last fall: oh my gosh, we're going to take our money and invest it in Venezuela. Well, there have been a series of political upheavals in that country that certainly make Alberta even more attractive now than it was in October.

Mr. Speaker, you look at some of the enormous potential that's left in the former republics of the Soviet Union as far as oil and gas development go, but there's considerable economic risk in putting your money there for development because you don't know the politics of the region. It was not long ago that there was a gas field developed in Russia, and no sooner was the last weld X-rayed in the gathering system than a local group of bandits took it over. So we have to heed the words of the hon. member when the Member for Calgary-Bow discusses the fact that we have a regulatory regime that is admired and I believe copied from other parts of the world.

Legislative Assembly of Alberta

Title: **Monday, May 5, 2003** **8:00 p.m.**
Date: 2003/05/05
[Mr. Shariff in the chair]

The Acting Speaker: Please be seated. Hon. members, before I recognize the hon. Member for Drayton Valley-Calmar, may we briefly revert to Introduction of Guests?

[Unanimous consent granted]

head: **Introduction of Guests**

The Acting Speaker: The hon. Member for Calgary-Mountain View.

Mr. Hlady: Well, thank you, Mr. Speaker. It's indeed a pleasure for me this evening to introduce to you and through you to members of the Assembly five guests that we have in the members' gallery this evening. The first is Mr. Peter MacKay, who is running for the leadership of the federal PC Party and is the front-runner today with the most delegates going for him to the convention in Toronto at the end of the month. With any luck we'll be fortunate to be looking at the new leader of the federal PC Party and the future Prime Minister of this country.

Traveling with him is Russ Carrigan, who's been a constant help all along as he travels back and forth across the country. We also have three of our cochairs organizing in northern Alberta: Kerry Mahood, Kori Mahood, and Peter Grewar. I'd ask them all to please rise and receive the warm welcome of the Assembly.

head: **Motions Other than Government Motions**

Organized Crime and Terrorism

508. Mr. Cenaiko moved:
Be it resolved that the Legislative Assembly urge the government to work with Criminal Intelligence Service Alberta to enhance collaborative partnerships and co-ordinated programs with various levels of government, policing agencies, and the public to effectively combat organized crime and terrorism.

[Debate adjourned April 28: Rev. Abbott speaking]

The Acting Speaker: The hon. Member for Drayton Valley-Calmar.

Rev. Abbott: Thank you, Mr. Speaker. When we left off Monday last, I was talking about how we live in a time of increasing uncertainty, where organized crime and terrorism pose real threats to safety, security, and our collective well-being as a society. How or whether you respond to terrorist threats is a bit of a double-edged sword. On the one hand, whenever a threat is made, it would be wrong to ignore it completely. For instance, no matter how unlikely or far-fetched a bomb threat may seem, it would be unthinkable in our society in this day and age to take no action. Even the remotest of possibilities that injury, damage, or even death may be the outcome prompts us to take action. Thankfully, these threats turn out to be empty threats almost all the time, certainly in these parts anyway, and life returns to what we may call normal not long afterwards.

But is this an acceptable norm? I don't think so, Mr. Speaker. It is not acceptable to have everyday life punctuated with threats of murder and mayhem, not even if these threats are made but once a year, not even if they're made but once a decade. This is why Motion 508 is so important in that it recognizes the valuable work of CISA, the Criminal Intelligence Service of Alberta. The temper of the times has now become such that the work of CISA is vital to the safety and security of Albertans, Mr. Speaker.

We must, however, proceed with caution. One of the hallmarks of terrorists and those involved in organized crime is their ability to blend in with the rest of society. We've seen this recently in the news around Edmonton. It allows them to strike when we least expect it. Another concern is how we view organized crime. I would suggest that collectively as a society we have a rather glamourized view of organized crime, which I'm afraid has given it an undeserved mystique and allure. As I will discuss in greater detail, these factors make it necessary for us not to paint with too broad a brush in trying to eliminate this scourge from our society. If we fail to act with caution, the likelihood that innocent individuals will be targeted is great.

Although North America has been spared much of the terrorist activities, other parts of the world have had to accept them as staples of ordinary life. For instance, during the 1970s terrorist actions in Europe ushered in a general awareness among Europeans that, like it or not, there were terrorists in their midst. Mr. Speaker, terrorist activity in Europe was frequent in the 1970s and the early 1980s. To mention just a few, West Germany's Bader-Meinhof, the Basque separatist organization ETA, or Italy's Red Army faction rose to infamy in that time and had become household names by the end of the 1970s. Over time, while the vast majority of the demands for money or the release of convicted terrorists have been rejected, where terrorists have succeeded is in making the concept of terrorism an accepted, albeit unwanted, aspect of daily life in Europe and in many other places around the world.

For this reason alone, Mr. Speaker, we must support the work of CISA to ensure that this does not happen here in Alberta. Terrorist activity has been and continues to be widespread in parts of the Middle East. Prior to September 11 that's probably where its occurrence was most expected and ingrained in our collective consciousness. For better or worse, we'd hear the word "terrorist," and we might have had an immediate association with the Middle East. However, it is imperative that our debate here tonight and at all other times not degenerate to being a matter of stereotypes. This is part of why Motion 508 is so important at this time. Terrorist activity is not unique to any one group of people. We must never lose sight of that fact.

Similarly, when we speak of organized crime, we should not treat that term as being synonymous with any one particular ethnic group, and we should steer clear altogether of the term "Mafia." One of the reasons we still use the latter term, I think, is that over the years it has gained a mysterious, intriguing, and alluring quality or dimension that for all of its ugliness also has a romantic quality. This makes recognizing the work of CISA all the more important.

Mr. Speaker, I'm sorry to say that thanks to the way organized crime has been glamourized in films and on television, the public at large has gotten a rather one-sided view of what organized crime is all about. For instance, look at *The Godfather* trilogy, pathbreaking in so many ways. The first installment of the trilogy, *The Godfather*, is considered by some to be one of the best movies ever made. Meanwhile, the crass television series *The Sopranos* has been showered with awards ever since it premiered in 1999. Why is this so? Well, Mr. Speaker, I don't think there's an easy answer to this question, but what is clear is that we live in a culture where dramatizations of criminal activity are commonplace. It has become a staple of prime-time programming as dramatizations of organized crime tend to be particularly successful. People eat this kind of stuff up like there's no tomorrow. Having said that, it shows why Motion 508 is such a timely initiative.

supportive. In fact, one of my former colleagues, the former Member for Edmonton-Rutherford, was a leader and a crusader in that area, and certainly one of the reasons we enjoy such strong accessibility legislation and bylaws in Edmonton is because of him. He has shown us all leadership, and we've all learned a great deal from him. Am I willing to support something that makes it easier for people to gas up either using technology that would make the pump system easier to access somehow or in fact by making sure that there are people there to assist if someone required it? Absolutely.

Just a couple of questions for the member. Is he anticipating that there would eventually be legislation that would require gas service stations to provide that additional staff person that's available to come out and actually operate the pumps for someone that couldn't do it themselves, or is he anticipating some sort of a retrofit program, for instance, like the city of Edmonton has in place where businesses can apply for a grant to help them retrofit buildings for accessibility for persons with disabilities? Exactly how is he anticipating the follow-through in getting this idea in place? I'm interested if he can expand upon that, please.

Now that he's clarified that what he was really talking about is access to the fueling system in gas stations, that makes it much easier for me to support this. If I can get the clarification on whether he's anticipating legislation that would require additional staff or somehow that all staff that are working in gas stations are capable of leaving their cash register and going out and doing this or how he is anticipating the implementation of this.

Good ideas are gratefully received, but if they don't ever make their way to implementation, they just become a frustration for us. So I'm pressing him to follow through on the rest of how he sees this coming to be, and I'm sure that in the time – he will probably have another week before he does his closing comments. It gives him time to seek guidance from some of the excellent agencies that we have working in Alberta, like the ACA or the Premier's Council on the Status of Persons with Disabilities or agencies like the ones in my riding like EmployAbilities or DECSA, all of which I'm sure would be more than willing to give him advice on this very important issue.

Thank you for the opportunity to speak to this. I am willing to vote in favour of Motion 510. Thank you.

The Acting Speaker: The hon. Member for Lac La Biche-St. Paul.

Mr. Danyluk: Thank you very much, Mr. Speaker. It gives me great pleasure to be able to stand up and speak to Motion 510. My constituents feel that the government already makes too many laws, and really they don't want any more restrictions on how they do their work. Albertans just want to work. Business does not want government to get involved in private business.

I guess one thing that I do want to say is: maybe the situations could be a little different in urban Alberta as opposed to rural Alberta. I need to talk about rural Alberta a little bit because I need to talk about small-town Alberta. Sometimes we only have one service station that's open, and if we are going to legislate business to have to operate with two people on duty, then that provides such a restriction because there isn't enough money being made to be able to support it.

You have to also remember that now we don't have service stations that only serve gas, where you can have an attendant that leaves the service station, goes to serve the gas, and the only thing that's left maybe in the service station is a till. Most of the service stations are a convenience store at the same time. It wouldn't take long for people to realize that if you have one attendant and he has to go outside to serve people, the money that he may make on the gas could be lost on chips and pop that might be underneath the coat.

I also say that, you know, there has been some allusion made to seniors needing assistance, and I would suggest that in my constituency, at least from my experience – and I have seniors coming to my office – they have a tremendous network. They know where there are service stations that have attendants that do pump gas in the daytime. They know exactly where they can go to get the service, and I don't think they need to go to the Internet to find out where those service stations are. It doesn't take them long in the pipeline of knowledge to find out where those places are.

I would also like to say that I really believe that having self-serves teaches kids how to maintain their vehicles a little bit and at least try to identify some of the problems that vehicles may have, checking the oil, looking at the fan belt, doing some of this checking. If you have a situation where you are going to have attendants that are going to take care of this, they are never going to go to the place where they have to do the self-serve. It's just easier to have someone else do it and thereby not have that much information or knowledge gathering.

I believe that we just cannot afford to impose restrictions on businesses on the amount of staff that they need. I think the service stations are operating very well. They want the business, and they are doing the work that is going to acquire the most business possible, and I very much would like to speak against those types of restrictions which are in Motion 510.

The Acting Speaker: The hon. Member for Edmonton-Meadowlark.

Mr. Maskell: Mr. Speaker, thank you for giving me the opportunity to rise tonight and speak in favour of Motion 510. I'd like to begin my remarks by commending the hon. Member for Edmonton-Norwood for introducing this motion. Not only that; a motion such as Motion 510 requires that the sponsor be a caring person as well as someone who is cognizant of the barriers that some members of our society face each and every day. The hon. Member for Edmonton-Norwood is such a person.

Humility is a virtue and one that perhaps we do not accord the status it deserves in daily life. In a society as dependent on the automobile as ours we sometimes forget that driving a car is not a right, but rather it is a privilege, as well it should be. While a car offers great convenience and ease of use, it is also something that requires a great deal of responsibility. In the wrong hands any car can become a deadly weapon. To put it quite simply, Motion 510 deals with matters of fairness and safety. As has already been stated, the purpose of Motion 510 is to enact legislation . . .

The Acting Speaker: I hesitate to interrupt the hon. Member for Edmonton-Meadowlark, but the time limit for consideration of this item of business has concluded.

9:00 head: Government Bills and Orders
head: Committee of the Whole

[Mr. Shariff in the chair]

The Deputy Chair: I'll call the committee to order.

Bill 18
Energy Statutes Amendment Act, 2003

The Deputy Chair: Are there any comments, questions, or amendments to be offered with respect to this bill? The hon. Member for Calgary-Bow.

Ms DeLong: Thank you, Mr. Chairman. It's my pleasure to speak to Bill 18 today. I have listened to the questions and concerns of the members opposite with great interest and would like to take this opportunity to address them.

It's important to keep the intent of this bill in mind as we move forward. This bill is designed to allow the Department of Energy to deal more effectively with land tenure and collection issues. It allows for a more effective collection process by providing certainty around which leaseholder has the natural gas rights when natural gas is found in coal seams or solution gas is found in conjunction with oil sands. This clarifies which leaseholder is responsible for paying royalty and which royalty regime applies. It codifies joint liability so that the Crown will not have to argue the common-law precedents in every case where a lessee defaults on a royalty payment. It clarifies that provisions governing royalty recalculations apply to royalty and to associated interest and penalties, and it sets out reasonable time periods to complete recalculations of royalty and related interest and penalties.

First, I'd like to highlight the fact that the Auditor General's report for the past two years has indicated that the gas royalty calculation and collection process has shown no outstanding issues or concerns. In fact, production data reported to the Alberta Energy and Utilities Board and to the Department of Energy has been enhanced through the implementation of the Petroleum Registry of Alberta. Up-front audits and validation processes ensure that only accurate data is accepted. Missing or incomplete data is identified and subject to compliance mechanisms such as penalties.

The Auditor General has also made recommendations with respect to the disclosure of costs related to royalty reduction programs. It's my understanding that the department addressed the Auditor General's concerns regarding these programs as part of the most recent completed audit.

Regarding individual meters on oil and gas wells, in Alberta today there is essentially a meter at every wellhead with some minor exceptions. The main exception is for the very low-producing wells in southern Alberta, where a number of wells can be measured through a common metering site. This means that the combined production for a cluster of wells is measured. There is a second set of metering for virtually all gas production in the province, which is the measurement of natural gas and natural gas liquids leaving natural gas plants. When the gaseous and liquid components have been separated and water and other impurities removed, the plant custody measurement is even more accurate than the wellhead meters. To make wellhead meters as accurate as plant custody meters would require building a miniature gas plant at each well, which is just not feasible.

Regarding new technologies, new technologies could result in better allocations back to the wellhead and could conceivably improve even the highly accurate plant gate custody meters. Metering affects the distribution of revenues between pipeline owners and well owners, so there is a very healthy interest in using the most accurate metering that is practically available. Mr. Chairman, accurate measurement of oil and gas is important to ensure that Albertans receive their fair share of royalties and the government ensures that production and disposition are properly calculated and reported.

Mr. Chairman, a member of the opposition asked about the extent of the problem in recalculating freehold mineral tax. The answer is that the total adjustments are approximately 2 percent of what is collected, or about $2 million; that is, 2 percent of the mineral rights tax that is collected. The Department of Energy is very diligent in collecting all the tax that's due.

Mr. Chairman, a member of the opposition also raised some concern over the use of the word "may" in section 3 of the Freehold Mineral Rights Tax Act. The word "may" empowers the minister to recalculate the tax payable. One should look at the entire act along with the regulation under the act to see if there are any conditions prescribing and exercising that power. Section 6 of the Freehold Mineral Rights Tax Act clearly states that where the tax owed on a single tract is less than $20, then no tax is owed. The use of the word "may" in the proposed section 3 of the act ensures consistency with section 6 of the regulation.

A question of why the minister is being given the power to determine the order of payment has also been raised. The order of payment to gas accounts is specified in the natural gas royalty regulation, 2002. With respect to freehold mineral tax, allocation to specific tax years may be required to ensure that the oldest outstanding arrears are paid first. This helps ensure that a freehold mineral owner's title does not go into default.

In relation to the legal question a member of the opposition asked in regard to ownership of the gas underneath the tar sands and bitumen mines, the provisions in Bill 18 are proposed to resolve the ownership of gas and solution gas in oil sands areas. The Crown identified the ownership conflict situation and provided industry more clarity surrounding the issue. The new definition is contained in Bill 18. On Crown land Albertans own all the resources: gas, petroleum, and bitumen. Bill 18 explains the issue of which lessee has the right to the solution gas.

The Member for Edmonton-Gold Bar raised some questions regarding venting and how this will affect the development of coal bed methane. The venting of methane ahead of the mining operation for safety reasons will have a very minor impact on the total volume of coal bed methane that will be developed in Alberta. There are a total of 24 permits to develop a mine in the province, which on an area basis represents only three out of a thousand of the total coal available for coal bed methane development. That's .3 percent. Explosions caused by coal bed methane during mining have historically been a bane to miners. This requirement to vent coal gas ahead of the mining operation is critical for the continued safe mining operations in Alberta.

Coal bed methane is in the early stages of development in Alberta. The Alberta government intends to proceed carefully with the development of this untapped resource so that it can learn from the experience of other jurisdictions and from data collected from Alberta operations. Coal bed methane is natural gas, and it is subject to the same legislation, regulations, and administrative practices as conventional natural gas. Alberta Energy, the EUB, Alberta Environment, and Sustainable Resource Development have existing regulations that apply to coal bed methane development.

In October 2002 the Department of Energy announced a cross-ministry review and external consultation process to determine if the existing regulations and policies are appropriate for responsible coal bed methane development or if any changes should be made. The planned cross-government external consultation process, that includes public input, will address a broad range of issues associated with coal bed methane development, including water, to ensure that recommendations balance industry interests with landowner, resident, and environmental considerations.

The Department of Energy is continuously reviewing its existing rules as well as developing new rules to ensure that the Crown and Albertans receive the intended shares of royalties from the development of energy resources. The royalty regime for oil sands delays taking a large up-front royalty due to the significant investment required to start up a project. The regime is designed to allow the Crown and industry to receive a fair share of the profits from oil sands over the entire cycle of a project. The Department of Energy

requires all large oil sands projects to be audited on an annual basis by an external accounting firm. The department also performs its own audits on all projects to ensure accurate collection of royalty revenues.

9:10

Regarding water flow, it is a requirement in Alberta to obtain a well licence from the EUB to drill an oil and gas well and to ensure that groundwater resources are protected. As part of the EUB application process, Alberta Environment has input by requiring surface casing, which I'm sure you've all heard of, to be set at a depth below the base of groundwater protection. This cemented surface casing protects any water aquifers that may be in the area from possible damage while the well is being drilled. If anyone suspects that the drilling or production of a well is causing disruptions in their water flow, they should contact the EUB, who will investigate their complaints.

To finish my comments, I strongly support Bill 18 as it advances Alberta's land tenure and collection capabilities. Thank you very much, Mr. Chairman.

The Deputy Chair: The hon. Member for Edmonton-Gold Bar.

Mr. MacDonald: Thank you very much, Mr. Chairman. It's a pleasure to rise this evening and participate in the debate on Bill 18 at committee stage. Certainly, I appreciate the answers to my questions from earlier in debate from the hon. Member for Calgary-Bow.

One cannot find too much fault with this legislation if one is just to look at the intent, which I believe is to provide legislative clarity for investors as well as to ensure that the rules are clear and effective for someone drilling a well. When we think of this and we think of the fact that the hon. member just concluded by saying that the coal bed methane industry is in its early stages of development in this province and that coal bed methane and natural gas are supposedly one and the same and that it's an industry that is in its infancy, I have to question at this time if this legislation is what the coal bed methane industry needs at this point in its development.

Now, there certainly are other initiatives presented here, Mr. Chairman. You know, we are going to amend the Mines and Minerals Act and the Freehold Mineral Rights Tax Act. We've already discussed that. We are going to permit the government to enhance its tenure and its collection practices, and at this time I would like to know from the hon. member if this is just for Crown tenure or if it is also for private tenure.

Last week I had the pleasure of attending a public meeting in Camrose with many of the landowners in Camrose, some of whom have rights that are older than the province. These have been passed down from one generation of the family to another. We had quite an interesting discussion. First and foremost, these individuals certainly wanted to talk about electricity and natural gas deregulation but were very interested to also talk about the coal bed methane industry. They recognized that there were a number of wells that could be drilled on a section, sometimes a lot more wells. In some rural areas 64 wells a section were proposed for coal bed methane development, and this number of wells was not, to say the least, popular with the farmers or the landowners. There was the issue of compressor noise. There was the issue of water disposal.

I thought at that time: well, this would be an ideal time to do some research into development in other jurisdictions and just what exactly other jurisdictions have done. The hon. member mentioned that in her remarks, and certainly I would think that this government would not like to lag behind other jurisdictions. I didn't have to go far in my research, encouraged by the farmers, to find out that B.C. in this legislative session has a bill, Bill 16, the Coalbed Gas Act, introduced by the hon. Minister of Energy and Mines in British Columbia, and it's a lot different, I must say, than what we are looking at in this province. After reading through it, it gave this member cause for concern.

Now, it looks like in proposing the Coalbed Gas Act, the British Columbia government has taken the lead as the most coal bed methane-friendly jurisdiction in Canada. The Minister of Energy and Mines in B.C. is developing a coal bed methane strategy. I do know that there are some pilot projects going on on Vancouver Island, and the government has made a commitment to coal bed gas development that is going to encourage and promote confidence for investors and also promote confidence in exploration opportunities throughout B.C.

I don't know what is going to happen with this bill if it is going to be assumed by investors that B.C. is a little bit more friendly towards exploration and investment and if people are going to vote with their feet and go there. That's why I would urge caution on Bill 18, and if there's a way to improve this legislation through amendment, well, perhaps the time is right for this House to consider it.

As I said earlier, we have Bill 18, and British Columbia has Bill 16, and the purpose of Bill 16 in B.C. is simply to promote economic activity in that province by removing any uncertainty that surrounds entitlement to coal bed gas underlying both Crown and freehold lands in that province. Our Bill 18 is going to amend, certainly, section 67 of the Mines and Minerals Act to clarify, as I understand it, that Alberta Crown coal tenure does not include "rights to any natural gas, including coalbed methane." If that is wrong, if the hon. member could clarify that, I would be very grateful.

Now, the proposed Bill 16 in British Columbia is, as I understand it, declaratory legislation that confirms a long-standing B.C. government policy that coal bed gas is a natural gas owned by the owner of the natural gas rights by deeming natural gas to be and to always have been a mineral and deeming coal bed gas to be and to always have been natural gas. It is further confirmed that a natural gas tenure issue pursuant to the Petroleum and Natural Gas Act includes coal bed gas rights and that a coal tenure issue pursuant to the Coal Act does not, regardless of when such tenures were issued.

9:20

The Alberta Bill 18 is, on the other hand, much more limited, or it has restrictions. The proposed legislation, as our research indicates and as I've been told, is that the legislation certainly clarifies that coal bed gas is not included in Crown coal tenure but does not specifically include such substances in natural gas tenure although the definition of natural gas leaves little doubt in this regard on a go-forward basis. Significantly, the Alberta legislation is silent as to its retroactive effect on the vested property rights of current tenure holders. Existing natural gas tenure holders must rely on the regulatory incorporation provisions contained in the Crown tenure documents. Mr. Chairman, the contractual provision in Crown dispositions whereby the grantee agrees to incorporate into the contract compliance with further legislation enactments. We also have to consider that the statutory compliance provision in section 4 of the Mines and Minerals Act provides that the act applies to an agreement made, entered into, or renewed under the former act notwithstanding anything in the agreement.

The Mines and Minerals Act here in Alberta applying to an agreement must be recognized as less effective language than, for example, the province of Saskatchewan Crown Minerals Act, which provides that all existing Crown dispositions shall be deemed to be issued under that act. Without specific retroactive enactment

TAB 14

LAW REFORM COMMISSION OF BRITISH COLUMBIA

REPORT ON SHARED LIABILITY

LRC 88

August, 1986

The Law Reform Commission of British Columbia was established by the *Law Reform Commission Act* in 1969 and began functioning in 1970.

The Commissioners are:

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ently responsible for another's loss or damage. Two or more persons may make independent promises to another or may be separately responsible for causing different injuries to another. In either case, liability to the injured person or to the person to whom the promises were made is separate. For example, if A and B each separately promise to pay C ten dollars, each is liable to pay C ten dollars. If the promises are kept, C will receive $20. Several liability is cumulative.

Where two or more persons promise to do the same thing or are responsible for a common injury to another, they share liability to perform the promise or compensate for the injury. The obligation is indivisible. Performance by one will discharge the other or others, since they cannot be called upon to repeat the performance of the obligation. Shared obligations are not cumulative.

The common law recognizes two kinds of shared liability: joint liability and joint and several liability. Different rules apply, depending on the characterization of shared liability. The chief distinction between the two kinds of shared liability is procedural. If liability is joint, the plaintiff must usually proceed against all who share liability in the same proceeding. If liability is joint and several, the plaintiff may elect to proceed against defendants separately. In this chapter, we examine the distinctions between joint liability and joint and several liability, together with the differing rules that apply to discharge of shared liability depending on its characterization.

2. Characterizing the Nature of Liability

It is not always clear whether shared liability is joint or joint and several.

The characterization of liability which arises consensually is one of construction. A promise made by two or more persons is usually presumed to be joint unless it is qualified. What constitutes qualification is, however, a question of interpretation. Liability for overdrafts on a joint bank account, for example, is not necessarily joint. It depends upon the terms of the contract and the nature of the dealings with the bank.

In some cases the characterization of shared contractual liability is dealt with by statute. The *Partnership Act* provides that partners are jointly liable for partnership debts and obligations. The *Bills of Exchange Act* provides that where two or more persons sign a promissory note which bears the words "I promise to pay" the obligation is deemed to be joint and several.

The *Negligence Act* provides that shared liability in tort is joint and several. Recently, however, it was held that where the injured person is contributorily negligent, liability is only several.

B. Principles of Shared Liability

1. Principles Common to Both Joint Liability and Joint and Several Liability

(a) Defence of One Person Liable

If one person has a personal defence, (for example, a defence based on his minority) the others who share liability with him may not take advantage of it. If one person has a defence which goes to the root of the plaintiff's claim, the others who share liability with him, although they have not pleaded it, may take the benefit of it.

Special rules apply to contracts of guarantee under which the guarantor usually undertakes joint and several liability with the principal debtor. The Commission examined these special rules in its *Report on Guarantees of Consumer Debts*.

(b) Release of One Person Liable

Actions or aspects of actions may be settled before trial. The plaintiff may accept payment or performance from a defendant in satisfaction of his claim, or he may abandon his claim. Frequently the defendant will require an assurance from the plaintiff that the plaintiff will not later proceed against him on the settled matter. An assurance of that kind may take one of two forms. It may constitute a "release" under which the plaintiff acknowledges that the defendant is not, or is no longer, liable to him with respect to the settled matter. Or it may take the form of a "covenant not to sue" which provides that the plaintiff agrees not to sue or continue an action against the defendant with respect to the settled matter, but does not address the issue of liability. Lord Denning M.R. has described the distinction between the two as arid and technical, without any merit. The distinction, however, has significant consequences.

A release of one person discharges others who share liability with him. On the other hand, a covenant not to sue a person does not discharge the others with whom he shares liability. A release which reserved the plaintiff's rights against persons who shared liability with the person released has been construed as a covenant not to sue.

2. Principles Which Differ

(a) Joinder of Parties

(i) Joint Liability

A joint obligation is only one obligation. At common law, as a general rule all persons jointly liable had to be joined as defendants and process served on them. A person who was jointly liable could apply for a stay of proceedings until the others jointly liable were joined in the proceedings and served with process. There are exceptions to the general rule. For example, a person jointly liable with others need not be joined if he is outside the jurisdiction, his promise is void or voidable by reason of his minority, he is a member of a firm of common carriers, or he is an undisclosed partner of one who represented himself as being the sole contracting party.

The court now has a discretion in the matter. A stay might be refused, for example, when the plaintiff has done all in his power to effect service on an absent defendant. Moreover, the *Law and Equity Act* now provides that:

> 48. (1) Where a party has a demand recoverable against 2 or more persons jointly liable it is sufficient if any of the persons is served with process, and an order may be obtained and execution issued against the person served notwithstanding that others jointly liable may not have been served or sued or may not be within the jurisdiction of the court.

(ii) Joint and Several Liability

Separate actions may be brought against persons jointly and severally liable. The court may, however, order joinder of other persons who share liability if their participation is necessary in the proceedings.

(b) Death of a Person Who Shares Liability With Others

(i) Joint Liability

Liability of a person jointly liable with others passes on his death to the survivors who shared the liability with him. His estate is freed of that liability. Liability of the last person jointly liable passes to his estate. When there is no one else to share liability, it necessarily becomes several. At that time, the rules governing joint liability no longer have any relevance.

The common law has been altered insofar as partners are involved. The *Partnership Act* provides that, although partners are jointly liable for partnership debts, the estate of a deceased partner is severally liable, subject to the prior payment of his separate debts.

(ii) Joint and Several Liability

Liability of a person jointly and severally liable with others passes to his estate on his death.

(c) Judgment Against One Person Who Shares Liability With Others

(i) Joint Liability

At common law, judgment against one or more persons jointly liable with others bars any subsequent action against the others. That is so even if the plaintiff was unaware of the existence of other persons who shared liability with the defendants and the judgment is not satisfied.

The common law position has been altered by the *Law and Equity Act*, which provides as follows:

> 48. (2) The obtaining of an order against any one person jointly liable does not release any others jointly liable who have been sued in the proceeding, whether the others have been served with process or not.

This section does not accomplish very much. Even before enactment of section 48 of the *Law and Equity Act*, the Supreme Court Rules offered some relief from the consequences of the common law rule. The Supreme Court Rules provide, for example, that judgment for a liquidated sum in default of appearance or defence does not prejudice the plaintiff's right to proceed against others jointly liable who have entered an appearance or delivered a defence. Similarly, summary judgment against one person does not prejudice the plaintiff's right to proceed against others jointly liable who obtained leave to defend. Section 48(2) of the *Law and Equity Act* is not restricted to liquidated demands and, therefore, does go slightly further than the Supreme Court Rules.

(ii) Joint and Several Liability

Where shared liability is joint and several, judgment against one does not bar action against others. Only satisfaction of the judgment will discharge others who share liability.

C. Reform

1. Introduction

In the previous discussion, various difficulties and uncertainties have been observed in the law governing shared liability. These include the different results which arise depending upon whether shared liability is joint or joint and several and the effect of a release of, or judgment against, one person on others who share liability with him.

In many respects, there is consistency in the rules governing shared liability arising in contract or tort. Historical distinctions between joint liability and joint and several liability have become blurred. A question which deserves attention is whether any advantage is obtained from continuing to distinguish between different kinds of shared liability.

2. Joint Liability and Joint and Several Liability

The characterization of shared liability determines who the plaintiff must proceed against. If liability is joint, generally the plaintiff must include in the same proceeding all persons jointly liable to